

CHAPTER 10

Industrial injuries: injury benefit and disablement benefit

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 CHAPTER 10

Industrial injuries: injury benefit and disablement benefit

Part 1: Injury benefit

Section 56 of the Social Security Act 1975 (hereinafter in Chapter 10 referred to as 'the Act')

1 Entitlement 'in respect of any day during the injury benefit period on which ... he is incapable of work'

Section 56(4) of the Act.

i A man was injured as a result of an industrial accident on 8th February, but continued to work until the following 14th February when, after working for one hour only, he became incapable of work. It was held that 14th February was not a day on which he was incapable of work for injury benefit purposes. See also C.W.I. 10/49 and R(I) 74/51. C.S.I. 49/49

ii A man was injured as the result of an accident arising out of and in the course of his employment while working on a day-shift on 17th February, but he continued to work until he became incapable of work as the result of the injury when working on the night-shift from 10 p.m. on 28th February to 5.45 a.m. on 1st March. It was held that he was a 'night-worker' and that the 1st March could not be treated as a day of incapacity for work. R(I) 31/55

iii The extent of a man's disablement as a result of prescribed disease no. 42 was assessed at 3 per cent for life and a disablement gratuity was paid to him. He was also in receipt of a special hardship allowance and during the currency of the award he met with a second industrial accident and made a claim for injury benefit. It was held that a beneficiary receiving special hardship allowance in conjunction with a disablement gratuity in respect of an earlier accident or disease is, when entitled to injury benefit in respect of a subsequent accident, 'a person entitled to receive benefit by way of injury benefit and a disablement pension' within the meaning of (What was then) section 29(1)(a) of the National Insurance (Industrial Injuries) Act 1965. See now section 91(1)(a) of the Act. R(I) 3/73

2 Incapacity for work

- C.I. 8/49 i It was accepted that a man had become incapable of work as the result of an industrial accident, but it transpired that, while in receipt of injury benefit, he worked regularly on Saturdays and Sundays for an employer other than the employer for whom he was working at the time of the accident. It was held that 'incapable of work' must be interpreted accordingly to the ordinary meaning of the words as meaning work which the claimant could reasonably be expected to do, and that as he had demonstrated that there was such work it could not be said that he was incapable of doing it. See also paragraph 10 of CI 99/49, *infra* 10.3.1 i and see now sub section 2 of section 56 of the Act.
- C.W.I.20/49 ii A blacksmith's striker was incapable of work and in receipt of injury benefit for some 6 weeks as a result of an injury to his eye. After resuming his employment he attended hospital for treatment for his eye on two occasions, on each of which he lost a day's pay. It was held that he was incapable of work on both days. Compare C.I. 40/49.
- R(I) 3/73 iii The extent of a man's disablement as a result of prescribed disease no. 42 was assessed at 3 per cent for life and a disablement gratuity was paid to him. He was also in receipt of a special hardship allowance and during the current of the award he met with a second industrial accident and made a claim for injury benefit. It was held that a beneficiary receiving special hardship allowance in conjunction with a disablement gratuity in respect of an earlier accident or disease is, when entitled to injury benefit in respect of a subsequent accident, 'a person entitled to receive benefit by way of injury benefit and a disablement pension' within the meaning of (what was then) section 29(1)(a) of the National Insurance (Industrial Injuries) Act 1965. See now section 91(1)(a) of the Act.
- R(I) 13/55 iv A doctor's certificate is not conclusive evidence of incapacity for work but merely represents a particular doctor's opinion and has to be weighed with all other relevant evidence in forming a judgement on the case. In some cases non-medical evidence may outweigh a doctor's opinion on the question of capacity for work; nor is the claimant's benefit record irrelevant when incapacity for work is being considered, and should not be excluded from consideration. See and compare R(S) 1/53, *supra* 2.2.2 ii.

3 Incapacity held to be the result of the relevant injury

- C.S.I. 1/48 i A claimant who suffered from asthma became incapable of work as the result of an acute attack of asthma brought on by the fumes from a fire on his employer's premises which he was attempting to extinguish. It was held that his incapacity was the result of an industrial accident and that injury benefit was payable to him.
- C.I. 4/49 ii A claimant cut two fingers when working with a circular saw and was incapable

of work for the following 2 weeks. He was then certified to be fit to resume work but he did not do so and his fingers became septic. A week later, although his fingers were healed, he was certified to be incapable of work by reason of neurasthenia or neurosis. Some 3 years previously he had been discharged from the Army with psycho-neurosis and it was held that the fact that he was neurotic before the accident did not prevent his subsequent incapacity from being the result thereof and that injury benefit was payable to him for his subsequent incapacity by reason of neurasthenia.

