IN THE UPPER TRIBUNAL **Case No. CI/3388/2014**
ADMINISTRATIVE APPEALS CHAMBER

Before Judge of the Upper Tribunal Miss E. Ovey

Decision: The decision of the tribunal given on 14th April 2014 contained an error on a point of law. I set it aside and, in exercise of the power given by s.12(2)(b) of the Tribunals, Courts and Enforcement Act 2007, I remit the case to the First-tier Tribunal for reconsideration by a differently constituted tribunal.

REASONS FOR DECISION

Introduction

1. This is the claimant's appeal against the decision of the First-tier Tribunal given on 14th April 2014 dismissing his appeal against the decision of the Secretary of State of 25th June 2013. That decision, which was confirmed by the tribunal, was, as the tribunal expressed it:

> "The claimant is not entitled to Industrial Injuries Disablement Benefit as he has been diagnosed as suffering from Carpal Tunnel Syndrome (PDA12) with an assessed loss of faculty of 2%. This is from 01/10/08 for life and is a final assessment."

2. Under ss. 103 and 108 of the Social Security (Contributions and Benefits) Act 1992, in order to establish entitlement to disablement benefit for an industrial disease a claimant has to show, so far as material for present purposes:

(1) that a prescribed disease is prescribed in relation to him;

(2) that he is suffering from that prescribed disease;

(3) that the resulting loss of faculty amounts to not less than 14 per cent.

3. The Secretary of State's decision of 25th June 2013 was thus a decision that the claimant satisfied the conditions in paragraph (1) and (2) above but did not satisfy the condition in (3) because his loss of faculty had been assessed as only 2 per cent. This is expressly stated at p.60 of the bundle. It is there also stated, however, that the Secretary of State accepts the medical advice dated 4th March 2013. I suspect that that is an error for 4th June 2013, since that is the date of the medical evidence in the bundle and the record of reconsideration at p.63 refers to medical advice of that date.

4. It is important to this appeal to note that the medical adviser's assessment was that the claimant began to suffer from the prescribed disease and a consequent loss of faculty on 1st June 1976: see p.28. That gives rise to the question why the Secretary of State decided that the loss of faculty was from 1st October 2008.

5. The answer to that question seems to be that the claimant had previously made a claim to disablement benefit on the basis of prescribed disease A12 and on that claim it was decided (or so the Secretary of State thought) that he was not suffering from that disease. That

decision was made by the decision maker on 30th September 2008 and I infer from p.58, where the date of 1st October 2008 is followed by the note "previously disallowed 30/09/08", that the decision maker simply found the claimant to be suffering from the prescribed disease from what he regarded as the first possible date, given that previous decision. The point was not, however, expressly addressed in the Secretary of State's submission to the First-tier Tribunal, in which the focus was on the extent of the assessed loss of faculty.

6. It is clear from the tribunal's statement of reasons that the members of the tribunal understood the claimant to be contending both that the assessment that he suffered from carpal tunnel syndrome should have been made at an earlier date and that the percentage of loss of faculty should have been higher. It is not surprising that that is what the claimant contended, since his case is essentially that he suffered symptoms of carpal tunnel syndrome from 1976 onwards, at which time and for a number of years afterwards he was employed as an engineer using hand-held power tools, but that he was not diagnosed as suffering from carpal tunnel syndrome until 2007. As he explains, he was injured in a road traffic accident in 1972 and for a long time his problems with his hands were thought likely to have been a consequence of that accident. In 2007 he had surgery for carpal tunnel syndrome to his right hand and experienced immediate and very considerable relief. His left hand was similarly operated on a few months later. Naturally he says that the obvious inference is that he suffered from carpal tunnel syndrome all along, and that seems to have been accepted by the medical adviser in June 2013. He further says that he now suffers some continuing problems as a result of the long-term nerve damage suffered when there was a substantial delay in treating his carpal tunnel syndrome.

