

## Police Medical Appeal Board decision

A South Wales Police pensioner has successfully appealed the decision to reduce his injury award from Band Three to Band One made in accordance with Home Office Circular 46/2004 using the cogent reason argument.

He was retired on the grounds of ill health in 1978 with six years service having been involved in a serious road traffic accident later in the year he joined 1972. He was granted a 36% Band Two injury award and never reviewed.

In the Autumn of 2008 he was notified that in the absence of cogent reasons, his award would be reduced to Band One as and from his 65<sup>th</sup> birthday, the following March. We sought a review in accordance with Regulation 37 PIBR and in December 2008 the SMP decided the retiree had an earnings capacity and placed him in Band Three. The SMP also recorded cogent reasons provided by the pensioner.

Without further review, the injury award was reduced to Band One on the pensioner's 65<sup>th</sup> birthday. We sought another review and in June 2009, a second assessment by a different SMP was conducted. Nothing changed.

The appellant argued that:-

- ✓ In December 2008, the SMP had recorded in his clinical notes he was conducting an '**over 65 review**' and placed the retiree into Band Three. It could therefore be argued he, the SMP, had accepted cogent reasons for not reducing the award.
- ✓ The decision to reduce the award on the 65<sup>th</sup> birthday was made without a further review although it was not clear who the decision maker was. Certainly it could not have been the SMP as required by both the Home Office Circular and Regulations.
- ✓ When the review was conducted in June 2009, the second SMP did not record any decision as to whether he believed the reasons were cogent. He merely completed a questionnaire.
- ✓ It was an ACC who made the decision on the direction of the Police Authority and that decision was unlawful as only an SMP can make it.
- ✓ The PIBR have primacy over the Home Office Circular and associated Guidance. Therefore the Board should follow the Regulations and take cognisance of the judgements in **Ayres, Pollard, Turner and Laws**.
- ✓ A Consultant Orthopaedic Surgeon had, at the behest of the Police Federation written that he agreed the retiree could undertake the work as identified by the SMP in December 2009 and therefore there was an earnings capacity irrespective of age. The Board should also therefore take further cognisance of the case of **Anton**.
- ✓ The pensioner agreed with the SMP and Consultant Orthopaedic Surgeon he could undertake the work given the opportunity.

The Police Authority argued:-

- The review in June 2009 had been conducted in accordance with the Home Office Circular.
- There was confusion in terms of the reason for conducting the review in December 2008.
- The award could be reduced in accordance with the Circular as the pensioner would be unlikely to be in gainful employment.
- The second SMP had considered the reasons for not reducing the award. Both he and the ACC decided they were not cogent.

The Board sought clarification from the Police Authority in respect of the availability of earnings figures for those over 65 years of age although it, the Authority considered there were none. The Chairman indicated the Office of National Statistics (ONS) had in fact produced a national average earnings figure for those over 65 as £398 per week.

The Board considered:-

- ❖ There were few medical decisions to make although the functional capacity of the appellant should be considered to determine what work he could undertake.
- ❖ PIBR, Home Office Circular 46/2004 and Case Law in particular the cases of **Ayres** and **Turner**.
- ❖ The task for the Board was to assess the current degree of disablement.
- ❖ The Police Authority argued the Home Office Circular should be followed by the Board in respect of 65 years olds although the PIBR made no mention of that age.
- ❖ The Police Authority maintains there is no comparator for those over 65 although the ONS does publish such a figure of £398 per week.
- ❖ Using that figure in the formula to calculate a percentage degree of disablement, arguably it would be around 35% Band Two.
- ❖ The dilemma was to follow the Home Office Circular or Regulations.

The determination of the Board was to unanimously uphold the appeal and the retiree was returned to Band Two.