- iii 'Injury by accident' does not necessarily involve the idea of violent or exceptional exertion, but includes any physiological injury brought about by an undesigned and untoward event happening in the course of the employment and as a result of it. Thus a colliery worker who had ruptured his right biceps while carrying timber in the course of his employment over 12 years previously was held to be entitled to injury benefit when he became incapable of work as the result of a strain to the same arm caused by shovelling wet sand in difficult circumstances. C.I. 5/49
- iv A chain maker who developed abscess of his hand due to the entry of infection through a crack in his hand was held to be entitled to injury benefit when certified to be incapable of work by reason of 'abscess of hand'. C.I. 12/49
- v The fact that a person is concurrently incapable of work for a reason unconnected with an industrial accident does not necessarily exclude him from the receipt of injury benefit. Thus, in the rather special circumstances of the case, a man who ruptured himself while staking wheat and was later certified to be incapable of work by reason of jaundice was held to be entitled to injury benefit when it was subsequently carried that his incapacity had also been due to right inguinal hernia. C.I. 50/59
- vu A labourer employed by British Railways was engaged in assisting a boiler washer in washing out engines. The work included sluicing out the accumulated scum with jets of water and, not being a result boiler washer, the claimant was not supplied with protective closing. On 2 occasions he was soaked to the skin by '2 bad wettings' from heaving rain coming into the shed and was subsequently certified to be incapable of work by reason of fibrositis. It was held that injury benefit was payable to him for the period of his incapacity. See also C.I. 147/50. R(I) 3/51
- vii A man who developed a psycho-neurotic condition and a connected condition of the skin after working in a machine shop in the vicinity of a machine which repeatedly produced explosive reports, any one of which might have presaged a more serious explosion, was held to be entitled to injury benefit in respect of his resulting incapacity. R(I) 43/55
- viii A man who had not fully recovered from the effects of an industrial accident, when he strained his left sacroiliac joint, slipped and suffered further injury when going to work on the day he resumed his employment. It was held by a Tribunal of Commissioners that the claimant's incapacity for work was demonstrated and prolonged by the incident in question and that injury benefit was payable to him for his subsequent incapacity. See paragraphs 10 and 12 as to the effect of 'second accidents' and compare C.I. 114/49. See also paragraphs 9 where reference is made to decisions under the Workmen's Compensation Acts. R(I) 3/56 (T)
- ix A furniture remover who had been employed in that occupation for 9 months only felt a pain in his chest while lifting a heavy wardrobe. It was subsequently found that he had suffered a myocardial infarction and it was held that he had suffered personal injury by accident arising out of and in the course of his employment and that injury benefit was payable to him. R(I) 12/68

4 Incapacity held not to be the result of an industrial accident

- C.I. 168/49 i A railway motor driver strained his abdomen when releasing a trailer and was sent to hospital for 'observation on abdomen'. It was subsequently found that he was being treated in hospital for colitis and some 6 weeks later he had an operation for hernia. It was held that incapacity after admission to hospital was due to colitis and not hernia and that injury benefit was not payable to him.
- C.I. 413/50 ii A man of 68 years of age who had suffered from emphysema for a number of years sustained cuts in three fingers in what was admittedly an industrial accident. After having his fingers dressed he resumed work, but approximately a fortnight later became incapable of work by reason of bronchitis which developed into pneumonia. It was held that injury benefit was not payable to him on the ground that his incapacity was not the result of the accident. See also C.S.I. 80/50.
- R(I) 18/51 iii While lifting a bin of pig food in the course of his employment a lorry driver's mater felt a pain in his chest and 4 days later was certified to be incapable of work by reason of cardiac dyspnoea, but it was held that injury benefit was not payable to him on the ground that his incapacity was not the result of what was accepted as having been an industrial accident.
- R(I) 33/53 iv A coal-miner suffered an injury to his shoulder as the result of an industrial accident but was able to return to work a week later. Approximately a month later returning to work he fell off his bicycle and injured the same shoulder and was again incapable of work, but it was held that his incapacity was not the result of the relevant injury but was the result of a second non-industrial accident, so that injury benefit was not payable in respect of it. See also R(I) 74/53.
- R(I) 16/55 v A maintenance fitter and turner trod on a piece of wood and two nails pierced the sole of his right foot, causing two punctured wounds. It was accepted that he had suffered personal injury caused by accident arising out of and in the course of his employment, but he was not thereby rendered incapable of work. Four days later, however, when walking on a pebble beach, he stepped in such a way that a pebble pressed hard against the wound in the sole of his right foot and it caused him to turn over on his right ankle and brought about a chip fracture of the external malleolus. It was held that his subsequent incapacity was not the result of industrial injury and that injury benefit was not payable to him.
- R(I) 27/58 vi A little over a month after injuring his back in what was accepted as having been an industrial accident, and while still receiving treatment, a man slipped in the yard of the house where he was lodging and injured his left buttock, as a result of which there was a further period of incapacity for approximately 2 months. It was held that he had not proved that the second spell of incapacity was the result of the previous, and accepted, industrial accident and that injury benefit was not payable to him. See and compare R(I) 3/56, *supra* 10.1.3 viii.