7. The tribunal was aware of the claimant's previous claim and of the fact that there had been three hearings in relation to that claim in front of the First-tier Tribunal and three further appeals or applications to the Upper Tribunal because that was mentioned in the extensive material provided to the tribunal by the claimant and at the hearing in the present case. That history is referred to in the tribunal's statement of reasons in connection with the claimant's contention that the date of assessment is wrong, but it is not clear to me what part, if any, the history played in the tribunal's conclusion. The piece of evidence which the tribunal regarded as having "fatally undermined" the claimant's case on the date of assessment is a report from a consultant orthopaedic surgeon obtained by the claimant for the purposes of a possible claim in negligence against some of the medical professionals who had treated him earlier.

8. In his application for permission to appeal the claimant reiterated that the Secretary of State had accepted that he had been suffering from carpal tunnel syndrome since 1st June 1976 and challenged the percentage assessed for loss of faculty. In giving permission to appeal, Judge Lane raised the point that the effect of the decision on the previous claim appears to have been that it was not open to the Secretary of State to reach such a decision. The Secretary of State in a submission dated 2nd March 2015 accepted that that was correct and submitted that there was a previous positive finding of fact in the original claim that the claimant began to suffer from carpal tunnel syndrome in 2006 and that finding of fact is binding.

9. Not surprisingly, the claimant, having been told that the Secretary of State accepted the medical adviser's opinion that he began to suffer from carpal tunnel syndrome in 1976, is not happy with that submission.

10. In those circumstances, in order to dispose of the appeal, I must deal with the following questions:

(1) what facts, if any, were found in the original claim, as to the date on which the claimant began to suffer from carpal tunnel syndrome?

(2) if there was a previous positive finding of fact that the claimant began to suffer from carpal tunnel syndrome in 2006, is that fact binding so as to preclude the Secretary of State from accepting for the purposes of the present claim that the claimant began to suffer from carpal tunnel syndrome on 1st June 1976?

(3) in the light of my conclusions on those issues, did the tribunal make an error on a point of law:

(a) in adopting the date of 1st October 2008 used by the Secretary of State as the date of onset for the purposes of the statutory provisions, or

(b) in dismissing the appeal against the assessment of the loss of faculty as 2%?

The facts found in the original claim

11. The papers now include copies of the three decisions of Judge Turnbull in relation to the original claim. I draw attention to the following:

(1) in his decision dated 2nd July 2009 (CI/922/2009), Judge Turnbull said that he was dealing with a decision that the claimant was not suffering from carpal tunnel syndrome. He set the decision aside on the ground that the tribunal had not referred to evidence which might have supported the claimant's case that he was suffering from carpal tunnel syndrome in 1976;

(2) in his decision dated 22nd April 2010 (CI/3110/2009), Judge Turnbull explained that he was dealing with a decision that the claimant was suffering from carpal tunnel syndrome but was not, at the time of the first symptoms of carpal tunnel syndrome, working in an occupation prescribed in relation to that syndrome, since he was no longer using hand-held power tools at the time the symptoms first developed. He set the decision aside on the ground that (as I read Judge Turnbull's decision) the tribunal had not given adequate reasons for its finding as to when the first symptoms of carpal tunnel syndrome appeared;

(3) in his decision on the claimant's application for permission to appeal (CI/2375/2010), Judge Turnbull said that the tribunal had found as a fact that the claimant did not develop carpal tunnel syndrome (and therefore was not suffering from symptoms of that disease) until 2006. He dismissed the application for permission to appeal on the ground that that was a finding of fact which the First-tier Tribunal was entitled to make and it had sufficiently explained why it did so.

12. It is thus clear that at the tribunal hearing on 30th June 2010, which was the third hearing of the claimant's appeal against the decision of the decision maker on 30th September 2008, there was a finding of fact that the claimant developed carpal tunnel disease in 2006. In his observations on the present appeal, and no doubt elsewhere, the claimant has given reasons why he regards that finding as wrong. Unfortunately, whether the finding is right or not is not the question raised by Judge Lane and answered by the Secretary of State. The question is effectively whether the Secretary of State was legally able to come to a different conclusion on the present claim or whether that finding still applies.

Was the Secretary of State bound by the previous finding?

