



Neutral Citation Number: [2026] UKUT 253 (AAC)
Appeal No. UA-2024-001763-AFCS

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

SKJ

Appellant

- v -

Secretary of State for Defence

Respondent

Before: Upper Tribunal Judge L. Joanne Smith

Hearing date: 6 January 2026 (remote)

Decision date: 29 June 2026

Representation:

Appellant: Mr P. Collins, Royal British Legion

Respondent: Mr W. Hays of Counsel, 6KBW College Hill

On appeal from:

Tribunal: First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber)

Judge/Panel: Judge: N Hawkes

Medical Member: Dr HM Freeman

Service Member: Mr J Lea

Tribunal Case No: AFCS/00315/2023

Tribunal Venue: Remote (CVP Video Hearing)

Hearing Date: 2 August 2024

Decision Date: 29 August 2024

Anonymity: The appellant in this case is anonymised in accordance with the practice of the Upper Tribunal approved in *Adams v Secretary of State for Work and Pensions and Green (CSM)* [2017] UKUT 9 (AAC), [2017] AACR 28.

SUMMARY OF DECISION

Keywords: 56.5 Armed Forces Compensation Scheme – Article 8 – caused by service – predominant cause – approach to Article 8

This appeal concerns an unsuccessful claim under the Armed Forces Compensation Scheme for a low back condition. The First-tier Tribunal upheld the decision of the

Criminal Injuries Compensation Authority, finding that service was not the “predominant cause” of the injury. The Upper Tribunal held that the First-tier Tribunal materially erred in law by failing to follow the complete test in Article 8 of the 2011 Order, as explained in *JM v Secretary of State for Defence (AFCS)* [2015] UKUT 332 (AAC), in particular by proceeding to the question of predominance under Article 8(2) without first determining under Article 8(1) whether service was a cause of the injury at all. This was of particular importance given the tribunal’s findings that the appellant had undertaken physically demanding duties during service which involving heavy load-bearing, with no clear findings as to alternative non-service causes. The Upper Tribunal found the tribunal’s conclusion to be irrational and the reasoning inadequate. The decision was set aside, and the matter remitted to a differently constituted First-tier Tribunal for re-determination.

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 dated 29 August 2024, following the hearing on 2 August 2024 under file number **AFCS/00315/2023**, was made in error of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh First-tier Tribunal in accordance with the following directions.

DIRECTIONS

- (i) This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.
- (ii) The new First-tier Tribunal should not involve the tribunal judge or specialist members previously involved in considering this appeal.
- (iii) If the Appellant has any further written evidence to put before the Tribunal and, this should be sent to the relevant HMCTS tribunal office within one month of the issue of this decision.
- (iv) The new First-tier Tribunal is not bound in any way by the decision of the previous Tribunal. Depending on the findings of fact it makes, the new Tribunal may reach the same or a different outcome to the previous Tribunal.

These directions may be supplemented by later directions by a Tribunal Judge or Legal Officer in the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal.

REASONS FOR DECISION

Introduction

1. This is an appeal against the decision of the First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber) (“FtT”) dated 29 August 2024. The

Appellant was granted permission to appeal by Upper Tribunal Judge Fitzpatrick on 17 February 2025.

2. On 6 January 2026, I held an oral hearing of this appeal. The appeal was listed as a hybrid hearing, with the Appellant due to attend in-person in London and the Respondent due to appear remotely. However, due to adverse weather conditions disrupting travel, it was re-listed as a fully remote hearing, with the consent of both parties. The Appellant was present and was represented by Mr P. Collins, Senior War Pensions and Armed Forces Compensation Scheme Case Advisor from the Royal British Legion. The Respondent was represented by Mr W. Hays of Counsel. Both parties served skeleton arguments in advance of the hearing and expanded upon those submissions during the hearing. I am grateful to the parties for their flexibility in managing the oral hearing, and for their very helpful oral and written submissions.
3. References to numbers in square brackets “[]” in this decision are references to page numbers in the Upper Tribunal bundle of papers in this case.

Factual background

4. The Appellant served in the army from 30 August 2010 until 28 January 2021. By claim form received by the Respondent on 23 December 2019, the Appellant made a claim for compensation under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (the “2011 Order”), due to low back pain/injury which he believed was due to excessive use during his military service. By a decision letter dated 19 February 2020, the Respondent determined that the Appellant was not entitled to compensation as his injury/illness was “not due to service” (see para 3 of the “Decision and Reasons” (“DAR”) dated 29 August 2024 at [22]).
5. The Appellant requested a reconsideration of the decision by letter dated 25 February 2020. By decision letter dated 1 December 2020, the Respondent stated that having reconsidered the decision, it remained unchanged. The Appellant appealed the decision to the FtT and the appeal was heard remotely on 2 August 2024.