5 Incapacity but no industrial accident

- i A home help employed by a local authority attended people's houses for the purpose of performing washing, cleaning and other such duties. At one of the houses she had to wring out the clothes in the garden when there was a cold wind blowing and it was raining. She got a chill and sometime later developed pneumonia and became incapable of work. It was held that her incapacity was not the result of injury caused by the accident and that injury benefit was not payable to her. See also C.I. 384/50 and R(I) 9/52. C.I. 18/49
- ii A dock labourer was certified to be incapable of work by reason of hydrocele and alleged that it was caused by lifting a bag of cement during the course of his employment. The medical evidence showed that the claimant's incapacity was caused by idiopathic hydrocele, which as a rule arises without any known original, and it was held that injury benefit was not payable to him. C.W.I. 3/50
- iii After working in a seam where he had to stand up to his knees in salt water a coal-miner developed boils and it was held that, although the boils were developed 'by accident', probably from a fellow-workman, the accident had not arisen out of the claimant's employment and that injury benefit was not payable to him. See paragraph 14 where it was said that if it were to be held that to develop boils through working near another workman was to suffer injury by accident it would seem to follow that the same would apply to catching a cold from a fellow-workman. C.I. 36/50
- iv A man who was employed on an Admiralty cable ship as a carpenter became incapable of work due to pleural effusion which, it was accepted, was caused by the unhealthy conditions of the work. He was held not to be entitled to injury benefit on the ground that there was no incident, or series of incidents, which could be regarded as accidents in the popular sense which caused or contributed to the original or progress of his illness. C.I. 325/50
- v A building foreman who was incapacitated by a disease of his feet variously diagnosed as 'septic feet', 'ulcer of foot', etc., caused by wearing cold and wet gun boots over a prolonged period, was held not to be entitled to injury benefit on the ground that his incapacity was the result of unhealthy working conditions and not due to accident. R(I) 25/52
- vi A man was employed in spraying weeks with a solution containing sodium chlorate. Protective clothing was supplied by the employers but the claimant's waterproof trousers were torn, and apparently, in the course of his employment his ordinary trousers became soaked with the chemical. Later, at home, the spark from a cigarette set alight to his trousers, with the result that he suffered extensive burns. It was held that the injury was caused by the setting alight of the trousers, which was a separate accident not arising out of the claimant's employment and injury benefit was not, therefore, payable to him. R(I) 4/58
- vii A laundry worker who had handled blankets which were suspected to have been in contact with a smallpox patient was vaccinated and became incapable of work by reason of 'vaccination reaction'. It was held that injury benefit was not payable because vaccination was not injury by accident. R(I) 12/58
- viii It was held that injury benefit was not payable to a labourer who attributed an attack of a dermatomycosis of the feet to the wearing of rubber boots supplied by his employers. The medical evidence showed that the disease is a fungus infection and there was no evidence that it was derived from the boots. See paragraphs 5-6 and see also and compare C.I. 211/49 R(I) 43/60

6 Incapacity held not to be the result of the relevant injury

- i A man who had met with 2 industrial accidents, and not certified to be incapable of work by reason of multiple sclerosis, was held not to be entitled to injury benefit since, on the medical evidence, the disease was not attributable to either of the accidents. R(I) 33/51
- ii It was accepted that a man met with an industrial accident when he received a blow to his testicles. He was admitted to hospital, where an orchidectomy was performed, but after his discharged from hospital a month later a medical certificate certified that he was suffering from teratoma. It was held on the medical evidence that the claimant's incapacity from that cause was not the result of the accident but was due to a pre-existing condition which is probably never caused by a single accident, and in that particular case was unlikely to have been affected by a blow. R(I) 37/53
- iii A cook in a works canteen injured her shoulder in an industrial accident and was in receipt of injury benefit for two months, after which she was found to be suffering from rheumatoid arthritis which affected both shoulders and her knee. It was held that as rheumatoid arthritis is a generalised progressive disease not usually associated with trauma the claimant's incapacity resulting therefrom was unconnected with the relevant injury. R(I) 60/53
- iv A man suffered a slight injury as the result of an industrial accident when he grazed his left shin, but the result sore was slow in healing. Six weeks later his left foot became painful and he was found to be suffering from defective circulation known as thrombo-angiitis obliterans which eventually also affected his right foot. It was held that the claimant's condition was not the result of the accident and that it was the presence of the disease which had delayed the healing of the abrasion of his shin. Injury benefit was not, accordingly, payable to him. R(I) 70/53
- v Several weeks after her apparent recovery from the minor effects of a fall at work a girl employed as a nursery maid was found to be suffering from highly malignant sarcoma which necessitated amputation of her left leg above the knee. It was held that the incapacity did not result from the accident but from the operation which was necessitated by a condition to which the accident merely drew attention. The claim for injury benefit was, accordingly, dismissed. R(I) 91/53
- vi A woman suffered a slight injury to her right ankle which was not incapacitating, but 12 weeks later she was certified to be incapable of work due to phlebitis and it was held that her incapacity was not the result of an industrial accident. See paragraph 5 where the development of phlebitis is discussed. R(I) 101/53
- vii A school welfare assistant was hit on the left side of her face and her left ear by a football and it was accepted that she had met with an industrial accident. Three months later she became incapable of work by reason of otitis media and mastoiditis, but it was held that, on the balance of medical evidence, her incapacity was not the result of the injuries caused by the accident. R(I) 35/54
- viii In jumping off his wagon a lorry driver caught his right knee on the side of the wagon and was certified to be incapable of work. A fortnight later his doctor sent him to hospital to have an x-ray examination, which revealed a tumour which was subsequently found to be an osteogenic sarcoma. It was held that, on the weight of the medical evidence, the tumour was neither caused nor accelerated in its development by the injury to the claimant's knee and that injury benefit was not payable to him. R(I) 67/54
- ix A man aged 25 who was employed as a plumber slipped and fell on an iron bar and suffered a severe blow in the left groin. He continued to work for 3 weeks, however, and then consulted his doctor about a swelling which had begun to cause pain and was certified to be incapable of work. Seven weeks after the accident a malignant tumour (a necrotic seminoma) of the left testis was removed and it was held that the weight of the medical evidence showed that a seminoma, like a

teratoma, is probably never caused by a single blow and that it must have been developing long before the accident. The only way it could have been aggravated would have been by a blow sufficiently severe to have caused a haemorrhage with immediate persistent pain, of which there was no evidence. The claimant's claim for injury benefit was, accordingly, disallowed. See the medical evidence referred to in paragraphs 9-10.

