



Neutral Citation Number: [2026] UKUT 389 (AAC)
Appeal No. UA-2025-001811-II

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

John Robert James Rawlings

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

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

Representation:

Appellant: In person

Respondent: Ms S Hennessy, Decision Making and Appeals, DWP

On appeal from:

Tribunal: First-Tier Tribunal (Social Security and Child Support)

Panel: Judge A Hobbs and Professor D Halpin

Tribunal Case No: SC200/23/00147

Digital Case No.: 1671-2912-1017-8795

Tribunal Venue: Plymouth

Hearing Date: 27 September 2024

SUMMARY OF DECISION

The Upper Tribunal allowed the claimant's industrial disablement benefit appeal on two grounds. The first ground was because the claimant could not read the DWP medical assessor's handwritten report. The second ground was because the First-tier Tribunal failed to give adequate reasons for its findings on the assessment of disablement. The Secretary of State's representative accepted that the FTT's statement of reasons contained "a high volume of grammatical and proofreading errors, rendering the FtT's reasons difficult to read, and in some places, unintelligible."

Keyword name (keyword number):

22.2 Industrial injuries benefits – assessment of disablement

34.2 Tribunal procedure and practice – fair hearing

34.9 Tribunal procedure and practice – statement of reasons

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 in accordance with this decision and the following directions.

DIRECTIONS

1. This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.
2. The new First-tier Tribunal should not involve the tribunal judge or medical member previously involved in considering this appeal on 27 September 2024.
3. If the Appellant has any further written evidence to put before the tribunal and, in particular, further medical evidence, this should be sent to the HMCTS regional tribunal office within one month of the issue of this decision. Any such further evidence will have to relate to the circumstances as they were no later than the date of the original decision of the Secretary of State under appeal (20 September 2022).
4. 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 Legal Officer, Tribunal Registrar or First-tier Tribunal Judge.

REASONS FOR DECISION

Introduction

1. The Appellant's appeal to the Upper Tribunal succeeds and so there will need to be a completely fresh hearing of the original Industrial Injuries (II) appeal before a new First-tier Tribunal (FTT).

The Upper Tribunal's decision in summary and what happens next

2. I allow the Appellant's appeal to the Upper Tribunal, which has the support of the Secretary of State's representative (Ms S. Hennessy). The decision of the First-tier Tribunal involves a two-fold legal error. For that reason, I set aside the Tribunal's decision.

3. The Appellant's case now needs to be reheard by a new and different First-tier Tribunal. I cannot predict what will be the outcome of the re-hearing. So, the new Tribunal may reach the same, or a different, decision to that of the previous Tribunal. It all depends on the findings of fact that the new Tribunal makes.

The factual background

4. The short version of events is that in December 1993 Mr Rawlings made a claim for an industrial accident which had occurred on 6 December 1991. On 3 July 1996 he was medically assessed as having a loss of faculty of 30% from 4 May 1996 for life. On 24 May 2022 Mr Rawlings requested that decision be superseded, as he believed his condition had deteriorated. The Appellant was examined by a Medical Adviser (MA) on 6 September 2022, who was of the opinion there had not been a change of circumstances. Accordingly on 20 September 2022 a DWP decision-maker considered the medical report and decided not to supersede the decision dated 3 July 1996, as there had been no change in the assessment of disablement. Mr Rawlings requested a mandatory reconsideration, but no change was made. On 17 December 2022 he appealed this decision to the FTT.
5. On 27 September 2024 the FTT (nominally at least) allowed the appeal, setting aside the decision of the Secretary of State on 20 September 2022. The FTT assessed the extent of the Appellant's disablement resulting from the accident as 33% (rather than 30%) from 24 May 2022 for life. Under section 103(3) of the Social Security Contributions and Benefits Act 1992 this assessment was rounded to the nearest percentage which is a multiple of 10; therefore, the level of industrial disablement benefit (IIDB) payable to the Appellant remained unchanged.

The Appellant's grounds of appeal to the Upper Tribunal

6. Mr Rawlings's application to the FTT for permission to appeal to the Upper Tribunal was refused. He renewed his application directly to the Upper Tribunal in the following terms:

I am writing to formally appeal the decision regarding my disability benefit. I believe I have not received a fair hearing, and I wish to outline the reasons for my appeal. Firstly, my health has been in a constant state of decline. I suffer from multiple ongoing conditions that severely impact my daily life and ability to function independently. Despite providing medical evidence and personal testimony, I feel that the full extent of my health issues was not adequately considered during the initial assessment. Secondly, due to my worsening condition, I have had no choice but to move in with my daughter and her family. This decision was not made lightly, but it became necessary as I could no longer manage on my own, including falling over and having to use a wheelchair for mobility on an ad-hoc basis.