The decision of the First-tier Tribunal

6. With consideration of the Appellant’s oral evidence, the evidence contained within the response bundle (including medical evidence), and the submissions made on behalf of both parties, the FtT dismissed the appeal, concluding that:

“[h]aving carefully weighed up and evaluated all of the evidence applying our medical expertise, we find as a fact on the balance of probabilities that service was not the predominant cause of the claimed condition”

(paragraph 22 of the DAR at [27])

The grounds of appeal to the Upper Tribunal

7. Permission to appeal was granted by UT Judge Fitzpatrick, on all three grounds of appeal presented by the Appellant. She considered ground 1 to be more persuasive than grounds 2 and 3 but chose not to limit her grant of permission. Submissions were made in respect of all three grounds. The grounds are as follows:
- (i) The FtT failed to address its mind to the relevant legal test as set out in Article 8 of the 2011 Order, in that it determined that service was not the predominant cause of the injury, when it should have first considered whether service was a cause at all.
 - (ii) The FtT erred in law in its consideration of the medical evidence in the appeal in that it failed to consider whether the work undertaken by the Appellant during service could have caused or contributed to the back injury.
 - (iii) The FtT erred in law in its determination that the injury arose over a period of time and not as a result of a single trauma.

The legal framework

8. The Armed Forces Compensation Scheme (the “Scheme”) compensates a qualifying claimant for an injury caused or made worse by service, or death caused by service, on or after 6 April 2005. Article 8 of the 2011 Order makes provision for a claim in respect of an injury caused by service:

“Injury caused by service

8.— (1) Subject to articles 11 and 12, benefit is payable to or in respect of a member or former member by reason of an injury which is caused (wholly or partly) by service where the cause of the injury occurred on or after 6th April 2005.

(2) Where injury is partly caused by service, benefit is only payable if service is the predominant cause of the injury.”

Article 2 provides interpretation as follows: “service” means service as a member of the forces; “forces” means the armed forces and the reserve forces;

“member” and “former member” means a member or a former member of the forces respectively; and “predominant” means more than 50%.

9. The case of *JM v Secretary of State for Defence* (AFCS) [2015] UKUT 332 (AAC) 3JP provides guidance on the correct approach to establishing the “cause” and the “predominant cause” under the Article 8 eligibility provision as follows (at paragraph 118):

“(i) First, identify the potential process cause or causes (i.e. the events or processes operating on the body or mind that have caused the injury);

(ii) Secondly, discount potential process causes that are too remote or uncertain to be regarded as a relevant process cause;

(iii) Thirdly, categorise the relevant process cause or causes by deciding whether the circumstances in which process causes operated were service or non-service causes. It is at this stage that a consideration of those circumstances comes into play, and the old cases on the identification of a service cause applying the old attributability test provide guidance;

(iv) Fourthly, if all the relevant process causes are not categorised as service causes, apply the predominancy test.”

10. The predominancy test is divided into two parts, namely (at paragraph 122):

“(i) where service competes with other causes of the injury it needs to predominate, and

(ii) to predominate it needs to contribute conceptually more than one half of the causative stimulus”

The Upper Tribunal continued, at paragraph 125 of the decision, that “...in applying the predominancy test the exercise of judgement is an assessment of the relative potency of process causes (i.e., the events or processes operating on the body or mind that have caused the injury or death) which have been categorised on one hand as service causes and on the other hand as non-service causes”.

11. With consideration of *Marshall v Minister of Pensions* [1948] 1 KB 106, a case directly concerned with competing causes of injury, the Upper Tribunal determined that where the process causes have been categorised into service and non-service causes, the decision maker should firstly consider whether, without the “service cause”, the injury would have occurred at all. If the injury would not have occurred in absence of the service cause, then the usual

conclusion will be that the service cause is the predominant cause of the injury. Secondly, the decision maker should consider whether, without the service cause, the injury would have been less than half as serious. If the first question does not assist, the answer to the second question should generally found the answer as to whether the service cause is the predominant cause of the injury (see paragraphs 134-136).