- x R(I) 15/59 While carrying a pot of tea in the course of her employment in a canteen kitchen a woman slipped and hit her head on a gas meter and scalded her arm. She continued to work for some 10 days, but then became incapable of work by reason of a cerebral vascular catastrophe causing a hemiplegia. The evidence showed that the head injury had not resulted in concussion, that a hemiplegia may be due to either a cerebral haemorrhage or a cerebral thrombosis, and that in that case it was probably due to the latter, though in either event the delay of 12 days made it no more than a bare possibility that the accident caused or precipitated the hemiplegia. It was held that the claimant had been unable to prove that her incapacity was the result of injury caused by accident.
- xi R(I) 43/59 A man on night work received a blow on the left side of his head and was found to have a slight contusion. He continued at work for the next fortnight, although he complained of headaches off and on, but then reported to the works surgery in a distressed condition following an attack of faintness and vomiting. He was admitted to hospital and was found to be suffering from a subarachnoid haemorrhage due to rupture of an aneurysm of the right posterior communicating artery. It was held on the medical evidence that it was improbable that the blow on the head caused the subarachnoid haemorrhage and that injury benefit was not payable to the claimant. See paragraph 7-13 for a discussion of the relevant medical evidence.
- xii R(I) 10/60 A woman who was employed as a cleaner knocked her hand but continued to work for the next two months, when she had an operation for 'trigger finger' and became incapable of work. It was held that her incapacity was the result of a constitutional condition and that injury benefit was not payable to her. See paragraphs 5-7 where the aetiology of 'trigger finger' is discussed.
- xiii R(I) 11/60 A coal-miner injured his left hip when he slipped on a steel plate and 7 days later was admitted to hospital and found to be suffering from tuberculosis of the trochanteric bursa. It was held on the medical evidence (as to which see paragraphs 5-6) that it was not probable that the tuberculous condition was either caused or materially aggravated by the accident and that injury benefit was not payable to the claimant.
- xiv R(I) 33/60 It was held that injury benefit was not payable to a man who was incapable of work by reason of prolapsed intervertebral disc on the ground that the medical evidence showed that the claimant's incapacity did not result from the relevant accident. See paragraph 10 where the aetiology of disc protrusion is fully discussed.
- xv R(I) 2/61 A builder's labourer fell off scaffolding, bruising his right shoulder, thigh and ribs, but continued to walk for the next two weeks. He then developed a carbuncle on his right shoulder and 6 weeks after the accident became incapable of work as the result of acute osteomyelitis of the right femur. It was held that injury benefit was not payable to him on the ground that his incapacity was not the result of the relevant injury, the osteomyelitis being secondary to the carbuncle, which was likely to have resulted from the accident. See as to the aetiology of osteomyelitis paragraphs 12-13.
- xvi R(I) 5/61 It was held that the incapacity of a coal-miner due to coronary thrombosis did not result from a blow on his chest which he received during the course of his employment. See paragraphs 8-9 where the relationship between coronary thrombosis and direct trauma to the chest is discussed.

Part 2: Disablement benefit

Sections 57 and 91 of the Act, the Social Security (Determination of Claims and Questions) Regulations 1975, Part 6, and the Social Security (Industrial Injuries) Regulations 1975, Parts 2 and 3.

1 Evidence of incapacity

R(I) 58/52 i The question whether a person is incapable of work for the purpose of his entitlement to industrial injuries benefits is not entirely a medical question, but must be decided by the statutory authorities in the light of all the available evidence, which includes report of medical boards. Thus a man suffered from pneumoconiosis and who had done no work for 7 years was, in the opinion of the medical board, capable of doing light work. His own doctor, and a previous medical board, however, considered that he was unfit for any form of employment and it was held on the evidence as a whole that the claimant had been, and was likely to remain permanently incapable of work. See also C.I. 99/49, 10.3.1 i below.

2 Amount of disablement gratuity

C.S.I. 74/50 i The amount payable by way of gratuity must be calculated on the basis of a composite assessment by a medical board of the degree of a person's disablement; not as an aggregate of gratuities corresponding to the component assessments.

R(I) 5/82 ii A claimant sustained injury by accident on 31.12.68 but did not claim that the accident was an industrial accident until 24.6.76. In July 1976 the insurance officer accepted that it was an industrial accident and on 11.7.77 the claimant claimed disablement benefit. On 14.0.77 a medical board assessed the disablement as 10% for life from 16.3.89, the day following the end of the injury period. This was upheld by the medical appeal tribunal on 6.6.78. The insurance officer awarded a gratuity of the amount appropriate on 16.3.69. The claimant contended that the award should have been of the far greater amount appropriate at the date of the claim. The Commissioner held that the insurance officers award was correct.