This change in living arrangements is a direct result of my disability and should be taken into account when assessing my need for support. Lastly, I do not believe the hearing process gave me a fair opportunity to present my case. I felt rushed, misunderstood, and that key aspects of my situation

were overlooked. I am requesting a reconsideration so that my circumstances can be properly reviewed with the compassion and thoroughness they deserve.

7. I directed an oral (telephone) hearing of the application for permission to appeal. That permission hearing took place on 6 July 2026, following which I granted permission to appeal, and making the following observations:

7. Mr Rawlings frankly admitted that he had little legal knowledge, which is entirely understandable. It follows that he has not drafted grounds of appeal in the way that a lawyer would. However, the Upper Tribunal is an inquisitorial tribunal, meaning that its judges can identify grounds of appeal of their own initiative, typically being based on concerns expressed by an appellant. I consider I can identify two potential grounds of appeal in respect of this FTT decision.

8. First, Mr Rawlings's main grievance concerned the report by the examining doctor Dr J Pacanowski. The nature of his complaints is set out in Mr Rawling's correspondence on file and need not be repeated here. In particular, however, the Appellant complained that he was unable to read Dr Pacanowski's report. That report is in the FTT bundle at pages 34-47 (electronic pages 43-56). I have to say I have seen doctors' reports with worse handwriting but also seen reports with better handwriting. However, the point is that Mr Rawlings was unable to read it. [A DWP official] helpfully prepared a typed transcript (page 55, electronic page 64) but (i) even she was unable to decipher all of the report, leaving illegible passages as '????'; and (ii) her transcript only covered the concluding Section 10 of the medical examiner's report, rather than the whole report. The FTT appear both to recognise the difficulties the Appellant had in reading the report (para 23) and to dismiss them (para 47). It may be arguable that the failure to ensure the Appellant could read the whole report amounted to a breach of natural justice.

9. Second, it is arguable – despite the length of the FTT's statement of reasons – that the FTT failed to give adequate reasons for its decision. The Appellant's case was that his condition had deteriorated considerably over time. The previous 30% assessment dated back to the mid-1990s. The FTT accepted the Appellant's account of his difficulties (see e.g. para 38) and yet there was very little real change to the level of assessment. Did the FTT do enough to explain why this was so?

10. At this stage I need only be satisfied that the grounds of appeal are arguable. In other words, I have to be satisfied that an appeal to the Upper Tribunal may realistically succeed, not that it necessarily will succeed. Given that threshold, I am on balance persuaded that I should grant permission to appeal.

The Secretary of State's submission on the appeal to the Upper Tribunal

8. Ms S Hennessy, the Secretary of State's representative in these proceedings, supports the appeal to the Upper Tribunal. She observes as follows with regard

to the first ground of appeal (PTA = permission to appeal; SOR = Statement of Reasons):

4.2 Regarding the ground of appeal identified by UT Judge Wikeley at paragraph 8 of the PTA, I respectfully submit the FtT erred in law in its treatment of the appellant's inability to read the MA's handwriting in the medical assessment report, and that this amounted to a breach of natural justice.

4.3 The appellant consistently raised this concern. In the letter of complaint sent to the IIDB service centre on 14/10/2022 [pages 52 to 53], the appellant raised the fact that *"The handwritten report was, as far as I am concerned, illegible"*. Paragraph 23 of the SOR shows the FtT were aware the appellant had struggled to read the handwritten report. Rule 2 (1) of The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the FtT rules) states *"The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly."*

4.4 *GB v SSWP* (2019) UKUT 120 (AAC) considered an IIDB case regarding concerns on the production of a medical report. While the factual issues of that case differ, I would highlight paragraphs 26 to 28 as potentially relevant. It was highlighted that *"the issue is primarily one of fairness to the appellant"*, more than if any missing information was material or not. Paragraph 24 also makes reference to *AG v Secretary of State for Work & Pensions* [2009] UKUT 127 (AAC), stating:

"In that case, a medical examination had been conducted by one doctor but the report had been signed by another doctor some three months after the examination had taken place. The Respondent's decision contained the following explanation for this: "the original medical report... was returned for rework on two occasions as the decision maker had some queries which required clarification by Medical Services." Those queries were not explained in the decision or the evidence filed on appeal to the tribunal. The Appellant's representative had criticised the report before the tribunal, alleging that it had been "fabricated". The tribunal however did not address this issue in its decision. Judge Wikeley held that this was an error of law, concluding at [18] that:

"... It had no evidence before it as to the nature of the "reworking" which had been carried out. It was incumbent on the tribunal at the very least to adjourn to obtain a full explanation of that process, given the challenge that had been made to the status of the report. Its failure to do so and its purported reliance on the...report amounted to an error of law."

