

S.I. 64/1974 **THE NATIONAL INSURANCE (DETERMINATION OF CLAIMS AND QUESTIONS) REGULATIONS.**

(SECTIONS 26, 46, 47 and 59.)

[Commencement 7th October, 1974.]

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PART I.

PRELIMINARY.

Citation. **1.** These Regulations may be cited as the National Insurance (Determination of Claims and Questions) Regulations.

Interpretation. **2.** In these Regulations, unless the context otherwise requires -

"Act" means the National Insurance Act;

"appeal tribunal" means a tribunal constituted under regulation 7 and the Schedule to these Regulations;

"claimant", in relation to the review of an award or decision, includes a beneficiary under the award or affected by the decision;

"degree of disablement" means the loss of faculty, suffered as a result of the relevant injury, assessed in whole numbers as a percentage of that loss of faculty;

"determining authority" means, as the case may require, the Board or the Director, an appeal tribunal or a medical referee or a medical appeal board appointed or constituted in accordance with any Regulations for the time being in force;

"grant" means any benefit which is payable in one sum and not by periodical payments;

"invalid" means a person who is incapable of work as a result of a specified disease or bodily or mental disablement which is likely to remain permanent, and the word "invalidity" shall be construed accordingly;

"local office" means an office appointed by the Board as a local office for the purposes of the Act;

"medical appeal board" means a medical appeal board constituted under regulation 24;

"medical examination" includes bacteriological and radiological tests and similar investigations, and references to being medically examined shall be construed accordingly;

"medical officer of the Board" means such medical officer in the employment of the Board as may be designated by the Board to perform on its behalf executive duties in connexion with the determination of medical questions;

"medical question" means any question set out in paragraph (1) of regulation 19;

"medical referee" means a registered medical practitioner appointed to act as a medical referee under regulation 21;

"paragraph" means a paragraph of a regulation;

"part" means a part of these Regulations;

"question" includes for the purposes of Part III, a claim for benefit or assistance;

"registered medical practitioner" means a person registered under the Medical Practitioners Act;

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"relevant accident", "relevant accident" and "relevant disease", in relation to any benefit, mean respectively the accident, injury or disease in respect of which that benefit is claimed or payable and "relevant loss of faculty" mean the loss of faculty resulting from the relevant accident, injury or disease;

"reserved question" means any question set out in regulation 3 for the determination of which the procedure in paragraph (1) of regulation 4 has been followed;

"Schedule" means the Schedule to these Regulations.

(2) In these Regulations, unless a contrary intention appears, references to a regulation are references to a regulation of these Regulations.

(3) Any notice or other document required or authorized 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 postal address.

(4) Any power given in 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 OF QUESTIONS BY THE BOARD.

*Questions for
determination
by the Board.*

3. Subject to the provisions of these Regulations the following reserved questions arising under or in connection with the Act, that is to say --

- (a) whether a person is or was an insured person;
- (b) whether a person is or was an employed person as defined in section 2 of the Act;
- (c) as to the class or category of insured persons in which a person is to be included;
- (d) whether the contribution conditions for any benefit are satisfied, or any question otherwise relating to a person's contributions;
- (e) who is or was liable for payment of contributions as the employer of any

insured person,

shall be determined by the Board whose decision shall be final.

Procedure for determination of questions by the Board.

4. (1) Any person desiring to obtain the decision of the Board on any question mentioned in regulation 3 shall deliver or send to the Board an application for the purpose in writing in a form approved by the Board and shall furnish such particulars as the Board may require for the purpose of the consideration and determination of any such question.

(2) The Board 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 proper determination of the question.

(3) The Board may, if it thinks fit, before determining the question, appoint a person to hold an inquiry into the matter 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) For the purpose of the determination of any question under regulation 3 of these Regulations, the Board may, by summons, require any person to attend upon the Board to give evidence or to produce documents reasonably required for the purpose of determining that question and may take evidence on oath and, for that purpose, administer oaths.

(5) Reasonable notice of the date and place of the holding of such an inquiry shall be given to the applicant and to any person notified of the application in accordance with paragraph (2).