When the claimant first began to suffer from carpal tunnel syndrome

13. The reason why the finding is particularly important in the present case is that under s.108 of the Social Security Contributions and Benefits Act and reg. 2 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985, S.I. 1985 No. 967, diseases are prescribed in relation to persons in particular occupations. That is why the first condition I identified in paragraph 2 above is the condition that the prescribed disease relied on should be prescribed in relation to the particular claimant. The first question a decision maker has to answer when making a decision on a disablement benefit claim is whether the prescribed disease relied on is prescribed in relation to the claimant: see the relevant form B191A in the present case at p.58. Under Sch. 1 to the Regulations, carpal tunnel syndrome is prescribed disease A12, but only in relation to a person who was in an occupation where he was using hand-held power tools at the time the symptoms first developed or where he engaged in repeated flexion of the wrist as specified in the Schedule in the 24 months prior to the onset of symptoms. The claimant retired on health grounds in 1999. It follows that if the claimant did not suffer any such symptoms until 2006, carpal tunnel syndrome was not a disease prescribed in relation to him and so he would not be entitled to disablement benefit.

14. The starting point in answering the question whether the previous finding is still binding is s.17 of the Social Security Act 1998. Under s.17(1), decisions made in accordance with the framework of that Act are in general final and under s.17(2) findings of fact embodied in or necessary to a decision are conclusive for the purpose of further decisions if and to the extent that regulations so provide.

15. The finding that the claimant developed carpal tunnel syndrome in 2006 is a finding of fact, rather than a decision, for the purposes of s.17 and so the next step is to consider whether there are any regulations making such a finding conclusive and if so, what the extent of those regulations is.

16. Until 2005 regs. 5 and 6 of the Prescribed Diseases Regulations provided as follows, so far as material:

> "5. If on a claim for benefit ... in respect of a prescribed disease a person is found to be or to have been suffering from the disease … the disease shall, for the purposes of such claim, be treated as having developed on a date (hereafter in these regulations referred to as "the date of onset") determined in accordance with the provisions of the next two following regulations.

> 6. (1) For the purposes of the first claim in respect of a prescribed disease suffered by a person, the date of onset shall be determined in accordance with the following provisions of this regulation, and … that date shall be treated as the date of onset for the purposes of any subsequent claim in respect of the same disease suffered by the same person, so however that –
>
> (a) … any date of onset determined for the purposes of that claim shall not preclude fresh consideration of the question whether the same person is suffering from the same disease on any subsequent claim for or award of benefit; and
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> (b) if, on the consideration of a claim, the degree of disablement is assessed at less than one per cent, any date of onset determined for the purposes of that claim shall be disregarded for the purposes of any subsequent claim.
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> (2) Where the claim for the purposes of which the date of onset is to be determined is –
>
> (a) …
>
> (b) a claim for disablement benefit … the date of onset shall be the day on which the claimant first suffered from the relevant loss of faculty on or after 5th July 1948 …"

17. These provisions were considered in *R(I) 2/04* and *R(I) 5/04*. In the first of those cases, Mr. Commissioner Rowland, as he then was, decided in paragraph 14 that reg. 6(1) made a determination as to the date of onset conclusive for the purposes of s.17(2), although it was not a decision within the meaning of s.17(1). He went on to express the view, in paragraph 17 of his decision, that the words "the first claim" in reg. 6(1) must be read as:

> "the first claim which is successful at least to the extent that it is found that the claimant was suffering from a loss of faculty due to the prescribed disease",

on the ground that otherwise there was no date of onset which could be determined. This reflects the words of reg. 5 defining "date of onset" and introducing reg. 6 as a provision determining that date, a date which only falls to be determined if on a claim for benefit a person is found to be suffering from a prescribed disease.

18. Mr. Commissioner Howell, as he then was, took a similar view of the effect of s.17 and reg. 6 in *R(I) 5/04*. He went on, however, to decide at paragraph 20 that neither reg. 5 nor reg. 6 had any operation where the claimant was not found to be suffering from a prescribed disease. There was not what he called a "negative date of onset" where a person was found not to be suffering from the disease on the first claim made.