4.5 Applying the above to the case at hand, I submit that where a genuine problem has potentially arisen with a medical report which could affect the appellant's ability to challenge or scrutinise it, it is not sufficient that the FtT itself was satisfied with it. As such, the FtT erred in its conclusion at paragraph 46 of the SOR that:

“Within the current assessment, the Tribunal cannot ignore that the current assessment due to the handwriting difficulties. The Tribunal has read the papers, looked at the transcription and the details are capable of being read.”

4.6 As such, I submit the FtT erred in law due to the procedural unfairness of not enabling all parties to participate fully in the hearing as per rule 2 (2) (c) of the FtT rules. It was considered that the FtT could read the report, but the question also should have been asked if the appellant could have as well.

9. Ms Hennessy provides further and more detailed analysis of the second ground of appeal:

4.7 Turning to the ground of appeal identified by UT Judge Wikeley at paragraph 9 of the PTA, whether the FtT provided adequate reasons as to why despite the deterioration in the appellant’s condition there was little change to the assessment of disablement; while the FtT arrived at a similar overall assessment as the respondent, these assessments were composed differently.

4.8 The 06/09/2022 medical assessment report advised a 25% loss of faculty for impaired spinal function, with an offset of 8% for degenerative changes in the spine, an 8% award for impaired lower limb function and a 5% award for impaired mental equilibrium, arriving at a total assessment of disablement of 30% [pages 42 and 44].

4.9 The FtT set aside this decision, awarding the appellant 20% for impaired spinal function, with an additional 8% awarded for the interaction with his degenerative spinal disease, and 8% for impaired lower limb function offset by 3% for post-accident degeneration, arriving at a total assessment of disablement of 33% [paras 53 to 55, SOR].

4.10 At paragraphs 17 to 19 of the SOR, the FtT summarise the findings in the 06/09/2022 medical assessment report concerning the degenerative changes in the appellant’s spine. At paragraph 25, the FtT refer to the medical report dated 31/03/1995 from a Consultant Anaesthetist which refers to the appellant having *“fairly extensive degenerative disease of the lumbar spine”* [page 63].

4.11 Paragraph 49 of the SOR explains the FtT considered the medical advice in the 06/09/2022 assessment report *“accurate, save with regard to the mental health aspect”*. At paragraph 52, the FtT acknowledge:

“that it is really difficult, when looking over a 30 year period of time, to work out how much loss is due to the accident and how much is due to degenerative changes. The Tribunal considers the balances likely change over time in favour of degenerative changes. The previous 30% assessment being broadly accurate regarding spinal function, as at the time it was given”.

4.12 At paragraphs 53 to 55 of the SOR, the FtT explain the different awards and offsets that the appellant's assessment is composed of. Upon one's reading of the SOR, it can be broadly understood that the FtT found as a fact the appellant's degenerative spinal disease pre-dated the index accident and considered the deterioration in the appellant's condition resulted from this pre-existing condition. Therefore, they did not materially increase the appellant's award. However, the SOR contains a high volume of grammatical and proofreading errors, rendering the FtT's reasons difficult to read, and in some places, unintelligible.

4.13 Paragraph 43 of the SOR refers to the:

"letter to the pain clinic dated 23/9/2022 (addition L page 104) reports long-standing back pain which she has had a previous lapping it to me over 30 years ago."

The letter at page Addition L104 refers to a laminectomy the appellant underwent (a procedure the FtT mistakenly describe as a "*lapendectomy*" in an earlier reference to the same letter at paragraph 38), but this cannot be clearly understood from this unintelligible sentence.

