



Neutral Citation Number: [2026] UKUT 183 (AAC)
Appeal No. UA-2025-000646-AFCS

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

NN

Appellant

- v -

The Secretary of State for Defence

Respondent

**Before: Upper Tribunal Judge Church
Decided on consideration of the papers**

Representation:

Appellant: Peter Collins, The Royal British Legion

Respondent: Paul Carolan and David Snape of Veterans UK

On appeal from:

Tribunal: First-tier Tribunal (WPAFCC)

Tribunal Case No: WP-2024-01016

Tribunal Venue: Remote video hearing

Tribunal Panel: Judge Horrocks, Medical Member Dr Al-Hillawi and Service
Member Sharpe

Hearing Date: 2 December 2024

Decision Date: 2 December 2024

SUMMARY OF DECISION

WAR PENSIONS AND ARMED FORCES COMPENSATION (56)

56.5 Armed Forces Compensation Scheme

Judicial summary – The Appellant suffered physical and mental injuries which the Tribunal accepted were caused or worsened by service. In considering which Table 3

descriptor best described his injury and its effect the Tribunal focused impermissibly on the job the Appellant had had at the date of his hearing rather than carrying out a holistic assessment of his whole history of employment (and unemployment), as envisaged by the Court of Appeal in *Pearson v Secretary of State for Defence* [2024] EWCA Civ 150 (which was binding on it), and failed to make adequate findings of fact as to whether the Appellant's post-discharge role in the civil service was more or less demanding than the role he carried out in the army. This was in material error of law. The Upper Tribunal set aside the FtT's decision and remitted the case for rehearing.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal excluding the members who decided the decision set aside.

REASONS FOR DECISION

Introduction

1. This appeal is about the Appellant (to whom I shall refer as “**NN**”) who served in the British Army from 2007 until his medical discharge in 2017.
2. On 9 May 2022 the Secretary of State made a Final Award for ‘Depressive Episode’ at Table 3, Item 3, Level 10 (the “**SoS Award**”) (the Appellant having been in receipt of previous interim awards at Table 3, Item 4, Level 12 in respect of ‘Depression and Anxiety’ as well as).

The Decision Under Appeal

3. On 9 August 2023 the Appellant sought a reconsideration of the SoS Award. A decision maker for the Secretary of State reconsidered the SoS Award, and decided that the criteria for ‘permanence’ were now met in respect of the Appellant's mental health condition, but nonetheless maintained the SoS Award on reconsideration. The Appellant then appealed the SoS Award to the First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber), a three-

member panel of which convened on 2 December 2024 (the “**Tribunal**”) for a remote oral hearing.

4. The Tribunal heard evidence and submissions and decided to dismiss the appeal and confirm the SoS Award (the “**FtT Decision**”).

The permission stage

5. The Appellant was unhappy with the FtT Decision and sought permission to appeal to the Upper Tribunal. After Judge Heron of the First-tier Tribunal refused permission, the Appellant renewed his application to the Upper Tribunal.
6. He identified the following grounds of appeal. I summarised these in my decision on the matter of permission (which was addressed to the Appellant) as follows:
 - a. Having found that the Applicant’s mental health condition could be treated as permanent, the Tribunal failed in its duty under Article 16(1)(b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (the “**Order**”) to identify which of the Table 3 descriptors best described your injury and its effect, and to explain why your accepted medical condition of “depressive episode” did not meet either Table 3, Item 1 Level 6 (read with footnote (a) or Table 3, Item 2 Level 8 (read with footnote (b)) (“**Ground 1**”);
 - b. Because the Tribunal had found your mental health condition to be permanent, and because Table 3 Item 3 Level 10 contains no requirement for permanence, the Tribunal was bound to consider and make findings as to whether your condition satisfied Table 3, Item 1 Level 6 (read with footnote (a) or Table 3, Item 2 Level 8 (read with footnote (b)) (“**Ground 2**”);
 - c. The Tribunal failed to make separate findings in respect of footnotes (a) and (b) to Table 3 as to whether your ability to work was “over time able to work only in less demanding jobs” or “able to work regularly in a less demanding job” (“**Ground 3**”);
 - d. The Tribunal provided inadequate findings and reasons as to whether your post-discharge role in the civil service was more or less demanding than your role in the army, and erred in concentrating on your physical injuries to the exclusion of his mental health condition (“**Ground 4**”); and
 - e. Having found that your mental health condition could be treated as permanent, the Tribunal failed to address its mind to the particular employment you undertook following your medical discharge from the army in order to determine the appropriate level of your award (“**Ground 5**”).
7. I decided that two of the grounds of appeal put forward on the Appellant’s behalf (Grounds 4 and 5) were realistically arguable.

8. I decided that permission to appeal was warranted and granted permission to appeal the FtT Decision. I made Directions inviting submissions on the appeal from the Secretary of State, and a response from the Appellant.
9. The parties duly complied with my Directions. The Secretary of State indicated his support for the appeal and invited the Upper Tribunal to allow the appeal, set aside the FtT Decision and remit the matter to be heard afresh by a new panel of the First-tier Tribunal. He did not ask for an oral hearing.
10. The Appellant responded to indicate that he too considered the appropriate disposal to be the setting aside of the FtT Decision and its remission to the First-tier Tribunal for rehearing before a new panel.

Analysis

11. At the permission stage I had to be persuaded only that it was “arguable” with a realistic (as opposed to “fanciful”) prospect of success that the Tribunal erred in law. At this, the substantive stage, to allow the appeal I must be satisfied on the balance of probabilities.
12. Having considered the Secretary of State’s Response and the Appellant’s Reply I am now satisfied to the civil standard that the Tribunal, in considering which Table 3 descriptor best described the Appellant’s injury and its effect, focused impermissibly on the job the Appellant had had at the date of his hearing rather than carrying out the kind of holistic assessment of his whole history of employment (and unemployment) envisaged by the Court of Appeal in **Pearson v Secretary of State for Defence** [2024] EWCA Civ 150 (which was binding on it), and the Tribunal failed to make adequate findings of fact as to whether the Appellant’s post-discharge role in the civil service was more or less demanding than the role he carried out in the army. This was in material error of law.
13. I am satisfied that the error was material, in the sense that had the error not been made the outcome of the appeal might well have been different.

Conclusion

14. I conclude that the decision of the First-tier Tribunal involves a material error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
15. Further facts need to be found. The First-tier Tribunal, with its expert members, is best placed to carry out that fact finding.

16. The case must (under section 12(2)(b)(i)) be remitted for re-hearing by a new panel of the First-tier Tribunal. That panel will not be bound by the findings of the Tribunal.

Thomas Church
Judge of the Upper Tribunal

Authorised by the Judge for issue on 5 May 2026