19. The effect of Mr. Commissioner Howell's decision was reversed by the Social Security, Child Support and Tax Credits (Miscellaneous Amendments) Regulations 2005, S.I. 2005 No. 337, which introduced a new reg. 5(2) as follows:

> "Where a person claims benefit under Part V of the Contributions and Benefits Act [which includes ss.103 and 108 of that Act] and it is decided that he is not entitled on the basis of a finding that he was not suffering from a prescribed disease, the finding shall be conclusive for the purpose of a decision on a subsequent claim of that kind in respect of the same disease and the same person."

20. The difficulty in considering the application of reg. 5(2) to the present case is that the tribunal's decision on the claimant's original claim was that he was suffering from carpal tunnel syndrome at the time of the decision maker's decision on 30th September 2008, but carpal tunnel syndrome was not a prescribed disease in relation to the claimant because the symptoms did not appear until 2006. In other words, the case raises the question whether the words "a finding that he was not suffering from a prescribed disease" mean only a finding that the person did not have a particular disease or whether they extend to a finding that a person has the disease but is not a person in relation to whom it is prescribed.

21. By case management directions dated 4th June 2015 I directed a submission from the Secretary of State on this issue. I explained the context as set out in paragraphs 11 to 20 above and continued:

> "20. It seems to me arguable that reg. 5(2) applies only where the claimant does not suffer from the particular disease and does not apply where he does suffer from the disease, but the disease is not prescribed in relation to him. "Prescribed disease" is defined in reg. 1 as "a disease or injury prescribed under Part II of these regulations". Part II begins with reg. 2, which reads:
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> > "For the purposes of sections 108-110 of the [Social Security Contributions and Benefits] Act –
> >
> > (a) … each disease or injury set out in the first column of Part I of Schedule 1 hereto is prescribed in relation to all persons who have been employed on or after 5th July 1948 in employed earner's employment in any occupation set against such disease or injury in the second column of the said Part;
> >
> > …"
>
> The Schedule is headed "List of prescribed diseases and the occupations for which they are prescribed" and the first column is headed "Prescribed disease or injury". This may imply that the words "prescribed disease" on their own refer simply to the prescribed disease and do not introduce an element of consideration whether the disease is prescribed in relation to a particular claimant.
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> 21. In my view that would arguably be consistent with the way in which *R(I) 2/04* and *R(I) 5/04* were decided and the reversal of the effect of the latter decision as to a "negative date of onset". As those cases explain, until s.17 of the Social Security Act 1998 came into force, questions relating to disablement benefit in the category of a "diagnosis question" were in general determined by medical practitioners making a medical report rather than by the Secretary of State and were final. A "diagnosis question" was defined in reg. 43 of the Social Security (Administration) Regulations

1995, S.I. 1995 No. 1801, as a question whether a person was suffering or had suffered from a prescribed disease. Both *R(I) 2/04* and *R(I) 5/04* were concerned with decisions which would have been decisions on a diagnosis question under the old system. As Mr. Commissioner Howell recognised, it was open to doubt whether Parliament intended, when introducing the Social Security Act 1998, to change the status of decisions on diagnosis from final decisions to decisions which were not binding unless made so by regulations, but that was the effect. Reg. 6 contained a conclusive finding provision for the purposes of the diagnosis question of date of onset, but there was no such provision in relation to the diagnosis question whether a claimant was suffering from a particular disease. That seems to me to have been the mischief which the 2005 amendments were designed to cure.

22. By contrast, the question whether an occupation is prescribed in relation to a claimant does not usually involve any medical expertise. Carpal tunnel syndrome is exceptional in including as part of the description of the relevant occupation (although only since 2007, as explained in paragraph 28 below) a reference to the development or onset of symptoms. In general, the relevant occupation is defined by reference to the work or exposure to agents of some kind which is involved. Any questions of fact arising in that context would not have been referred for a medical report under the old system. Indeed, there are many non-medical decisions relating to the question whether or not a claimant's employment was within the prescription of employment in relation to which carpal tunnel syndrome is a prescribed disease. These decisions determine points of construction relating to the prescription of employment and under the old system did not raise diagnosis questions. Although medical advice may now be required to determine the particular issue of when symptoms first occurred in the specific context of carpal tunnel syndrome, the distinction between decisions about the employment and decisions about the disease is a possible pointer to the conclusion that reg. 5(2) is not dealing with the issue whether a disease is prescribed in relation to the claimant.