4.14 Paragraph 27 ends, inexplicably, "*We also reports ongoing treatments the involvement of the MP. Include a copy of the decision letter as well.*" Significantly, the poor standard of writing undermines the adequacy of the FtT's reasons in the 'Analysis' section of the SOR, which begins at paragraph 43. Paragraph 45 reads:

45. "The award in 1996 said the pre-existing disease should contribute but not offset the original award as onset was caused by the accident. The underlying disease increases the impact of the accident the subjects of current prognosis was worse for a period i.e. brought forward. Argued with a 1% offset has been reasonable as no symptoms in the past. Then they are working in tandem. He was given an initial three-year assessment with a base of loss of spinal function. At Page 33 this became 25% gross based on his back with a 5% offset".

It is very difficult to discern the reasoning the FtT is attempting to convey in these fragmented sentences.

4.15 Paragraph 51 is similarly unintelligible:

51. "As to the lower limb function the knee problems are likely unconnected except it is possible that osteoarthritis in the knees may be somewhat capable of offsetting. If the Appellant is struggling with walking such that they are considering operation on the knee then the Tribunal cannot accept that that can be is said to not impact his ability to walk."

4.16 I respectfully submit that while the FtT have provided reasons explaining why there was little change to the level of the appellant's

assessment, the consistently poor standard of written English in the SOR renders these reasons inadequate, as they are not clearly intelligible, particularly for the appellant, who as UT Judge Wikeley notes at paragraph 7 of the PTA *“frankly admitted that he had little legal knowledge, which is entirely understandable.”* Given the appellant’s lack of legal knowledge, he may reasonably struggle to discern whether some parts of the SOR cannot be understood because of his lack of knowledge of the law and IIDB’s complex regulations, or because the SOR is poorly written and edited.

4.17 At paragraph 49 of the SOR, the FtT determined:

49. “In terms of the advice on relevant loss of faculty the Tribunal considers this is accurate, save with regard to the mental health aspect. The Appellant has lost his wife and other family members in the last few years. Taking all the evidence into account, the Tribunal was not satisfied that there is a causal link to the loss of mental equilibria. The Tribunal considers the correct attribution is in regard to all physical symptoms only. The Tribunal would remove the mental health is a loss of faculty that is not separate in its judgement, to the extent that it cannot be said to be linked to the index accident and considers that reflects degenerative changes across the Appellant’s lifetime.”

4.18 I respectfully submit the FtT have failed to provide adequate reasons, supported by proper findings of fact, as to why they were not satisfied there was a causal link between the index accident and the appellant’s impaired mental equilibrium.

4.19 While the appellant was not given a separate assessment for any injury to his mental health until the 06/09/2022 reassessment, the MA’s clinical findings in the 03/05/1995 assessment report note *“Depressed facies & attitude”* [page 22]. This finding is consistent with the medical report from a Consultant Anaesthetist dated 30/03/1995, which notes *“Mild depression...On examination, he was slightly depressed”* [page 63].

4.20 A medical report prepared by a Consultant in Orthopaedics dated 13/02/1995 clearly links the appellant’s depression to the injuries suffered in the index accident [page 105]:

“He has remained irritable and has become depressed because of the continuance of his symptoms, his restricted mobility and the worry concerning his job, and he has been on anti-depressant treatment from his general practitioner for some time.”

A supplementary report from the same consultant dated 02/04/1996 [page 72] states:

“Because of his inability to work and undertake his leisure time activities, he has become depressed and very irritable, although recently he has been helped a little by drug therapy.”

4.21 Upon one's reading of the SOR, it is unclear why the FtT appear to have attributed the appellant's impaired mental equilibrium to bereavement. The appellant's GP summary confirms his wife died in 2015 [page Addition B21], which was not *"in the last few years"* prior to his supersession request on 24/05/2022 or the FtT hearing on 27/09/2024. There is no reference to the appellant losing *"other family members"* in the FtT bundle or elsewhere in the SOR; it's therefore unclear whether this is an error on the FtT's part or if the appellant suffered further bereavements, and if so, whether these occurred before or after the date of decision.

4.22 The FtT bundle does not contain any medical evidence documenting the appellant's mental health after 1996 and before 2020, when the GP records provided by the appellant begin [Addition L1]. According to an entry in this record dated 23/08/2022 [page Addition L19], which is between the date of the appellant's supersession request and the date of decision, the appellant:

"Hasn't had a good night sleep for 30 years...Lost wife in 2015, lives alone but has a very supportive family. Feels he has a very poor quality of life...Feels anxious sometimes in the morning. On fluoxetine 40mg OD. Discussed think he is depressed – He agrees. Has felt depressed for many years."

This neither confirms or disproves that the appellant's depression is related to the index accident, or the loss of his wife.