3 Period of entitlement to disablement gratuity

i A medical board found that at the end of the injury benefit period a man had a loss of faculty which was likely to be permanent and assessed the degree of his disablement at 12 per cent of 6 months. The reassessment medical board made an assessment of 10 per cent and expressed the opinion that the claimant's disablement was not likely to be permanent. It was held that the claimant had a continuing title to a disablement gratuity until the degree of his disablement was assessed at less than 1 per cent. C.I. 54/50

ii A medical board found that a man who had injured his knee in an industrial accident was suffering from a loss of faculty which was likely to be permanent and they provisionally assessed the degree of his disablement at 10 per cent for 6 months, on the basis of which a disablement gratuity was paid to him. The terminal date of the medical board's assessment was 6th November and on the previous 17th September a reassessment medical board made a final assessment of 5 per cent for the remainder of the claimant's life. That assessment was to run from and including 6th November and it would have entitled to a gratuity from that date, but prior to that date he died and it was held that the second gratuity which had been calculated by reference to the period from 6th November was not payable to his widow. See paragraphs 5-6 and see now section 57(3) of and Schedule 8 of the Act and regulation 6 of the Social Security (Industrial Injuries) (Benefit) Regulations 1975. R(I) 23/52

4 No time limit for claiming disablement gratuity

i A woman made a claim for disablement benefit 2 years after meeting with an industrial accident and the extent of her disablement was then assessed at a degree which entitled her to a gratuity. It was held the gratuity was payable to her, there being no period for which disqualification could be operative. See also R(I) 51/53 and paragraph 6 of R(I) 14/74. R(I) 27/52

5 Successive accidents

i A man who had two industrial accidents, both of which caused injury to his head, was found by a medical board to have a loss of faculty attributable entirely to the second accident and disablement benefit was paid to him on the basis of a series of assessments of the degree of his disablement based on that accident. Later a medical appeal tribunal reversed those assessments and made a series of assessments based on the first accident, and the claimant contended that he was entitled to benefit in full for both series of assessments. It was held by a Tribunal of Commissioners that, as only one loss of faculty was involved, the disablement benefit payable as a result of the medical appeal tribunal's decision should be reduced by the amount paid following the medical board's assessment. See paragraph 11 et seq; see also R(I) 43/56. R(I) 22/55 (T)

ii A claimant was awarded disablement benefit for a period during part of which he had already received a payment by way of injury benefit and it was held by a Tribunal of Commissioners that where the 'successive accidents' provision (see now section 91 of the Act) comes into operation on a day other than a Tuesday disablement benefit is payable at the full weekly rate up to and including the following Tuesday. (Under regulation 15(8) of the Social Security (Claims and Payments) Regulations 1975 weekly sums on account of industrial injuries benefit are payable on Wednesday.) R(I) 13/57 (T)

- R(I) 2/84 iii A claimant had 2 successive accidents, one in 1968 and one in 1977. The final assessment for the first was 4% for life and for the second 6% of life. He was awarded a gratuity and special hardship allowance for the first accident and under a provision which subsequently was incorporated in regulation 18(2) of the SS (General Benefits) Regulations 1975 he elected to receive a disablement pension in lieu of the gratuity. In respect of the second accident he was awarded a gratuity only, and on the basis that he was in receipt of a disablement pension (in respect of the first accident) he elected under a provision subsequently incorporated in regulation 38(1) of the above Regulations to receive a disablement pension in lieu of this gratuity also. Some 2½ years later, this was stopped on the basis: (a) that the first disablement pension would cease to be payable if the claimant were to cease to qualify for the special hardship allowance, therefore it was not a disablement pension 'in respect of an assessment for a period which is limited by a reference to the person's life' for the purposes of the provision which became regulation 38(1), and therefore the second election under that provision was inoperative (R(I) 30/56, para 15 which had become the basis of the Department's practice sine that decision) (paras 12(2) and 14); and (b) that there was a further requirement under that provision that special hardship allowance was in payment in respect of the second accident also (para 19(2)). The Commissioner held that R(I) 30/56 was erroneous on the above point: should not be followed in reference to the 1975 legislation: and that both grounds for the disallowance were wrong (paragraphs 17 to 20). A disablement pension in lieu of gratuity under regulation 18(2) is a disablement pension for the purposes of regulation 38(1).

6 The set-off between disablement pension and disablement gratuity and adjustment of benefit

Section 119(4) of the Act and regulation 34 of the Social Security (Determination of Claims and Questions) Regulations 1975.