23. I note that the matters on which an examining doctor's opinion is now sought, as set out in Parts 2 to 7 of form B1 613 at pp. 22-32 in the present case, do not include any question as to whether the prescribed disease in question is prescribed in relation to the claimant.

24. I also observe that in CI/3110/2009, in which the tribunal had found that the claimant was no longer using power tools at the time the first symptoms of carpal tunnel syndrome appeared, Judge Turnbull pointed out that the decision:

> "was not that the Claimant was not suffering from the prescribed disease carpal tunnel syndrome, but rather that he had not been working in an occupation which is prescribed in relation to carpal tunnel syndrome."

25. This raises the possibility of an argument that the earlier tribunal decision did not constitute a finding that the claimant was not suffering from a prescribed disease which by virtue of reg. 5(2) would be conclusive for periods up to 30th September 2008."

22. The Secretary of State, in response to my directions, has provided a further submission dated 21st August 2015 in which he now agrees that the decision of 30th June 2010 proceeded on the basis the claimant was suffering from carpal tunnel syndrome, but that his occupation was not a prescribed occupation. He also agrees that reg. 5(2) therefore does not apply and submits that regs. 5 and 6 only need to be applied once it has been determined that the disease in respect of which the claim has been made is prescribed in relation to the claimant's occupation.

23. I accept this submission, which accords with the provisional view I had formed. I therefore conclude that the Secretary of State was able to determine that the claimant first began to suffer from carpal tunnel syndrome on 1st June 1976.

The date of onset issue

24. That is not the end of the matter, because, as already noted, at the third hearing the tribunal did make a finding as to when the claimant first developed carpal tunnel syndrome in the course of reaching its decision that carpal tunnel syndrome was not prescribed in relation to the claimant. The further question then arises whether that was a determination as to the date of onset for the purposes of reg. 6 and made conclusive by that route.

25. That is another question on which I directed a submission from the Secretary of State in my case management directions. In doing so, I said:

> "In my view it is arguable that the purpose of identifying a date of onset in the context of the Regulations is to enable the Secretary of State to answer questions which arise if not only is the claimant suffering from a prescribed disease, but also the disease is prescribed in relation to him. As is pointed out in *R(I) 5/95* at paragraph 10, in most cases the date of onset determines the earliest date from which disablement benefit may be paid. In other words, the date of onset provisions are directed, as Mr. Commissioner Rowland said in paragraph 17 of *R(I) 2/05*, to claims which are successful to some extent. A claim in respect of which the claimant is found not to be suffering from a disease prescribed in relation to him is not successful to any extent.
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> 27. In considering this question, it is first to be noted that the prescription of employment in relation to carpal tunnel syndrome does not use the defined expression "date of onset" but rather refers to "the time the symptoms first develop" and "prior to the onset of symptoms".
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> 28. It is also to be remembered that carpal tunnel syndrome is exceptional in including in the prescription of employment an element relating to onset. There was in fact no such requirement in the original provisions relating to carpal tunnel syndrome; that requirement was introduced by the Social Security (Industrial Injury) (Prescribed Diseases) Amendment Regulations 2007, S.I. 2007 No. 811, with effect from 6th April 2007. It follows that for much of the life of the Regulations the relevance of onset in relation to carpal tunnel syndrome would have been no different from its relevance to other prescribed diseases and would not have affected whether carpal tunnel syndrome was prescribed in relation to a particular claimant. Further, again as I have said, there are many other issues which may arise in the course of determining whether a claimant's employment is prescribed and may give rise to findings of fact. Those

findings, however, are not made conclusive by regulations. It would be surprising if a change in the prescription of employment meant that one particular type of finding of fact in relation to one employment became subject to a different regime and became conclusive, while other types of finding of fact in relation to that and other employments did not. There is nothing in the report of the Industrial Injuries Advisory Council which led to the 2007 amendment (*Work Related Upper Limb Disorders*, CM. 6868 (July 2006)) which suggests any such intention. Rather, the purpose of the amendment seems to have been to increase the likelihood that the carpal tunnel syndrome suffered by a claimant was attributable to the prescribed employment.

