

**GUIDANCE ON MEDICAL APPEALS
UNDER THE POLICE PENSIONS REGULATIONS 1987 AND THE POLICE
(INJURY BENEFIT) REGULATIONS 2006**

SECTION 9

DECISION OF THE BOARD

Regulation H2(3)/31(3) states that the medical decision of the board is final, subject to a review under regulation H3/32. The board must reach a decision on any question it is considering on appeal in clear and unambiguous terms. Where there is room for doubt, the board should reach its decision on the balance of probabilities, making it clear in which way the balance is tipped and why.

2. While generally it is to be expected that medical issues will dominate, it is possible that the board may be called upon to determine issues of fact and law. The role of the board is quasi-judicial, and whether the issue is medical, factual or legal, the board will need to consider and evaluate the evidence and arguments put before it and reflect this approach in the conclusions in its report.

3. If there are disputes about facts the board should ensure that each party provides the clearest possible evidence in support of their case and allows each party to comment on the other's evidence. The board should also test the evidence in the light of their medical knowledge and reasoning, and any advice they seek. The board should come to its decision on these issues as well on the balance of probabilities.

4. The regulations provide that a board can disagree with the SMP's decision on any of the questions referred to him or her and not just the question giving rise to the appeal. In exercising this power the board must be aware of its quasi-judicial role and the obligation of fairness to the parties. What fairness requires will depend on the precise circumstances of a particular case. However, where a board is minded to review an issue not disputed by the parties it may wish to consider whether it would be sufficient to invite both parties to submit arguments on the issue within a stated time so that the board can come to a final decision in the light of the additional information before it without need of a further hearing.

5. It is to be hoped that in most cases the time between the decision of the SMP and the appeal hearing will be too short for the appellant's condition to have changed. However, this cannot be guaranteed. The board should therefore note that the courts have held, most recently in April 2004, that the appellate authority is required to consider whether the appellant is permanently disabled at the time of the appeal. The board must therefore assess the appellant's current state of health in order to determine whether he or she is permanently disabled at the time of its appeal decision, not at the time of the SMP's decision.

6. In April 2005 the courts applied this principle, in the case of *McGinley v Metropolitan Police Service*, to appeals against a decision on degree of disablement. The effect of the court's decision is that for the purpose of regulation 30(2)(d) of the Police (Injury Benefit) Regulations 2006 an appellant's degree of disablement is to be determined at the date of the appeal and not as at the date of the prior decision by the SMP. The board is therefore required to consider the appellant's loss of earning capacity at the time of appeal and must assess actual or potential earnings at the time of its appeal decision, not at the time of the SMP's decision.

7. The board will not inform the parties of its decision on the day of the hearing. In accordance with Schedule H/6, the board must produce a detailed report of proceedings and its decision on the relevant medical issues and send it to both parties and also to the Secretary

of State (in practice, to the Home Office Police Pensions Section or to the Scottish Public Pensions Agency as appropriate). The report should normally be sent within 10 working days of the hearing (or in 15 working days in extenuating circumstances, e.g. if more information is required for it to reach a decision or if the consultant member of the board is not available to sign).

8. The board's decision will be summarised in a form attached to its report. A draft template of the board's report is attached at Annex A to this section. An example of the decision form is attached at Annex B. A set of notes to assist the board in drawing up its decision is at Annex C.

Referral of the appeal decision back to the board under regulation H3 or 32

9. As mentioned in paragraph 1, the decision of the board may be reviewed with agreement of both parties under regulation H3 or 32. This can either be achieved by the board conducting a paper review (for example where there is a point of law that is considered to have a bearing on the case) or by having a full hearing again (which might arise where there is substantial new evidence to be considered).

10. The facility of a review under H3/32 is on the basis that the board agrees to undertake it. If the board is unwilling or unable to undertake the review it is open to the parties to agree to appoint their own medical practitioner or board of practitioners. The tariffs for these reviews are set out in Section 10.