- R(I) 34/58 i The degree of a man's disablement resulting from a prescribed disease was assessed at 2 per cent for life and he was duly awarded, and paid, a gratuity based on that assessment. It was later found that there had been unforeseen aggravation of the effects of the disease and the degree of his disablement was reassessed at 20 per cent for the period of 12 months, followed by 2 per cent for life. It was held that the award should have been (a) a gratuity based on 2 per cent.; (b) a pension based on 20 per cent for the period of the assessment; and (c) a gratuity based on 2 per cent for life. And further that (a), (b) and in part (c) should be treated as already paid by reason of the sum originally awarded and paid. See and compare R(I) 2/62, 10.2.6 ii, below, particularly paragraphs 15-16 where it was said that paragraph 20 of this decision (R(I) 34/58) is incorrect.
- R(I) 2/62
(T) ii Disablement resulting from an industrial accident was assessed at 5 per cent for life and the claimant was awarded and paid a gratuity. A medical board later found there had been unforeseen aggravation of the effects of the relevant injury and further assessments were made of 10 per cent for the remainder of the claimant's life. Gratuities were again awarded and paid in full. There was then further unforeseen aggravation of the effects of the relevant injury and a medical board

made a life assessment of 20 per cent which, on appeal, the MAT increased to 30 per cent. It was held by a tribunal of Commissioners that when the last assessment was made the insurance officer should have awarded a pension for life. From the arrears of the pension no more was to be recovered than a sum which represented the differences between the 10 per cent gratuity which had been awarded for an earlier period and the sum representing the value of the pension for two years preceding the commencement of the 30 per cent life assessment. *See* paras. 15-16 with reference to R(I) 34/58, 10.2.6 i above.

iii A colliery worker injured his knee in an industrial accident in December 1957 and the degree of his disablement was provisionally assessed by successive medical boards until in September 1963 a final assessment of 5 per cent was made for the remainder of the claimant's life. Thereupon he became entitled to, and was awarded, a gratuity of £114, the whole of which was paid to him at the beginning of November 1963. On appeal however, the MAT varied the board's life assessment and substituted for it a provisional assessment of 10 per cent for a period beginning on 15 July 1963 and ending on 14 February 1965, with the result that the amount of the gratuity to which the claimant was entitled was reduced to £47 so that he had been overpaid an amount of over £66. The insurance officer then reviewed the original award under what was then reg. 28 of the NI (Industrial Injuries) (Determination of Claims and Questions) Regs. 1948 as substituted by later regs. (see now reg. 34 of the SS (Determination of Claims and Questions) Regs. 1975), and treated part of the original award as having been paid on account of the later award. Shortly before the expiration of the assessment made by the MAT a further provisional assessment was made, on the basis of which the insurance officer purported again to review his original decision awarding a gratuity of £114 and treated the amount payable to the claimant as a result of the latest assessment as having been paid to him on account by the original award. It was held that it was a condition precedent to the operation of reg. 28 that a decision pursuant to which benefit had been paid should have been revised on review, but that, if that condition was satisfied, the benefit in question might be treated as paid on account of subsequent awards without the need for any further review. Reg. 28 applied in relation to a "common period" so that benefit paid pursuant to an award which had been revised might only be treated as paid on account of a subsequent award to the extent that it was paid for a period covered by the subsequent award. R(I) 15/66

iv A MAT assessed the degree of a man's disablement at 10 per cent for a period of nine years expiring in July 1967. He had already received two disablement gratuities and the insurance officer offset both those amounts against the gratuity awarded on the basis of the latest assessment. It was held that the award had been correctly calculated but that the insurance officer's decision should be reviewed and the amount payable to the claimant on the basis of the MAT's assessment should be adjusted. R(I) 11/67

7 Withdrawal of claim for disablement benefit and meaning of "finally determined"

i A refuse collector met with an industrial accident and was in receipt of injury benefit for approximately a month. Shortly after resuming his employment he made a claim for disablement benefit, but a medical board decided that the accident had not resulted in any loss of faculty and made a nil assessment. The claimant appealed to the MAT on the medical board's decision and, while the appeal was pending, he submitted medical certificates which were treated as claims for injury benefit. No decision was, however, given on such claims pending the decision of the MAT, who subsequently upheld the nil assessment made by the medical board. The insurance officer, and on appeal the local tribunal, then decided that injury benefit was not payable to the claimant, who appealed to the Commissioner, and while the appeal was pending withdrew his claim for disablement benefit. It was held, on the facts, that the claim for disablement benefit had been "finally determined" before the claimant's purported withdrawal of the claim so that (what is now) a proviso to s. 57(4) of the Act applied and that injury benefit was not payable to the claimant for the days for which it was claimed pending the decision of the MAT. *See* paras. 28 to 33 and *see* also R(I) 15/63. R(I) 14/63

10.2.8-10

8 Rates at which arrears of disablement pension to be paid

- R(I) 1/86 i A claimant became entitled in 1982 to arrears of disablement pension from 1962 and sought to establish that these arrears should all be calculated at the rate applicable in 1982. Held that payments of arrears were related solely to the rates appropriate to the periods of assessment and such rates were not influenced by the moment in time at which the arrears were paid.

9 Entitlement for period before 1 October 1986 where claim made on or after that date

- R(I) 3/96 i The claimant claimed disablement benefit for PD A11 on 18 November 1991. Disablement was assessed at 15% from 1 April 1985. Held that a person with an assessment of disablement of 14% to 19% in respect of a period before 1 October 1986 who made a claim on or after that date could be awarded a disablement pension for that period (and so might also be entitled to SHA). For another synopsis of this decision *see* 13.3.1.xix.

