R (Turner) v. PMAB and another

Police Federation succeeds in upholding the injury pension rights of a disabled former police officer.

On 8 July 2009 in court 5 of the Royal Courts of Justice Mr Justice Burton upheld ex P.C. Turner's application for judicial review against the attempt by the Metropolitan Police Authority ("MPA") and the Police Medical Appeal Board ("PMAB") to reduce his injury pension.

The facts

Mr Turner suffered hearing loss in his left ear whilst serving as a police officer. There was a dispute about whether the injuries were caused by his service but a medical referee in 2001, hearing an appeal under the 1987 regulations, decided that the injury was caused in part by an assault he suffered whilst in the police service and in part by firearms training. He was awarded a Band 2 pension.

On 18 October 2007 the MPA, acting through the Selected Medical Practitioner ("SMP") did a new review of the jobs she felt Mr Turner could do and decided to reduce Mr Turner's injury pension from Band 2 to Band 1.

On 14 August 2008 the PMAB dismissed his appeal against the reduction in his pension. They rejected the SMP's case on the jobs Mr Turner could do but re-opened the issue about the cause of his original injuries, and cast doubt on whether they were related to his service.

The High Court decision

In the High Court the Judge, Mr Justice Burton, quashed the decisions of both the SMP and the PMAB, and restored the Band 2 pension.

He held that once a medical referee (or PMAB) had determined the cause of a work related injury, that decision was final and could not be re-opened at a later review. In coming to this view the Judge supported the construction of the regulations as explained by Mr Justice Silber in the High Court on 9 February 2009 in R (on the application of Pollard) -v- PMAB and West Yorkshire Police Authority .

The following general propositions can be distilled from the judgments:-

1. An SMP is not entitled under Regulation 37 to review an award of an injury pension unless there is a proven substantial change in the pensioner's degree of disablement. This could either be because the pensioner's medical condition has changed or that there are jobs which are now open to the pensioner which were not open when the injury pension was last reviewed. The SMP cannot start with a blank piece of paper to assess what jobs he or she thinks the pensioner can do and use that new assessment as a basis for reviewing the pension.

2. The SMP and PMAB are bound by the causation findings of the original medical referee. These are “final” under regulation 30(2)(c). The SMP and the PMAB are not permitted to reinvestigate the original cause of the pensioner’s injury or reach a different view to the medical referee about whether the pensioner’s disablement was the result of an injury on duty. They are only entitled to review secondary issues such as apportionment if there has been a change in the pensioner’s degree of disablement as a result of the original injury.

3. If there has been a change in the pensioner’s medical condition triggering a review under Regulation 37, the SMP cannot review the pension unless he or she reaches the decision that the change is ‘substantial’. Minor changes do not entitle a review.

4. When determining the ‘degree of disablement’, the SMP can consider current jobs which are suitable for the pensioner and were not available when the original decision was made or the last review was conducted. The SMP is not entitled to take into account jobs which were previously available to the pensioner (even if not considered at the last review) or which the pensioner had previously carried out since these jobs cannot be evidence of a change in the pensioner’s degree of disablement.