(6) The applicant and any person appearing to the Board or to the person holding the inquiry to be interested in the application shall be entitled to attend and be heard at the inquiry, and to be represented by any other person, and the procedure thereat shall, subject to this regulation, be such as the person holding the inquiry shall determine.

(7) The Board shall give notice in writing of its decision together with the reasons therefor 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.

Reference to Supreme Court by Board of questions of law; appeals against decisions of Board on questions of law.

5. (1) Any question of law arising in connection with the determination by the Board of any such question as is mentioned in regulation 3 may, if it thinks fit, be referred by the Board for decision to the Supreme Court.

(2) In the event of the Board determining in accordance with paragraph (1) 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.

(3) Any person, aggrieved by the decision of the Board on any question of law which is not referred to the Supreme Court, may appeal from that decision to the Supreme Court, in accordance with rules of court made pursuant to section 46 (4) of the Act, and the appellant and any other person appearing to the Board to be interested shall, on request, be furnished with such a statement of the grounds of the decision as will enable them to determine whether any question of

law has arisen upon which they may wish to appeal.

(3) Without prejudice to the right of any other person, the Board shall be entitled to appear and be heard on any such reference or appeal.

*Review of
decision of the
Board.*

6. (1) The Board may, on new facts being brought to its notice or if it is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact, review a decision given by it in accordance with this Part of these Regulations:

Provided that any such decision shall not be reviewed while an appeal is pending against the decision of the Board on a question of law arising in connexion therewith or before the time for appealing has expired.

(2) The provisions of regulation 5 shall apply in relation to a decision on review as they apply to the original determination or decision.

**PART III.
DETERMINATION OF CLAIMS AND QUESTIONS BY THE DIRECTOR
OR AN APPEAL TRIBUNAL.**

*Submission of
question to
Director.*

7. (1) The following questions, that is to say-

- (a) any question as to the right to benefit or assistance;
- (b) any other question arising under or in connexion with the Act, not being a reserved question under Part II of these Regulations or a medical question to be determined under Part IV hereof,

shall be submitted to the Director who shall consider the question and, so far as practicable, dispose of it in accordance with these Regulations within fourteen days from the date when it was submitted to him.

(2) If on consideration of a question the Director is of opinion that no reserved or medical question arises then --

- (a) if he is satisfied that the question ought to be determined wholly in favour of the claimant, he may determine the question accordingly;
- (b) in so far as he is not so satisfied he may either -
 - (i) refer the question (so far as is practicable, within fourteen days from the date on which it was submitted to him) to an appeal tribunal, constituted as laid down by the Schedule, for its decision; or
 - (ii) himself determine the question in whole or in part adversely to the claimant.

Schedule.

(3) Where the Director refers a question to an appeal tribunal in accordance with paragraph (2), notice in writing of such reference shall be given to the claimant.

(4) Subject to the provisions of the Act and these Regulations, the Director may delegate to any officer of the Board the power to carry out on his behalf any of his functions under this regulation.

(5) Every delegation under paragraph (4) shall be revocable by the Director and no delegation shall prevent the exercise of the Director of any function.

*Appeals to
appeal tribunal.*

8. (1) If the Director has determined a question in whole or in part adversely to the claimant; the claimant shall, subject to the provisions of this regulation, have the right to appeal in respect of the decision to an appeal tribunal and shall be notified in writing of the decision and the reason therefor and of his right to appeal therefrom:

Provided that where a reserved question has arisen in connexion with the decision of the Director and has been determined by the proper authority, and the Director certifies that the decision on that question is the sole ground of his decision, no appeal shall lie without the leave of the chairman of the appeal tribunal.

(2) An appeal against a decision of the Director must be brought by giving notice of appeal at an office of the Board within twenty-one days after the date of that decision or within such further time, not exceeding four months, as the chairman of the appeal tribunal may allow.

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

*Time and place
of hearings
before appeal
tribunal.*

9. (1) Reasonable notice of the time and place of the hearing before an appeal tribunal shall be given to the claimant and to any other person who may appear to the chairman of the tribunal to be interested and, except with the consent of the claimant, the appeal tribunal shall not proceed with the hearing of any case unless such notice has been given.