10 Aggregation of assessments

- R(I) 3/00 i The claimant had an assessment of 7% from 1 April 1985 for life in respect of PD A11 and for which a disablement gratuity had been awarded. On 26 May 1992 he claimed benefit in respect of PD D4 and was assessed at 8% from 1 January 1960 for life. On 24 August 1995 the AO refused to award a pension because the assessment for PD A11 was increased to 8% from 3 May 1995 for life following a review on the grounds of unforeseen aggravation. On 15 February 1996 the AO aggregated the assessments for A11 and D4 but deducted 7% for the gratuity which had been paid for PD A11, leaving a net aggregated assessment of 9%. On 10 May 1996 (following a Commissioner's decision on 24 July 1995 in a different case) the AO reviewed the decision of 24 August 1995 and awarded a pension from 24 July 1995 based on an aggregated assessment of 16%, making no deductions for the gratuity awarded for PD A11. On appeal a tribunal awarded the pension from 3 May 1995. The claimant appealed to the Commissioner who held that:

1. where there has been a final assessment of disablement on a claim made before 1 October 1986, on any review for unforeseen aggregation or any further claim for an accident or disease made after that date, the threshold for disablement pension is 14% (not 20%) and a gratuity cannot be paid;
2. when an assessment of disablement for an accident or disease is being considered, aggregation of assessments resulting from other accidents or diseases must be considered;
3. there is no power to make a deduction from the assessment of disablement for the "primary" accident or disease (i.e. that which is the subject of the claim or review) in respect of a gratuity that has already been paid;
4. a deduction in respect of a gratuity already paid for another accident or disease can be made when considering aggregation with assessment for the "primary" accident or disease. But the deduction can only be applied during the period covered by the gratuity. If that period is for more than seven years (including life) the gratuity should be treated as having been paid for seven years and a deduction will not be appropriate at the end of that period.

The Commissioner decided that the 7% assessment for PD A11 expired on 31 March 1992 and was then available for aggregation with 8% assessment for PD D4. A disablement pension was therefore payable at the aggregated rate of 15% (before rounding) from 1 April 1992.

ii On 24 July 1995 a Commissioner decided that the post-October 1986 departmental practice on aggregation was incorrect in law and that life assessments of disablement for which lump sum gratuities had been awarded were available for aggregation after the expiry of a period of seven years (CI/522/93). The question then arose as to the extent to which decisions on aggregation in other cases could be reopened in the light of the Commissioner's decision. A tribunal of Commissioners *held* that:

R(I) 1/03

1. the only relevant provision under which further decisions could be given effect was regulation 7(6) of the S S and Child Support (Decisions and Appeals) Regs, 1999, by which a decision superseding an earlier one under s 10 of the 1998 Act in consequence of a "relevant determination" within s 27 is to take effect as from the date of that determination;

2. the earliest "relevant determination" under s 27 was CI/522/93 because that was the first case in which the issue of aggregation in respect of expired gratuities was considered.

Part 3: Increase of disablement benefit: unemployability supplement

Section 58 of the Act.

1 'Incapable of work'

- C.I. 99/49 i A person is incapable of work if, having regard to his age, education, experience, state of health and other personal factors, there is no work or type of work which he can reasonably be expected to do. The fact that there is no such work locally, or that owing to the state of the labour market the claimant has only a remote prospect of obtaining it, or that there is none in connection with the occupation in which he has previously been employed, does not prove that he is incapable of work for the purpose of (what is now) s 58 of the Act. Thus when a medical board took the view that a miner who had fractured his ankle some 5 years previously was capable of light work, and that he could have undertaken such work long ago, it was held that he was not entitled to payments by way of unemployability supplement. Compare C.I. 44/49, but *see* also C.I. and R(I) 58/52, *supra* 10.2.1 i.
- R(I) 10/61 ii A 60-year-old claimant who had a war pension for the 1914-1918 War and who had been paid disablement gratuity for industrial accidents in 3 separate years, the earliest of which was some 10 years previously, had been in receipt of a 30 per cent disablement pension on account of pneumoconiosis and for a little over 3 years immediately preceding his claim to be entitled to an unemployability supplement he had been continuously in receipt of sickness benefit. It was held that, unemployability supplement being an increase of *disablement pension*, the claimant could not rely directly upon the industrial accidents in respect of which he received a gratuity, but that he had established that pneumoconiosis had turned him from a man who was capable of working to a man who was, having regard to his age, education, experience, state of health and other personal factors, likely to be permanently incapable of work. It was held, accordingly, that he was a person who would have been in receipt of an unemployability supplement but for the fact that, being in receipt of sickness benefit, he had not made a claim for the supplement.

2 When not payable

- R(I) 34/54 i A man had been suspended from the coal-mining industry because he was suffering from pneumoconiosis and recent medical evidence showed that since then the disease had not progressed appreciably, but that a fresh and unrelated cause of disability had supervened. It was held that the claimant's incapacity was not the result of pneumoconiosis and that on the medical evidence as a whole fresh causes of disability were probably themselves sufficient to cause incapacity. The claimant was not, therefore, entitled to payment by way of unemployability supplement. See also R(I) 43/54.
- R(I) 48/59 ii The primary condition of entitlement to unemployability supplement is that a person is in receipt of a disability pension. The assessment of the claimant's disability at the material time was a final assessment of 15 per cent for life, which meant that his disablement benefit took the form of a disablement gratuity, which was duly paid to him. It was held, accordingly, that there could be no title to unemployability supplement and the claimant's claim was accordingly dismissed.

Part 4: Increase of disablement benefit during hospital treatment

Section 62 of the Act.