29. I should also add that at present it seems to me that the Secretary of State fell into error in proceeding on the basis that there had been a previous decision that the claimant was not suffering from the prescribed disease carpal tunnel syndrome: see paragraph 8 on p.22. If that was indeed the previous decision, ultimately upheld by the tribunal on 30th June 2010, it would be consistent with reg. 5(2) for the Secretary of State to conclude that the earliest possible date on which the claimant's carpal tunnel syndrome could have begun for the purposes of a claim to disablement benefit was 1st October 2008. In fact, however, it seems that the previous tribunal decided that the claimant was suffering from carpal tunnel syndrome from 2006 onwards and not earlier."

26. In his further submission, the Secretary of State accepts that the decision of the tribunal did not constitute a determination of the date of onset for the purposes of reg. 6. He submits that that was the case for two reasons:

(1) the date of "2006" given by the tribunal was not sufficiently specific to constitute the determination of a date of onset within reg. 6(2)(b), which clearly requires identification of a particular day;

(2) there was no reason for the tribunal to determine the date of onset at all if it was not going to make an assessment of the disablement.

27. Again I accept that submission. The tribunal's decision was, in effect, that the claimant fell at the first hurdle because on its finding, whatever the exact date on which the symptoms first developed, it was long after the claimant ceased to be employed. No purpose was therefore to be served by determining the date of onset for the purposes of regs. 5 and 6 and the tribunal did not purport to do so.

Error of law: the date of 1st October 2008

28. If there was no conclusive finding of fact either that the claimant was not suffering from carpal tunnel syndrome up to 30th September 2008 or that the date of onset was at some point in 2006, the Secretary of State was free to accept the medical evidence before him, as he did, and to conclude that, given the date on which the symptoms of carpal tunnel syndrome first appeared, carpal tunnel syndrome was a prescribed disease in relation to the claimant, the claimant had been suffering from it since 1976 and the date of onset was 1st June 1976. It would not have been open to the Secretary of State to adopt a date of onset of 1st October 2008, because that would not be consistent with carpal tunnel syndrome being a prescribed disease in relation to the claimant.

29. It would alternatively have been open to the Secretary of State not to accept the medical advice in the light of other material and to make some other internally consistent decision, such as that the claimant had developed carpal tunnel syndrome in 2006 and so carpal tunnel syndrome was not a prescribed disease in relation to him, or that the claimant was not suffering from carpal tunnel syndrome (although clearly such decisions might well have been challenged). Again, however, it would not then have been open to the Secretary of State to decide that the date of onset was 1st October 2008, because such a decision would have been inconsistent with either a decision that the claimant experienced the first symptoms in 2006 or that the claimant was not suffering from carpal tunnel syndrome.

30. I cannot see any way in which the findings of the third tribunal, so far as they can be discerned, and the material before the Secretary of State can have led to a decision that the claimant was suffering from a disease prescribed in relation to him but the date of onset was 1st October 2008. The relevant finding was that the claimant did not develop carpal tunnel syndrome until 2006. Even if I am wrong and that finding is conclusive, it could not support a decision that:

(1) the claimant was not suffering from carpal tunnel syndrome on 30th September 2008; or

(2) the claimant first experienced symptoms of carpal tunnel syndrome on 1st October 2008; or

(3) carpal tunnel syndrome was a prescribed disease in relation to the claimant.

If I am right there was not even a conclusive finding of fact to that effect.

31. I therefore conclude that the Secretary of State's decision was fundamentally flawed.

32. In my view, by adopting that decision without addressing the difficulties inherent in it, the tribunal made an error on a point of law. The Secretary of State in his present submission in effect agrees. I shall therefore set aside the tribunal's decision. Before explaining further how I shall deal with the appeal, however, I turn to the question whether the tribunal further erred in law in dealing with the assessment of disablement, the issue on which the claimant originally appealed.