(2) If a claimant or other person to whom notice of hearing has been duly given in accordance with these Regulations should fail to appear either in person or by representative at such hearing and has not given a reasonable explanation for his absence, the tribunal may proceed to determine the case, or may give such directions with a view to the determination of the case as it may think proper.

*Hearings before
appeal tribunal.*

10. (1) Every hearing by the appeal tribunal shall be in public except in so far as the chairman of the tribunal may otherwise direct if he is of the opinion that intimate personal and financial circumstances may have to be disclosed or that consideration of public security are involved.

(2) The following persons shall be entitled to be heard at the hearing of any case by an appeal tribunal --

- (a) the claimant;

(b) the Director;

and any person appearing to the tribunal to be interested shall have the right to be present notwithstanding that the hearing of the case is not in public.

(3) The chairman of an appeal tribunal may, by summons, require any person to attend at any such hearing to give evidence or to produce documents reasonably required for the purpose of the hearing and may take evidence on oath and, for that purpose, administer oaths.

(4) Any person who by virtue of the provisions of this regulation has the right to be heard at the hearing of the case by an appeal tribunal, may be represented at the hearing by some other person (whether having professional qualifications or not) and, for the purpose of the hearing, any such representative shall have all the rights to which the person whom he represents is entitled under these Regulations.

(5) Any person who exercises the right conferred by this regulation to be heard at the hearing may call witnesses and shall be given an opportunity of putting questions directly to any witness called at the hearing.

(6) For the purpose of arriving at its decision, or discussing any question of procedure, an appeal tribunal may, notwithstanding anything in this regulation, order all persons (not being members of the tribunal or an officer of the Board acting as clerk to the tribunal) to withdraw from the sitting of the tribunal.

*Decisions of
appeal tribunal.*

11. (1) An appeal tribunal shall -

(a) record in writing, in such form as may from time to time be approved by the Board, all its decisions (whether on an appeal or on a reference from the Director); and

(b) include in the record of every decision (which shall be signed by all the members of the tribunal) a statement of the reasons for its decision including its findings on all questions of fact material thereto.

(2) Where the members of the tribunal are unable to reach a unanimous decision on any case, the decision of the majority of the members thereof shall be the decision of the tribunal.

(3) As soon as may be practicable after a decision has been reached, a copy of that decision shall be sent to the claimant and to the Director and to any other person who appears to the appeal tribunal to be interested.

*Reference to
Supreme Court
of questions of
law; appeals
against
decisions of
appeal tribunal
on questions of
law.*

12. (1) Any question of law arising in connexion with the determination by an appeal tribunal of any question (whether on an appeal or on a reference from the Director) may, if it thinks fit, be referred by the appeal tribunal to the Supreme Court.

(2) In the event of the appeal tribunal determining in accordance with paragraph (1) to refer any question of law to the Supreme Court, it shall send notice in writing of its intention to do so to the applicant and to any other person appearing to it to be interested therein.

(3) Any person aggrieved by the decision of an appeal tribunal on a question of

law which is not referred to the Supreme Court in accordance with paragraph (1), may appeal from that decision to the Supreme Court in accordance with rules of court made pursuant to subsection (4) of section 46 of the Act, and the applicant and any other person appearing to the appeal tribunal to be interested shall, on request, be furnished with such a statement of the grounds of the decision as will enable them to determine whether any question of law has arisen upon which they may wish to appeal.

(4) Without prejudice to the rights of any other person, the Director and the chairman of the appeal tribunal shall be entitled to appear and be heard on any such reference or appeal.

*Review of
decisions of
Director and
appeal tribunal.*

13. (1) Any decision under this Part made by the Director or an appeal tribunal may be reviewed at any time by the Director or, on a reference from the Director, by an appeal tribunal, if -

- (a) either he or the tribunal is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact;
- (b) there has been any material change of circumstances since the decision was given; or
- (c) the decision was based on the decision of any reserved or medical question and the decision on that question has been revised.

(2) A request for such a review may be by means of an application in writing to the Director stating the grounds of the application.

(3) On receipt of any such application, the Director shall proceed to deal with or refer any question arising thereon in accordance with the Act and these Regulations.