1 Meaning of 'in-patient'

i An in-patient in a rehabilitation centre was at home while the centre was temporarily closed, but he returned to it when it re-opened 10 days later. It was held that while he was at home he could not be said to have been an in-patient and that the two periods which were divided by his being at home for 10 days could not be linked.

ii A man employed as a colliery repairer injured his foot in an industrial accident which made it necessary for two of his toes to be amputated. After the end of the injury benefit period he travelled from his home to a rehabilitation centre some 4½ miles away for remedial treatment because there was insufficient beds at the centre to accommodate him. The centre had no facilities for out-patients and he was treated in all respects as an ordinary in-patient except that he went home to sleep, but it was held that hospital treatment allowance was not payable to him. The phrase 'as an in-patient' refers to a person's status as an in-patient and not to the nature of the treatment he is receiving. See paragraphs 10-11. R(I) 27/59

C.I. 14/50

2 When payable

i A man in receipt of injury benefit was examined by a medical board in connection with his claim for disablement benefit and on 29th March the board made an assessment of the extent of his disablement of 30 per cent for a period beginning on 25th April, i.e. 2 days after the injury benefit period was due to terminate. On the same day (25th April) the claimant entered hospital for the purpose of receiving treatment for his injury. He had been awarded a disablement pension from the first appropriate pay-day, which was 27th April, and it was held that on his admission to hospital 2 days previously he was a person entitled to a disablement pension and so had title to the increase under what was then section 16 of the National Insurance (Industrial Injuries) Act 1946 and is now section 62 of the Act.

R(I) 1/67

R(I) 6/80

3. Increase held not to be payable.

i In adjudicating on a claim under what is now section 62 of the Act is the duty of the statutory authorities first to ascertain from the evidence what was the condition for which the claimant was being treated while in hospital. They must then turn to the particular decision of the medical authorities by virtue of which disablement benefit is being paid during the period of treatment, and must determine, in the light of that decision and of the findings of facts on which it is based, whether the treatment was for the relevant injury or relevant loss of faculty. If, but only if, the condition for which the claimant was receiving treatment was the condition, or one of the conditions, which was taken into account as relevant (whether fully or partially) to the assessment of the extent of the claimant's disablement, the claim will succeed. A man was in hospital and having treatment for varicose veins, but the medical authority who had made an assessment of disablement of 12 per cent for life had found that the varicose veins did not result from the relevant accident and had disregarded any loss of faculty resulting therefrom in making their assessment. It was held that the extent of the claimant's disablement during the period he was in hospital could not be treated as assessed at 100 per cent since the treatment he received was not for the relevant loss of faculty.

Part 5: Workmen's Compensation Supplementation

1 Major incapacity allowance

i A claimant injured his left hip in 1939 and received workmen's compensation for partial incapacity. For some time before 21 July 1978 he had received a lesser incapacity allowance under Art. 5 of the Workmen's Compensation (Supplementation) Scheme 1966. The claimant claimed a major allowance under Art. 4 of that Scheme on the ground that he was totally incapable of work. The medical evidence was to the effect that he was totally incapable of work but that his hip injury was only partly the cause of that incapacity; constitutional causes operating to render him totally incapable. The question was whether, in order to qualify for a major incapacity allowance, it is necessary to show that incapacity results solely from the relevant injury. The Commissioner held that it is. The Scheme, like the successive Workmen's Compensation Acts 1987, 1906 and 1925 and unlike Part II Chapter IV of the SS Act 1975, draws a distinction between partial and total incapacity. The decision on the Workmen's Compensation Acts are relevant to the question. It had been held under those Acts that where a person who had suffered an accident was totally incapacitated but the accident produced only partial incapacity, the rest of the incapacity being due to other causes, compensation at the rate appropriate to partial incapacity only was payable. Applying that principle the claimant was entitled to a lesser incapacity allowance only.

R(I) 4/97

2 Lesser incapacity allowance

i A claimant who had an accident in 1943 but who had never received payments of worker's compensation and for which there was no admission of liability by the employer was held not to satisfy the conditions for a lesser incapacity under para. 5(1) of the Scheme. It was not open to the adjudicating authorities to decide whether the claimant "may be expected to be entitled" to workmen's compensation. That was a question solely between the claimant and his employers.

The decisions listed below are not included in chapter
10

C.I. 48/49	Application for repayment of post-war credits
C.I. 129/49	No longer relevant
R(I) 35/51	Relates to a case before the medical appeal tribunal
R(I) 17/52	Where a share fisherman continued to be in receipt of wages and so disentitled to injury benefit
R(I) 50/52	Rate at which hospital treatment allowance was payable
R(I) 51/52	No longer relevant
R(I) 57/53	Amount of the balance of disablement gratuity payable on death
R(I) 68/53	Whether hospital treatment has been approved
R(I) 77/53	Payment of the balance of disablement gratuity when entitlement to special hardship allowance ceases
R(I) 30/56	Amount of balance of gratuity payable overruled by R(I) 2/84 regarded entitlement to disablement pension in lieu of gratuity for second accident
R(I) 38/57	Relates to adjudication
R(I) 37/60	Entitlement to payments under the Workmen's Compensation Act

Decisions relating to statutory provisions which are no longer in force

R(I) 1/90	} Given under transitional provisions
R(I) 4/90	
R(I) 5/90	