1968. No. 173 [C]

NATIONAL INSURANCE (INDUSTRIAL INJURIES)

Determination of Claims and Questions

REGULATIONS, DATED 25TH JULY 1968, MADE BY THE MINISTRY OF HEALTH AND SOCIAL SERVICES UNDER THE NATIONAL INSURANCE (INDUSTRIAL INJURIES) ACTS (NORTHERN IRELAND) 1966 AND THE NATIONAL INSURANCE ACTS (NORTHERN IRELAND) 1966.

The Ministry of Health and Social Services, in exercise of powers conferred by sections 38(3), 39, 40(4), 41, 49 and 53 of the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(**a**), and section 74(2) of the National Insurance Act (Northern Ireland) 1966(**b**), as amended by sections 8 and 9 of the National Insurance (No. 2) Act (Northern Ireland) 1966(**c**), and by section 14(6) of the last-mentioned Act, and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations (Northern Ireland) 1968 and shall come into operation on 2nd September 1968.

(2) In these regulations—

"the Act" means the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966;

"applicant" in Part II means any person who has made an application to the Ministry for the determination of a question to which Part II relates;

"hearing" means an oral hearing;

"inquiry" means an oral inquiry;

"insurance officer" means an officer appointed in accordance with section 67 of the National Insurance Act (Northern Ireland) 1966;

"member" in relation to a medical appeal tribunal includes the chairman thereof;

"the National Insurance Regulations" means the National Insurance (Determination of Claims and Questions) Regulations (Northern Ireland) 1968(**d**).

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address.

(**a**) 1966, c. 9 (N.I.).
(**b**) 1966, c. 6 (N.I.).
(**c**) 1966, c. 16 (N.I.).
(**d**) S.R. & O. (N.I.) 1968, No. 172.

(4) Any power given by these regulations to extend the period during which anything is required to be done under these regulations or to dispense with any of the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.

PART II

DETERMINATION BY THE MINISTRY OF CERTAIN SPECIAL QUESTIONS TO WHICH SECTION 35(1) OF THE ACT APPLIES

Application for the Ministry's decision and procedure thereon

2.—(1) Any person desiring to obtain the decision of the Ministry on any of the questions mentioned in section 35(1)(*a*) to (*e*) of the Act shall deliver or send to the Ministry an application for that purpose in writing in a form approved by it and shall furnish such particulars as the Ministry may require for the purpose of the consideration and determination of any such question.

(2) The Ministry shall take steps to bring any such application and any such particulars to the notice of any person appearing to it to be interested therein and to obtain from such person such particulars within such time and in such form as it considers reasonably necessary for the purpose of the determination of the question.

(3) The Ministry may, if it thinks fit, before determining the question, appoint a person to hold an inquiry into the question or any matters arising in connection therewith and to report to it thereon, and any person so appointed may by summons require persons to attend at any such inquiry to give evidence or to produce documents reasonably required for the purpose of the inquiry, and may take evidence on oath and for that purpose administer oaths.

(4) Reasonable notice of the date and place of the holding of such inquiry shall be given to the applicant and any persons notified of the application in accordance with paragraph (2) and the procedure at an inquiry shall, subject to this regulation, be such as the person appointed to hold the inquiry shall determine.

(5) Subject to paragraph (6) the applicant and any other person appearing to the Ministry or the person holding the inquiry to be interested in the question which has arisen shall have the right to be heard at the inquiry.

(6) Any person who by virtue of paragraph (5) has the right to be heard at any inquiry may, and in the case of a body of persons corporate or unincorporate shall, be represented by some person duly authorised and for the purposes of the proceedings at such inquiry any such representative shall have all the rights and powers to which the person whom he represents is entitled under these regulations.

(7) The Ministry shall give notice in writing of its decision to the applicant and to any persons appearing to it to be interested therein and may publish its decision in such manner as it thinks fit, and the applicant and any such person as aforesaid shall, on request, be furnished with such a statement of the grounds of the decision as will enable him to determine whether any question of law (not being a question which has been referred to the Supreme Court in accordance with section 35(3) of the Act) has arisen upon which he may wish to appeal.

Review or reference

3. The provisions of these regulations shall apply with the necessary modifications to any case in which—

(*a*) a question has been raised with a view to the review of any decision of the Ministry given in accordance with this Part; or

(*b*) a question such as is mentioned in regulation 2(1) is referred to the Ministry—

(i) under section 66(2) of the Act (reference of such questions for decision by the Ministry where the decision thereof is necessary for the determination of any proceedings by a court); or

(ii) under section 70 of the National Insurance Act (Northern Ireland) 1966 as modified by the National Insurance (No. 2) Act (Northern Ireland) 1966 (reference by an insurance officer of any such question for determination where such question arises on the consideration of any claim or question).

Notice of reference of question of law

4. In the event of the Ministry determining in accordance with section 35(3) of the Act to refer any question of law to the Supreme Court it shall send notice in writing of its intention so to do to the applicant and to any other person appearing to it to be interested therein.

PART III

DETERMINATION OF DISABLEMENT QUESTIONS

Constitution of medical boards

5.—(1) A medical board constituted in accordance with section 38 of the Act shall, except as hereafter provided in this regulation, consist of two members.

(2) A medical practitioner shall not act as a member of a medical board for the purpose of the consideration of any case referred to the board if he—

(*a*) is or may be directly affected by that case; or

(*b*) has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or to whom any question has been referred for examination and report or as an employer or as a witness.