(4) Any question given on a review under this regulation, and any refusal to review a decision under this regulation, shall be subject to appeal in like manner as an original decision, and the provisions of this Part shall, subject to the necessary modifications apply in relation to any decision given on a review as they apply to the original decision on a question.

*Interim
payments.*

14. (1) Subject to the provisions of this regulation and regulation 17, benefit or assistance shall be payable in accordance with an award, notwithstanding that an appeal is pending.

(2) Where it appears to the Director that a question has arisen whether -

- (a) the conditions for the receipt of benefit or assistance payable under an award are or were fulfilled; or
- (b) an award of benefit or assistance ought to be revised in accordance with these Regulations,

he may direct that payment of benefit or assistance shall be suspended in whole or in part until that question has been determined.

*Reviews of
decisions*

15. (1) Where on review a decision is revised so as to make benefit or assistance payable, or to increase the rate of benefit or assistance, the decision on review shall have effect as from the

involving payment or increase of benefits or assistance other than grants.

date of the application for the review.

Provided that, if in any case the claimant proves that on a date earlier than the date on which the application for the review was made, he was (apart from satisfying the condition of making a claim therefor) entitled to benefit or assistance under the National Insurance (General Benefits and Assistance) Regulations or the National Insurance (Industrial Benefits) Regulations, or both of those Regulations, he shall not be disqualified by virtue of the foregoing provisions of this paragraph for receiving any benefit or assistance to which he would have been entitled in respect of the period between the earlier date and the date on which the application for the review was made.

(2) Notwithstanding anything contained in this regulation, the following provisions shall have effect -

- (a) the proviso to paragraph (1) of this regulation shall apply subject to the condition that no sum on account of benefit or assistance shall be paid to any person in respect of any part of the period referred to in that proviso which is earlier than six months before the date of the application for the review;
- (b) the decision on review shall not have effect for any period before the date on which the original decision took effect or would have taken effect if an award had been made;
- (c) if the said decision on review was based on a material change of circumstances subsequent to the date on which the original decision took effect, it shall not have effect for any period before the date declared by the Director or the appeal tribunal, as the case may be, to be the date on which such material change took place.

(3) For the purpose of this regulation, where a decision is reviewed at the instance of the Director under paragraph (1) of regulation 13, the date on which it was first decided by the Director that the decision should be reviewed shall be deemed to be the date of the application for the review.

(4) In this regulation, "benefit" does not include a grant.

Review of decisions involving payment of grants.

16. (1) A decision shall not be reviewed so as to make a grant payable unless the claimant proves that the application for review was made not later than four years from the date of the decision.

(2) The provisions of paragraph (3) of regulation 15 shall apply in the application of paragraph (1) of this regulation as they apply in the application of paragraphs (1) and (2) of that regulation.

Adjustment of benefit.

17. (1) Where a grant is awarded by a decision on review or appeal in lieu of a pension previously awarded, such decision shall direct that any payments made on account of such pension shall, in so far as they do not exceed the amount of the grant, be treated as being made on account of the grant.

(2) Where any benefit (other than a grant) or assistance is awarded by a decision on review or appeal in lieu of another kind of benefit or assistance previously awarded, that decision shall, (in relation to any payments made on account of benefit or assistance previously awarded) -

- (a) direct that, in so far as the amount thereof does not exceed the amount of any arrears payable by way of the benefit or assistance so awarded, such payments shall be treated as having been made on account of such arrears; and
- (b) to the extent by which the amount thereof exceeds the amount of the said arrears, direct that such payments shall (except in so far as they are required to be repaid under this regulation) be treated as having been made on account of sums becoming payable after the date of the decision on review or appeal by way of the benefit or assistance awarded thereby.

(3) Where on review or appeal a decision is revised, or is reversed or varied so as to make benefit or assistance not payable or to reduce the amount of benefit or assistance, the decision given on the review or appeal shall require repayment to the Fund of any benefit or assistance paid in pursuance of the original decision to the extent to which it -

- (a) would not have been payable if the decision on review or appeal had been given in the first instance; and
- (b) is not directed to be treated as paid on account of the benefit or assistance awarded by the decision on review or appeal.