Ground of Appeal (i)

The submissions

12. As to the first ground of appeal, the Appellant asserts that the FtT erred in law by failing to correctly apply the eligibility test within Article 8 of the 2011 Order. Mr Collins submits, on behalf of the Appellant, that the FtT failed to address whether the Appellant's injury was caused "wholly or partly" by service, and whether the cause of the injury occurred on or after 6 April 2005 (Article 8(1) of the Order). The Appellant submits that the FtT ought to have considered Article 8(1), before it went on to apply the second aspect of the test in Article 8(2), which provides that where it is found that the injury was "partly" caused by service, the FtT should consider whether service was the "predominant" cause.
13. The Respondent had determined in its letter dated 19 February 2024, and reiterated in its reconsideration letter dated 1 December 2020, that the injury suffered by the Appellant was "not due to service". It is submitted by Mr Collins that the FtT fell into error by failing to make a finding in respect of Article 8(1) of the 2011 Order and solely considering whether service was the predominant cause of injury under Article 8(2). Mr Collins, making direct reference to *JM*, further asserts that Article 8(1) is the gatekeeper to Article 8(2) in that the FtT should not consider Article 8(2) unless it first considers Article 8(1) and determines that the injury is at least partly caused by service. He continues that the FtT erred by failing to follow the correct process as set out in *JM*, and which is similar to the issues in this matter.
14. Mr Hays, on behalf of the Respondent, agrees that the FtT solely identified that service was not the predominant cause of the Appellant's injury. However, he suggests that in order to make this finding, the FtT was in fact saying that service was not the cause of the claimed injury at all. He submits, therefore, that despite any error in how the FtT framed the issue, that error was immaterial to the outcome of the appeal.

Analysis

15. Article 8 of the 2011 Order, as stated above, sets out a multi-layered test to apply when considering eligibility for benefit under the Scheme. Subject to

Articles 11 and 12, Article 8(1) provides that benefit is payable to or in respect of a member or former member of the armed forces if they have an injury which is “caused (wholly or partly) by service where the cause of the injury occurred on or after 6th April 2005”. This requires a number of conditions to be satisfied: (i) there is an injury; which is (ii) sustained by a member or former member of the armed forces; which is (iii) either wholly or partly caused by service; and (iv) the cause occurred on or after 6 April 2005. If all four conditions are satisfied, and it is found that the service is one of the causes of the injury, Article 8(2) provides that the benefit is only payable where service is the “predominant” cause. By virtue of Article 2, a predominant cause is one which constitutes more than half (50%) of the cause of the injury.

16. It is agreed by the parties that the FtT did not address the test within Article 8(1) of the Order. The FtT did not make findings as to the cause or causes of the injury, nor did it identify the date of any such cause (or causes). Instead, the FtT immediately dealt with the Article 8(2) predominancy test, finding that service was not the predominant cause of the injury i.e. service did not contribute more than one half of the cause of the Appellant’s back injury. To Determine if the FtT’s approach to the Article 8 eligibility test amounts to a material error of law, I must read the FtT’s DAR fairly and as a whole, and consider whether it undertook the complete process in substance. The Upper Tribunal should be reluctant to assume that a tribunal has misdirected itself simply because something is not expressly stated in its decision. It should be presumed that the FtT, as an expert tribunal, is aware of the law that operates within the jurisdiction being exercised and applies it correctly, unless it is clear from the language of the decision that it failed to do so.
17. Undertaking that analysis, I note that there was no dispute that the FtT was dealing with a former member of the armed forces who had sustained an injury (conditions (i) and (ii) above were satisfied). The matters in issue were whether the injury was wholly or partly caused by service (condition (iii)), the timing of that cause(s) (condition (iv)) and if service was a partial cause, whether it was the predominant one. Following the guidance in *JM* the FtT should therefore have made findings to: (i) identify the cause or causes of the injury; (ii) discount any potential causes that are too remote or uncertain to be regarded as a cause; (iii) decide which cause(s) were service cause(s), with consideration of the attributability test as guidance; and (iv) if some of the cause(s) were not service related, apply the predominancy test, to establish whether the service cause contributed more than one half of the overall causation.
18. The FtT’s first objective, therefore, was to identify the potential cause or causes of the injury i.e., establish what were “*the events or processes operating on the body or mind that have caused the injury*” (*JM*, paragraph 118(i)). The FtT made findings that the Appellant’s employment prior to service did not involve any (or

much) heavy lifting (paragraph 16(a)-(d) of the DAR [23]). It went on to examine the Appellant's roles within service, finding that the Appellant carried extra equipment in his role as signaller (paragraph 16(f)); he participated in extra fitness activities including cross-country and boxing (paragraph 16(g)); he was first on scene to deal with casualties and this involved picking up and carrying those casualties (paragraph 16(h)); when deployed to Afghanistan, he wore body armour between 20-24 hours per day and, as the team medic, he carried extra kit in that role as well as the usual kit required of a service member (paragraph 16(i)); he carried a lot of extra equipment when deployed to Northern Ireland (paragraph 16(k)); he worked with heavy equipment in an asset management position after his deployment to Northern Ireland (paragraph 16(l)). The FtT thereafter outlined the Appellant's interactions with various medics in respect of his back injury and what, if anything, he disclosed to them at the relevant times.