(3) A medical board shall not determine any questions referred to them if—

(*a*) any member thereof is unable to be present at the consideration of any such question; or

(*b*) the medical board, being a board consisting of two members, are unable to reach a unanimous decision on any such question.

(4) In any case in which, by reason of the provisions of paragraphs (1) to (3), a medical board are unable to determine any question which has been referred to them, the reference to that board shall be revoked and the questions arising in that case shall forthwith be referred to another medical board:

Provided that, in a case to which paragraph (3)(*b*) relates, the reference shall be to a medical board consisting of three members, whose decision, if not unanimous, shall be that of the majority of such members.

Reference to single medical practitioner instead of to medical board

6.—(1) For the purposes of the provisions of section 41 of the Act (reference of disablement questions to a single medical practitioner) and notwithstanding anything in the foregoing provisions of these regulations, the disablement questions arising in any case may, with the consent of the claimant, be referred to a single medical practitioner appointed by the Ministry instead of to a medical board.

(2) The provisions of regulations 7 and 8 shall apply to the proceedings on a reference to a single medical practitioner in accordance with paragraph (1), as if such practitioner were a medical board constituted in accordance with the Act or the chairman of such a board, as the case may be.

(3) If a medical practitioner to whom any questions have been referred in accordance with paragraph (1) is of the opinion that a final assessment can be made but that the period which should be taken into account by such assessment would exceed six months, he shall, instead of himself determining such questions, make a report in writing stating his opinion and the grounds therefor, and thereupon the reference to the single medical practitioner shall be revoked and the disablement questions arising in the case shall be referred to a medical board constituted under the Act, to whom a copy of such report shall be made available.

Notice of sitting and procedure of medical boards

7.—(1) Reasonable notice of the time and place at which a medical board will sit for the consideration of any case shall be given to the claimant and if, after such notice has been given, the claimant should fail to appear at the sitting of the board, the board shall not proceed to determine the questions referred to them without his consent.

(2) No person shall be entitled to be present and be heard during the consideration of any question by a medical board other than the claimant and any other person whom the medical board may, with the consent of the claimant, allow to be present as being a person who, in their opinion, is likely to assist them in the determination of that question.

Notice of decision of medical board

8.—(1) A medical board shall in each case record their decision in writing in such form as may from time to time be approved by the Ministry and shall include in such record (which shall be signed by all the members of the board)—

(*a*) a statement of their findings on all questions of fact material to such decision; and

(*b*) in a case in which the decision of a medical board consisting of three persons was not unanimous, a statement that one of the members dissented and of the reasons given by him for so dissenting.

(2) As soon as may be practicable, the claimant shall be sent written notice of the decision of a medical board, and such notice shall be in such form as may from time to time be approved by the Ministry and shall contain a summary of the said findings of the board, including, where the decision was not unanimous, a statement that one of the members dissented and of the reasons given by him for so dissenting.

Constitution of medical appeal tribunals

9.—(1) A person shall not act as a member of a medical appeal tribunal constituted under section 38 of the Act, for the purpose of the consideration of any case referred to them if he—

(*a*) is or may be directly affected by that case; or

(*b*) has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or who has acted as a member of a medical board or to whom any question has been referred for examination and report or as an employer or as a witness.

(2) A tribunal constituted as aforesaid shall not proceed to determine any case referred to them if any member thereof is unable to be present at the consideration of that case and where, by reason of this paragraph, such tribunal are unable to determine any case referred to them, the reference to that tribunal shall be revoked and the case shall forthwith be referred to another tribunal constituted as aforesaid.

Notice of appeal and notification by the Ministry

10.—(1) An appeal by a claimant against a decision of a medical board shall be brought by giving notice of appeal to the Ministry within three months after notice of that decision has been given in accordance with regulation 8 or within such further period as the chairman of a medical appeal tribunal may for good reason allow.

(2) A notice of appeal shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

(3) For the purpose of securing the reference of a case to a medical appeal tribunal in accordance with section 39(3) of the Act where the Ministry is of the opinion that a decision of a medical board ought to be considered by a medical appeal tribunal, the Ministry may notify the insurance officer of its opinion in that respect within three months after the date of that decision or such longer period as the chairman of a medical appeal tribunal may for good reason allow.

Hearing of appeals by, and procedure of, medical appeal tribunals

11.—(1) For the purpose of determining any case referred to them, a medical appeal tribunal shall hold a hearing which shall be in public except in so far as the chairman of the tribunal may for special reasons otherwise direct.

(2) Reasonable notice of the time and place at which a medical appeal tribunal will hear a case shall be given to the claimant and to the Ministry, and, except with the consent of the claimant, the tribunal shall not proceed with the hearing unless such notice has been given.

(3) If a claimant to whom notice of hearing has been duly given in accordance with paragraph (2) should fail to appear at the hearing and has not given a reasonable explanation for his absence, the medical appeal tribunal may proceed to determine the case referred to them or may give such directions with a view to the determination of the case as they may think proper.

(4) Where a medical appeal tribunal are unable to reach a unanimous decision on any case referred to them, the decision of the majority of the members thereof shall be the decision of the tribunal.

(5) Where in any case there is before a medical appeal tribunal medical advice or medical evidence relating to the claimant which has not been disclosed to him and in the opinion of the chairman of the tribunal the disclosure to the claimant of that advice or evidence would be harmful to the claimant's health such advice or evidence shall not be required to be disclosed to the claimant but the tribunal shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of their determination of the case.