(4) Where --

- (a) on appeal against an award of benefit or assistance a decision is reversed or varied, so that such benefit or assistance is not payable at a less rate; and
- (b) on review, the decision on that appeal is revised so as to make such benefit or assistance payable or payable at a higher rate from a date before the decision on appeal,

any benefit or assistance paid in pursuance of the award before the decision on appeal shall (to the extent to which it would not have been payable if the decision on appeal had been given in the first instance) be treated as having been paid on account of any benefit or assistance made payable for the same period by the decision on review, except in so far as it has, in pursuance of the decision on appeal, been repaid or treated as paid on account of the benefit or assistance awarded by that decision.

(5) Where, in accordance with a decision given on a review or appeal, any benefit or assistance is required to be repaid to the Fund then, without prejudice to any other method of recovery, such benefit or assistance shall be recoverable by deduction from any benefit or assistance which is then payable to the person by whom it is to be repaid, or which becomes payable to that person in respect of any part of the period of six months immediately following the day on which the decision is given.

Reference of reserved questions.

18. (1) If on consideration of a question the Director is of the opinion that a reserved question arises he shall --

- (a) refer the reserved question to the Board to determine the same; and
- (b) deal with any other question as if the reserved question had not arisen:

Provided that the Director may --

- (i) postpone the reference of a reserved question or dealing with any question until after other questions have been determined;
- (ii) in cases where the determination of any question disposes of a claim or any part thereof, make an award, or decide that an award cannot be made as to the claim on that part thereof, without referring or dealing with; or before the determination of, any other question.

(2) The foregoing provisions of this regulation shall apply to an appeal tribunal in the same manner as they apply to the Director, except that an appeal tribunal instead of itself referring a question for determination in accordance with sub-paragraph (a) of paragraph (1) of this regulation, shall require it to be referred to the Director.

PART IV. DETERMINATION OF MEDICAL QUESTIONS.

Reference of medical questions.

19. (1) The following medical questions may be determined in accordance with this Part of these Regulations.

- (a) whether a person is, or was, an invalid as defined in regulation 2;
- (b) whether the relevant accident has resulted in a loss of faculty;
- (c) at what percentage the degree of disablement resulting from the relevant loss of faculty is to be assessed and what period is to be taken into account by the assessment;
- (d) whether the relevant injury has resulted from the relevant accident;
- (e) whether the death of a person has resulted from the relevant accident;
- (f) whether a person is, or was, suffering from a prescribed disease;

- (g) whether, in the case of a person who is suffering from a prescribed disease and who has previously suffered from that prescribed disease, his condition is to be treated as having recrudesced, or, due to further exposure as a risk of his occupation, the prescribed disease has developed afresh;
- (h) whether a person is, or was, incapable of work;
- (i) whether or not a person is permanently incapable of work;
- (j) whether a person whose age is in doubt is, or is not, likely to be the age he alleges;
- (k) whether the disease from which a person is suffering is or is not a sequela to an employment injury;
- (l) any other medical question which may arise in any case.

(2) Any medical question referred to in subparagraphs (a), (b) and (c) of paragraph (1) shall be referred to and determined by a medical referee or; on appeal, by a medical appeal board in accordance with these Regulations.

(3) The Director may refer any other medical question to a medical referee for decision and where such medical question is so referred, it shall be determined by a medical referee or, on appeal, by a medical appeal board in accordance with these Regulations.

(4) Subject to these Regulations, the decision of a medical appeal board on a medical question shall be final.

Further reference where extent of disablement is provisionally assessed.

20. Where the case of a claimant for disablement benefit has been referred by the Director for determination of the medical question in sub-paragraph (c) of paragraph (1) of regulation 19 and, on that or any other subsequent reference, the degree of disablement is provisionally assessed, the medical question arising in that case shall again be referred to a medical referee not later than the end of the period taken into account by the provisional assessment.

Medical referees

21. (1) A medical referee shall be selected by the medical officer of the Board from a panel of medical referees prepared by him and approved by the Board.

(2) A person shall not act as a medical referee for the purpose of the consideration of a medical question in any case if he -

- (a) is or may be directly affected by that case; or
- (b) has taken any part in such case as a registered medical practitioner, who has attended the claimant in respect of a condition out of which the medical question has arisen, or to whom any medical question has been referred for examination and report; or

- (c) is, or was during the material period, an employer of the claimant; or
- (d) has taken any part in such case as a witness; or
- (e) is a Senator or a Member of Parliament.