4.23 In the statement of clinical findings in the 06/09/2022 medical assessment report [page 45], the MA determined:

"His depression has not changed since last medical board. He gets irritable and has poor sleep due to physical and mental health issues. There is evidence of self-neglecting. He denied thoughts of self-harm / ending his life. His pastimes and hobbies are limited due to physical problems. Therefore, limited disablement is advised for psychological impaired function, 5%."

This assessment report was reviewed on 14/11/2022 by another MA [page Addition B24], who was of the opinion:

"An additional award of 8% for lower limb dysfunction and 5% for mental health impairment have been advised and these awards are also reasonable and take into account the effects of the index accident on the client's left leg and his psychological trauma caused by the index accident."

4.24 The FtT were *"not satisfied that there is a causal link to the loss of mental equilibria"*; however, the medical evidence from 1995 and 1996 links the appellant's depression to the index accident, and two of the respondent's Medical Advisers were of the opinion in 2022 that an award of 5% for impaired mental equilibrium as a result of the index accident was reasonable. The FtT has neglected to provide any reasons as to why they

were not satisfied, nor have they identified any medical evidence that supports their position. I respectfully submit the FtT's failure to provide adequate reasons explaining the removal of the 5% assessment for the appellant's impaired mental equilibrium amounts to a clear error of law.

10. The Secretary of State's representative accordingly supports the appeal to the Upper Tribunal on both grounds.

The Appellant's reply

11. Mr Rawlings has provided a detailed reply to the Secretary of State's submission. He obviously welcomes Ms Hennessy's support for his appeal to the Upper Tribunal. He identifies the central problem in his case as being that he has "never received a full, fair, thorough and independent assessment of my disability". To that end he argues that a new independent medical assessment is required. He also seeks an oral hearing of his Upper Tribunal appeal and the following enumerated outcomes:

- (1) Set aside the decision of the First-tier Tribunal.
- (2) Direct that a new and wholly independent medical assessment be undertaken by a different medical examiner.
- (3) Ensure that the assessment includes a full examination of my physical condition, mobility, pain, daily limitations and overall disablement.
- (4) Direct that my entitlement be reconsidered using the findings of that independent assessment.
- (5) Remit the case to a differently constituted First-tier Tribunal for reconsideration if necessary.
- (6) Ensure that any future decision is based upon current medical evidence that properly reflects the extent of my disability and deterioration.

Analysis: a summary

12. I refuse the application for an oral hearing of the Upper Tribunal appeal. An Upper Tribunal oral hearing is both unnecessary and inappropriate. It is unnecessary as the appeal against the FTT's decision can be dealt with much more swiftly on the papers. It is inappropriate as the Upper Tribunal does not sit with medical members, unlike the FTT, and medical expertise is needed to adjudicate fairly on the substantive appeal in this case. I therefore turn to determine the Upper Tribunal appeal.
13. In short, I agree with the analysis by the Secretary of State's representative, which finds both grounds of appeal are made out. I am accordingly satisfied that the First-tier Tribunal erred in law for those two reasons. I therefore allow the Appellant's appeal to the Upper Tribunal and set aside the Tribunal's decision of 27 September 2024.

14. I also remit the original appeal for re-hearing to a new First-tier Tribunal, which must make a fresh decision.
15. I decline to make a direction for a new medical assessment. A District Tribunal Judge is better placed than the Upper Tribunal to consider what further case management directions, if any, may be appropriate. I should remind the Appellant that the new FTT will not be considering his health as it stands today. The new FTT must have regard to the statutory rule that a tribunal “**shall not** take into account any circumstances not obtaining at the time when the decision appealed against was made” (emphasis added; see section 12(8)(b) of the Social Security Act 1998). The decision by the Secretary of State, which was appealed to the FTT, was taken on 20 September 2022.

What happens next: the new First-tier Tribunal

16. There will therefore need to be a fresh hearing of the appeal before a new First-tier Tribunal. Although I am setting aside the previous Tribunal’s decision, I should make it clear that I am making no finding, nor indeed expressing any view, on the substantive issue(s) under appeal, namely the assessment of disablement for the purposes of the Appellant’s IIDB award. That is all a matter for the good judgement of the new Tribunal. That new Tribunal must review all the relevant evidence and make its own findings of fact.

Conclusion

17. I therefore conclude that the decision of the First-tier Tribunal involves an 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. The case must be remitted for re-hearing by a new tribunal subject to the directions set out above (section 12(2)(b)(i)). My decision is also as set out above.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised by the Judge for issue on 10 October 2026