

POLLARD AND THE EFFECT ON INJURY AWARD REVIEWS

Pollard v Police Medical Appeal Board is a decision of the High Court in a West Yorkshire case issued on 9th February 2009. The formal transcript is not yet available.

The Officer in question had been medically retired due to Lumbar Disc Degeneration and Spondylosis resulting from an injury in the execution of duty. She received an injury award and was originally assessed at 51% disabled. That assessment was confirmed by a second SMP who did not recommend that the degree of disablement be reassessed at any time.

Many years later a review was conducted by an SMP who reduced the degree of disablement to 0%. The retired Officer appealed to the PMAB but they rejected the appeal.

The PMAB found that the injury sustained by the retired Officer whilst on duty would only have resulted in the soft tissue injury from which she should have recovered in a short period of time, and that therefore there was no causal link between her injury and the permanent disablement which resulted in her retirement. Their view on this medical issue was directly contrary to the view taken by the SMP who granted her an injury award at the time of retirement. The Board said that because of this they would reduce the degree of disablement to 0%.

The application for Judicial Review brought on behalf of the retired Officer succeeded. The High Court emphasised that the decision of the SMP as to the causation of an injury was final unless it had been challenged at the time. Where the degree of disablement is reviewed under Regulation 30, neither the SMP nor a PMAB could reopen the question of causation of the original injury. They could only deal with the impairment of earning capacity now affecting the retired Officer as a consequence of the condition which had been originally determined to be the result of an injury received in the execution of duty.

Subject to seeing the official transcript of the judgment, this appears to be a helpful decision because there have been a number of instances recently where the view on causation taken by the original SMP / medical referee has been questioned on a review of the degree of disablement. Where an SMP seeks to reopen the question of causation this case can be utilised.

However, the case does not mean that the current degree of disablement can never be the subject of apportionment. The dividing line between apportionment and reopening causation can be difficult to identify.

- If there is only one medical condition affecting the member which has already been determined to be the consequence of an injury received in the execution of duty, all the current impact on earning capacity of that one medical condition should be reflected in the assessment, even if the current SMP/PMAB would have taken a different view of causation when the original injury award was granted.

- If there are two or more medical conditions affecting the member and some are not due to an injury on duty, there can be a reduction by way of apportionment as long as those conditions not due to an injury on duty would in themselves have caused some reduction in earning capacity.

Further, retired members who consider that an SMP or PMAB has contravened the Pollard principle in a previous assessment cannot automatically reopen it. If they are still within 28 days of an SMP decision an appeal should be lodged; if they are within 3 months of a PMAB decision a judicial review application may be possible. If they are outside those time limits they can ask for the Police Authority to agree to refer the matter back for reconsideration under regulation 32(2) of the regulations. If that is not agreed an application for a fresh review under regulation 37 should be made.