Notice of consideration by a medical referee.

22. (1) Reasonable notice of the time and place at which a medical referee will consider any medical questions referred to him shall be given to the claimant and if, after such notice has been given, the claimant fails to appear, the medical referee may not, without his consent, proceed to determine the medical questions referred to him.

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

(3) A medical referee shall have power to make or, through the medical officer of the Board, arrange for, any necessary medical examination to assist him in determining the medical question.

Notice of decision of medical referee.

23. (1) A medical referee shall on each medical question record his decision in writing in such form as may from time to time be approved by the Board and shall include in such record, which shall be signed by him, a statement of his findings on all questions of fact material to the decision and shall send the form to the Director.

(2) As soon as may be practicable after receipt of the decision of the medical referee, the Director shall send written notice of that decision to the claimant. The notice shall be in such form as may be approved by the Board from time to time and shall contain a summary of the findings of the medical referee.

Constitution of medical appeal board.

24. (1) A medical appeal board shall be appointed by the medical officer of the Board from a panel of registered medical practitioners prepared by him and approved by the Board for the purpose and shall consist of three members of whom one shall be appointed as chairman.

(2) The members of a medical appeal board shall hold office for such period as the Board may direct and the Board may at any time terminate the appointment of any member of a medical appeal board.

(3) A registered medical practitioner shall not act as a member of a medical appeal board for the purpose of the consideration of any medical question arising in a case if he -

- (a) is or may be directly affected by that case; or
- (b) has taken any part in such case as a medical referee, or as a registered medical practitioner who has attended the claimant in respect of a condition out of which the medical question has arisen, or to whom any question has been referred for examination and report; or
- (c) is, or was during the material period, an employer of the

claimant; or

(d) has taken any part in such case as a witness; or

(e) is a Senator or Member of Parliament.

(4) A medical appeal board shall not determine any medical question referred to it or brought before it if any member thereof is unable to be present at the consideration of any such question.

(5) Where the members of a medical appeal board are unable to reach a unanimous decision on any case, the decision of a majority of the members thereof shall be the decision of the Board.

Appeals from decisions of medical referees.

25. (1) This regulation shall have effect where the Director has referred a medical question to a medical referee for determination.

(2) If a claimant is dissatisfied with the decision of a medical referee, he may appeal against that decision in accordance with regulation 26 and the medical question shall be referred to a medical appeal board.

(3) If the Director is of opinion that any decision of a medical referee ought to be considered by a medical appeal board and he notifies a medical appeal board in accordance with regulation 26, then the medical question shall be referred to a medical appeal board and the said board may confirm, reverse or vary the decision in whole or in part as on an appeal.

Notice of appeal and notification to the Board.

26. (1) An appeal by a claimant against a decision of a medical referee shall be brought by his giving notice of appeal at an office of the Board within three months after the notice of that decision has been given in accordance with regulation 23 or within such further period as the chairman of a medical appeal board may 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 medical question to a medical appeal board in accordance with paragraph (3) of regulation 25, where the Director is of opinion that a decision of a medical referee ought to be considered by a medical appeal board, the Director may notify a medical appeal board of his opinion in that respect within three months after the date of that decision or such longer period as the chairman of the medical appeal board may for good reason allow.

Hearing by medical appeal boards.

27. (1) For the purpose of determining any medical question referred to it, a medical appeal board shall hold a hearing which may be held in public if the medical appeal board so decides.

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

(3) The chairman of a medical appeal board may, by summons, require any

person to attend at any such hearing to give evidence or to produce documents reasonably required for the purpose of the hearing and may take evidence on oath and, for that purpose, administer oaths.

(4) If a claimant to whom notice of hearing has been given in accordance with paragraph (2), fails to appear at the hearing, the medical appeal board may proceed to determine the medical question notwithstanding his absence, or may give such directions with a view to the determination of the medical question as it may think proper having regard to all the circumstances including any explanation for the absence:

Provided that if a reasonable explanation for his absence has been given by him or on his behalf, the medical appeal board shall not, without his consent, determine the medical question in his absence unless the hearing has first been adjourned for a least one month and reasonable notice of the time and place of the adjourned hearing has been given to him.