19. The FtT reasoned that the best medical evidence was that of the MRI scans conducted on 21 July 2021, following which the Consultant Orthopaedic Surgeon identified "facet degeneration at L5-S1 level". He stated that he was unable to provide a definitive opinion on whether this degeneration was caused by military service without sight of the Appellant's military medical records. The Appellant did not provide him with such records, for the reasons explained by him during his oral evidence, so no opinion on this matter was ever provided. The FtT found that the Consultant's MRI scan outcome was supported by the medical examination conducted on 31 October 2019, when the Appellant said that his back pain had been on and off for two years and it had been more frequent within the three months prior to that consultation. The Appellant's clinical notes also stated that the impression of his back injury was "longstanding mechanical LPB +/- sciatica - objective findings do not appear to correlate with reported symptoms, strong psychosocial factors" (paragraph 21 of the DAR [26]). From this preferred evidence, the FtT concluded, having made the factual findings noted above, that *"[h]aving carefully weighed up and evaluated the evidence applying our medical expertise, we find as a fact on the balance of probabilities that service was not the predominant cause of the claimed condition."* This was repeated in paragraph 23, where it is stated, *"[h]aving found as a fact that service was not the predominant cause of the Appellant's condition, the Tribunal had to dismiss the appeal"* ([26]).

20. So, the FtT made findings as to the Appellant's roles during service that exposed him to carrying excess weight. However, it went no further than this. These roles had the potential to be considered causative (or partially causative) of the back injury, however no such definitive finding was made. The FtT made findings that the Appellant had non-service related employment which did not expose him to the potential for injury to his back. It made no findings about whether the Appellant's back injury was age related degeneration despite

identifying an entry in his medical reports (dated 26 August 2020) which suggested that it was “normal age related changes” (paragraph 16t of the DAR [25]). It made findings that the Appellant’s disclosures to the medical professionals were inconsistent but did not state what it made of this inconsistency. So, the FtT, in substance, made findings that the only potential causes for his back injury were service related, but it reached the conclusion that service was not the “predominant cause” of that injury. It did not make findings as to what, in fact, was the cause (or causes) of the Appellant’s injury.

21. The Respondent argues that in finding that service was not the predominant cause of the Appellant’s injury, the FtT had clearly established that service was not a cause at all. That cannot be correct as predominant equates to 50%, hence service could still be found to contribute less than 50% of the cause of the Appellant’s injury. Regardless, the FtT’s detailed findings regarding the extra weight carried by the Appellant during service roles, does not correlate with the Respondent’s proposition in the circumstances of this case. I find the FtT’s conclusion that service was not a predominant cause of the Appellant’s injury to be an irrational conclusion to reach in light of those findings. The FtT gives inadequate reasons to explain why service was not the predominant cause when service related load bearing roles were the only potential causes it had identified within its findings. Such an irrational conclusion can only have been reached as a result of having failed to first make specific findings as to the cause (or causes) of the injury, and thereafter follow the correct process to complete the Article 8 eligibility exercise, taking guidance from *JM* in dealing with any finding that service was a partial cause.
22. I therefore find myself in agreement with the Appellant that the FtT erred in law by failing to initially consider the cause(s) of the injury required by Article 8(1) of the 2011 Order, before proceeding to consider predominance under Article 8(2). This error is material as it cannot be said that a properly directed tribunal, applying the test logically and in full, in the circumstances of this case, would have reached the same conclusion. The appeal is allowed on ground 1

Conclusion

23. 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 of the Tribunal (Tribunals, Courts and Enforcement Act 2007, section 12(2)(a)). As the case requires further fact finding, I do not consider it appropriate for me to re-make the decision and therefore the matter must be remitted for re-hearing by a new Tribunal subject to the directions above (section 12(2)(b)(i)).
24. As I have allowed the appeal on ground 1, I need not consider grounds 2 and 3. Any errors of law arising out of these grounds will be resolved by the re-

hearing of this matter. Although I am setting aside the FtT's decision, I make it clear that I am making no finding, nor indeed expressing any view, on whether the Appellant is entitled to any award under the Scheme. The assessment of entitlement is a matter for the good judgement of the new Tribunal. That new Tribunal must review all the relevant evidence afresh and make its own findings of fact, uninfluenced by the decision of the original tribunal.

L. Joanne Smith
Judge of the Upper Tribunal

(Approved for issue on)
29 June 2026