Error of law: assessment

33. This is a shorter and more straightforward issue. The tribunal found by implication that the claimant suffered functional difficulties, which were not identified, but went on to find expressly that the main reason for those difficulties was damage to his ulnar nerve rather than carpal tunnel syndrome. That does not appear to be the opinion of the medical adviser as given at p.30 of the bundle and it does not seem to have been suggested by the consultant orthopaedic surgeon whose report (at pp.43-53) was said fatally to undermine the claimant's case on the date of assessment. The tribunal seems to have relied solely on the claimant's submission to the previous tribunal dated 16th October 2009.

34. The Secretary of State has not dealt with this aspect at any length in his submission, but has invited me, having set the decision aside on the grounds already discussed, to substitute my own decision that the claimant is 2% disabled for life with a date of onset of 1st June 1976, in line with the latest medical advice. The Secretary of State realistically recognises, however, that the statement of reasons pays scant attention to medical matters and it is arguable that the tribunal has not adequately explained how it reached its decision.

35. In my view, it was open to the tribunal to consider the possibility of damage to the claimant's ulnar nerve in the light of the material available, but in the absence of any findings as to the claimant's functional disabilities and any explanation of the reasons for which those disabilities were attributed to ulnar nerve damage rather than carpal tunnel syndrome, coupled with the absence of any indication that the examining doctor had detected ulnar nerve damage, I conclude that the tribunal did not make sufficient findings of fact as to the claimant's functional disabilities or give adequate reasons for its finding that such damage was the main reason for those disabilities. There was thus a further error of law on the part of the tribunal and on that ground also the decision should be set aside.

Outcome and directions

36. The Secretary of State, having had the opportunity to look further at this case, now:

(1) accepts that carpal tunnel syndrome is a prescribed disease in relation to the claimant, which necessarily implies that the claimant first suffered symptoms of carpal tunnel syndrome no later than 1999;

(2) is content to take 1st June 1976 as the date on which the claimant first suffered symptoms of carpal tunnel syndrome; and

(3) accordingly submits that 1st June 1976 is the date of onset.

In those circumstances, if the assessment of loss of faculty was not also in issue, I would unhesitatingly substitute my own decision as the Secretary of State suggests. It is, however, in issue and given the conclusion I have reached that the tribunal erred in law in its treatment of the question of assessment, I have no doubt that this is not a case in which it is appropriate for me to substitute my own decision. The claimant has made frequent references to difficulties from which he now suffers and has also adduced material to show that those difficulties may in part be attributable to the length of time for which his carpal tunnel syndrome was untreated. The matter must be remitted to a new tribunal which will be able to consider all the material relating to that aspect of the claimant's claim with the benefit of appropriate medical expertise.

37. Nevertheless, I regard it as appropriate in all the circumstances to give a direction that the new tribunal's consideration of the matter should be limited to the assessment of loss of faculty: cf. the approach taken by Judge Ward in *Shah* v. *NHS England* [2013] UKUT 538 (AAC). Although in that case the decision was to exclude from the scope of reconsideration matters in respect of which undisputed findings of fact had been made by fitness to practice panels and the tribunal, and in this case the tribunal has not made an undisputed finding of fact, it seems to me that the discretion to give directions limiting the scope of reconsideration which has clearly been identified is not limited to that particular circumstance. Here both the claimant and the Secretary of State now agree, for the purposes of this claim, that the claimant first

suffered symptoms of carpal tunnel syndrome on 1st June 1976 and that that date is to be taken as the date of onset. It is the question of assessment which is the live issue between them and I direct that the reconsideration should be limited to that live issue.

38. I further direct that, given the history of the claimant's attempts at claiming disablement benefit, the case be heard by a tribunal constituted differently from the previous tribunals which have dealt with the claimant's claims. The Courts and Tribunals Service will no doubt do its best to ensure that the medical member of the tribunal has particular expertise in the neurological area which seems the most relevant to the claimant's claim.

39. For the above reasons, I set aside the decision of the tribunal and remit the matter to be heard in accordance with the directions in paragraphs 37 and 38 above.

E. Ovey
Judge of the Upper Tribunal
12th February 2016