(5) In any case where there is before a medical appeal board medical advice or evidence relating to the claimant which has not been disclosed to him and in the opinion of the chairman of the medical appeal board the disclosure 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 him but the medical appeal board shall not by reason of such non-disclosure be precluded from taking it into account for the purposes of its determination of the medical question.

(6) The Director and the claimant shall have the right to be heard at a hearing by a medical appeal board and each may be represented by some person duly authorized by him and, for the purpose of the hearing, and such representative shall have all the rights and powers to which the person whom he represents is entitled under these Regulations.

(7) Any person who exercises the right conferred by this regulation to be heard at a hearing by a medical appeal board, may call witnesses and shall be given an opportunity of putting questions directly to any witness called at the hearing.

(8) A medical appeal board shall have power to make, or through the medical officer of the Board, to arrange for, any necessary medical examination to assist it in determining the medical question.

Record and notice of decision of medical appeal board.

28. (1) A medical appeal board shall on each medical question record its decision in writing in such form as may from time to time be approved by the Board and shall include in such record, which shall be signed by all the members of the medical appeal board, a statement of the reasons for its decision, including its findings on all questions of fact material to the decision.

(2) Written notice of the decision of a medical appeal board (in such form as the Board may from time to time approve) shall be sent to the claimant as soon thereafter as practicable and shall contain a summary of the record of that decision made in accordance with paragraph (1) of this regulation.

Medical and other questions.

29. (1) If on consideration of a medical question, a medical appeal board is of opinion that -

- (a) no question other than a medical question arises, it may determine the medical question accordingly;

- (b) a question other than a medical question arises, it may proceed to determine the medical question and refer the other question, including any question of law, to the Director to be dealt with pursuant to Part II of these Regulations if it is a reserved question or to Part III if it is not a reserved question.

(2) If a medical appeal board has purported to make a decision on a medical question, which includes a decision on any other question including a question of law, the Director may deal with that other question under these Regulations as if it had been referred to him under subparagraph (b) of paragraph (1) of this regulation.

Review of decisions of medical referee or medical appeal board.

30. (1) Under this Part of these Regulations any decision made on a medical question by a medical referee or a medical appeal board, whether provisional or final, may be reviewed at any time by a medical referee or, on a reference from the Director, by a medical appeal board, if -

- (a) the determining authority is satisfied that the decision was given in ignorance of, or was based on a mistake as to some material fact;
- (b) there has been any material change of circumstances relating to the medical question, since the decision was given including, in the case of any assessment of the degree of disablement, any substantial or unforeseen aggravation of the result of the relevant injury; or
- (c) the decision was based on the determination or purported determination of a question (other than a medical question) and that determination has been revised.

(2) An application to the Director for a review of any decision that is mentioned in paragraph (1) of this regulation shall be made in writing and shall state the grounds thereof.

(3) On receipt of such an application, the Director shall refer any medical question arising thereon to the appropriate determining authority in accordance with this Part of these Regulations.

(4) Any decision given on a review under this regulation by a medical referee, and any refusal by a medical referee to review a decision under this regulation, shall be subject to appeal in like manner as an original decision, and the provisions of this Part shall, subject to the necessary modifications, apply in relation to any decision given on a review as they apply to the original decision of the medical question.

Period to be taken into account by assessment revised on grounds of unforeseen aggravation.

31. On a review of any assessment on account of unforeseen aggravation under subparagraph (b) of paragraph (1) of regulation 30, the period to be taken into account in revising any assessment may include any period (not exceeding three months before the date of the application for the review) if the medical referee or the medical appeal board is satisfied that throughout the period there has been substantial unforeseen aggravation of the results of the injury since the making of the assessment under review.

PART V.

MISCELLANEOUS.

Decisions to be conclusive for purpose of proceedings under Act, etc.