ANNEX A to Section 9

Draft template and notes on writing the report:

Normally the decision of the board will be confined to the issue or issues under dispute. However, the Police Pensions Regulations 1987 and the Police (Injury Benefit) Regulations 2006 provide that a board can disagree with the SMP's decision on any of the questions referred to him or her and not just the question or questions giving rise to the appeal. (Though this is not so when the decision under appeal relates, say, to the issue of injury because the issue of permanent disablement was the subject of a separate report by the SMP.) In either case use of the following template either in whole or in part as appropriate as an aide memoir may help the board to set out its decision clearly and logically:

The appellant is/is not disabled from performing the ordinary duties of a member of the police force.*

† If disabled

If disabled - *The above-named is disabled in respect of the following condition(s): ...*

The disablement is/is not likely to be permanent.* † If permanent

Of the conditions listed above, the following is/are likely to be permanent:*

The permanent condition(s) above is/is not the result of an injury received in the execution of duty.*

If some conditions are and some conditions are not the result of an injury in the execution of duty, please specify..... Similarly

If any condition(s) are the result of more than one injury, please specify and say which injuries are and which are not in the execution of duty:..... † If injury on duty

The degree of the person's disablement (taking account of any apportionment) is%

Notes

* delete as appropriate

† do not proceed further if not applicable

REGULATION H2/30
Appeal against decision of the Selected Medical Practitioner

Model Form: Decision of the Police Medical Appeal Board

THE POLICE PENSIONS REGULATIONS 1987
THE POLICE (INJURY BENEFIT) REGULATIONS 2006
Decision of the Police Medical Appeal Board

Your Reference Number.....

HML Unique Reference Number

Date and Time of Hearing.....

Location of Hearing

Appellant Name

Address

Date of Birth

Police AuthorityPolice Authority

Decision of Board

Following our consideration of this appeal on.....we confirm our decision is that:

This decision should be read in conjunction with the attached report.

Signatures of Board Members

Chairman (Name and Qualifications)

Second member (Name and Qualifications)

Third member (Name and Qualifications)

Other member(s)
If applicable (Name and Qualifications)

Date

ANNEX C to Section 9

Summary notes on drawing up the decision

1. The following are the ordinary duties of a member of the force for the purpose of assessing permanent disablement under regulation H1/30:
 - Managing processes and resources and using IT;
 - Patrol/supervising public order;
 - Incident management, such as traffic and traffic accident management;
 - Dealing with crime, such as scene of crime work, interviewing, searching and investigating offences;
 - Arrest and restraint;
 - Dealing with procedures, such as prosecution procedures, managing case papers and giving evidence in court.
2. Disablement means inability, occasioned by infirmity of mind or body as the case may be, to perform all the ordinary duties of a member of the force. “Infirmity” means a disease, injury or medical condition, and includes a mental disorder, injury or condition – see Section 3 and, if needed, Annex B to PNB Guidance at Appendix 2, paragraphs 6 and 7.
3. “Permanent” is not defined in the regulations since the word arguably speaks for itself, meaning for the rest of one’s life. If, in a case where the officer is still in the early stages of his or her career, such a long-term view is difficult the test should be that the officer is likely to remain disabled for the ordinary duties of a member of the force until at least the normal compulsory retirement age for his or her rank – see Section 3 and, if needed, Annex B to PNB Guidance, paragraphs 8 and 9. However, see also point immediately below.
4. For purposes of permanent, it shall be assumed that the person receives normal appropriate medical treatment for his or her disablement. (If the person is refusing such treatment, it will be for the police authority to decide whether or not such refusal is reasonable - see Section 3 and, if needed, Annex B to PNB Guidance, paragraphs 12-14.)
5. Disablement is deemed to be the result of an injury if the injury has caused or substantially contributed to the disablement.
6. Degree of disablement is calculated by reference to the degree to which earning capacity has been affected as a result of an injury received in the execution of duty and is a key element in determining injury awards for the purposes of Section 5.