- 32.** (1) Where in any proceedings -
- (a) for an offence under the Act; or
 - (b) involving any question as to the payment of contributions under the Act; or
 - (c) for the recovery of any sums due to the Fund,

any question arises which, under the Act or Regulations made thereunder, is to be determined by the Board or the Director or an appeal tribunal or medical appeal board, or by the Court in the event of an appeal on a point of law, the decision by the appropriate determining authority shall, unless an appeal under these or any other Regulations is pending or the time for so appealing has not expired, be conclusive for the purpose of those proceedings.

(2) If any such decision under paragraph (1) has not been obtained and the decision of the question is necessary for the determination of the proceedings, the question shall be referred to the appropriate determining authority, as the case may require, in accordance with the procedure (modified where necessary) prescribed in these or any other Regulations.

(3) Where any such appeal as is mentioned in paragraph (1) of this regulation is pending, or the time for so appealing has not expired, or where any question has been referred under paragraph (2) hereof, the authority dealing with the case shall adjourn the proceedings until such time as a final decision upon the question has been obtained.

Authority for payment of expenses.

33. (1) There shall be paid to persons required to attend on the consideration of a case before a determination authority such travelling or other allowances as the Board may by resolution declare and such sums shall be properly payable out of the Fund.

(2) There shall be paid such other expenses incurred in connexion with the work of a determining authority in the determination of questions under these Regulations as the Board may by resolution declare and such sums shall be properly payable out of the Fund.

(3) In this regulation, reference to travelling or other allowances, include a reference to compensation for loss of remuneration.

Provided that such compensation shall not be paid to any person in respect of any time during which he is in receipt of remuneration under the Act.

Chairman of Board, appeal tribunal, medical appeal board and medical referee to determine procedure.

34. Subject to the provisions of the Act and of these Regulations, the procedure of the Board when determining a reserved question and the procedure of an appeal tribunal, a medical appeal board or a medical referee shall be such as the respective chairman or the medical referee (as the case may be) shall determine.

SCHEDULE.

Regulation 7.

APPEAL TRIBUNAL.

1. An appeal tribunal shall consist of -
 - (a) one person drawn from a panel of persons chosen by the Board to represent employers, in accordance with paragraph 3 of this Schedule; and
 - (b) one person drawn from a panel of persons chosen by the Board to represent insured persons, in accordance with paragraph 3 of this Schedule; and
 - (c) a chairman who, subject to the provisions of this Schedule, shall hold office for such period (not exceeding two years) as the Minister may determine, and shall be eligible for reappointment.

2. (1) The chairman of an appeal tribunal shall be a counsel and attorney of at least five years' standing and the Minister may appoint one or more persons to perform the functions of chairman.

(2) The members of a panel shall be appointed by the Board so, however, that before appointing members to either of the panels, the Board may take into consideration any recommendation from -
 - (a) a confederation, representative of employers and employer's associations or, in the absence of such a confederation, such employers and associations of employers as in the opinion of the Board are representative of employers generally; and
 - (b) an association of registered trade unions, or, in the absence of such an association, such registered trade unions as, in the opinion of the Board, are representative of insured persons generally.

3. As far as practicable, the members of each panel shall be summoned by the Board to serve in turn on an appeal tribunal for which the panel is established:

Provided that no person shall sit on a tribunal during the consideration of a case -
 - (a) in which he appears as the representative of the claimant; or
 - (b) by which he is or may be directly affected; or
 - (c) in which he has taken any part as an employer or as a witness; or
 - (d) if he is a Senator or a Member of Parliament.

4. An appeal tribunal may, with the consent of the claimant but not otherwise, proceed with any case in the absence of any member other than the chairman and in any case the chairman shall, if the number of members of the tribunal is an even number, have a second or casting vote.

5. Members appointed to a panel pursuant to this Schedule shall subject to the provisions of this Schedule, hold office for such term and on such conditions as may be determined by the Board.

6. The Minister may, if he considers it expedient so to do, at any time revoke the appointment of a chairman of an appeal tribunal and the Board may, if it considers it expedient so to do, at any time revoke the appointment of any member of a panel.

7. No member of the Board shall be eligible for appointment as a chairman or member of an appeal tribunal.

Made at Nassau this 2nd day of October, 1974.

Sgd.
Clifford Darling
MINISTER OF LABOUR & NATIONAL INSURANCE