

Published on the 22nd day of September, 1969

No. 26 of 1969

THE NATIONAL INSURANCE AND SOCIAL SECURITY ACT, 1969.

**THE NATIONAL INSURANCE AND SOCIAL SECURITY
(DETERMINATION OF CLAIMS AND QUESTIONS) REGULATIONS, 1969**

In exercise of the powers conferred upon the Minister by sections 20, 38, 39 and 51 of the National Insurance and Social Security Act, 1969, and by virtue and in exercise of all other powers enabling him in that behalf the following Regulations are hereby made —

1. These Regulations may be cited as the National Insurance and Social Security (Determination of Claims and Questions) Regulations, 1969, and shall come into operation on the appointed day. Citation
and com-
mencement.

PART I

2. (1) In these Regulations, unless the context otherwise requires — Interpre-
tation.

“the Act” means the National Insurance and Social Security Act, 1969; No. 15 of
1969.

“claimant” means a person who has claimed benefit under the Act and includes, for the purposes of Part II of these Regulations a persons whose right to be excepted from liability to pay or to be credited with a contribution is in question;

“the Commissioner” means the National Insurance Commissioner appointed under regulation 14;

“grant” means any payment not being a periodical payment made by way of old age benefit, invalidity benefit, survivor’s benefit, disablement benefit or death benefit, and includes funeral benefit;

“pension” means periodical payments made by way of old age benefit, invalidity benefit, survivor’s benefit, disablement benefit or death benefit;

“question” includes, for the purposes of Part III of these Regulations a claim under the Act;

“registered medical practitioner” means a person duly registered as a medical practitioner under the laws for

the time being in force relating to the registration of medical practitioners;

“reserved question” means any question set out in regulation 3.

(2) Any notice or other document required or authorised to be given or sent to any person under the provisions of these Regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address.

(3) Any power conferred by these Regulations to extend the period during which anything is required to be done under these Regulations or to dispense with any of the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.

PART II

Determination of Questions by Board

3. Subject to the provisions of these Regulations, the following reserved questions arising under or in connection with the Act shall be determined by the Board on application made to it in accordance with regulation 4, and the decision of the Board shall be final—

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

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

(2) The Board shall take steps to bring any such application and any such particulars to the notice of any person appearing to it to be interested therein and to obtain from such person such particulars within such time and in such form as it considers necessary for the proper determination of the question.

(3) The Board may, if it thinks fit, before determining any

Questions for determination by the Board..

Procedure for determination of questions by the Board.

question, appoint a person to hold an inquiry into the question or any matters arising in connection therewith and to report to it thereon and the person so appointed may by summons require persons to attend at any such inquiry to give evidence or to produce documents reasonably required for the purpose of the inquiry and may take evidence on oath and for that purpose administer oaths.

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

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

(6) The Board shall give notice in writing of its decision to the applicant and to any persons appearing to it to be interested therein and may publish its decision in such manner as it thinks fit.

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

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

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

(3) Any person aggrieved by the decision of the Board on any question of law such as is mentioned in paragraph (1) of this regulation which is not referred in accordance with that paragraph, may in accordance with rules of court made pursuant to section 38 of the Act, appeal from that decision to the High Court and the applicant and any other person appearing to the Board to be interested shall, on request, be furnished with such a statement of the grounds of the Board's decision as will enable them to determine whether any question of law has arisen upon which they may wish to appeal.

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

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

Review of decision of the Board.

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

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

PART III

Determination of Claims and Questions by the Director, Appeal Tribunal or Commissioner

Submission of
questions to
Director.

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

- (a) any question as to the right to benefit; and
- (b) any other question arising under or in connection with the Act, not being a reserved question, shall be submitted to the Director, who shall consider the question, and, so far as practicable dispose of it in accordance with these Regulations within fourteen days after the date when it was submitted.

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

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

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

Appeals to
appeal
tribunal.

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

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

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

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

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

Time and place of hearings before appeal tribunal.

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

10. (1) Every hearing by an appeal tribunal shall be in public except in so far as the chairman of the tribunal may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved; and any person appearing to the tribunal to be interested shall have the right to be present notwithstanding that the hearing of the case is not in public.

Hearings before appeal tribunal.

(2) The Director and the claimant shall be entitled to be heard at the hearing of any case by an appeal tribunal.

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

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

(5) For the purposes of arriving at their decision or discussing any question of procedure, an appeal tribunal may, notwithstanding anything in this regulation, order all persons not being members of the tribunal other than the person acting as clerk to the tribunal, to withdraw from the sitting of the tribunal.

Decisions
of appeal
tribunal.

11. (1) An appeal tribunal shall —

- (a) record in writing in such form as may from time to time be approved by the Board all its decisions (whether on an appeal or on a reference from the Director; and
- (b) include in the record of every decision (which shall be signed by all members of the tribunal) a statement of the reasons for its decision including its findings on all questions of fact material thereto.

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

(3) As soon as may be practicable, a copy of the record of its decision made in accordance with this regulation shall be sent to the claimant and to the Director and to any other person who appears to the appeal tribunal to be interested.

Appeal to
the Commis-
sioner.

12. (1) Subject as hereinafter provided, an appeal shall lie to the Commissioner appointed in accordance with regulation 14 whose decision shall be final subject to the provisions of this Part of these Regulations, from any decision of an appeal tribunal at the instance of —

- (a) the Director,
- (b) the claimant.

(2) An appeal to the Commissioner must be brought within three months after the date of the decision of the appeal tribunal or such further period as the Commissioner may in any case for special reasons allow, and such an appeal shall be brought by giving notice in writing to the Commissioner in a form approved by the Board stating the grounds of the appeal, and a copy of such notice shall be given —

- (a) in the case of an appeal by the Director, to the claimant;
- (b) in the case of an appeal by the claimant, to the Director through the office of the Board.

Oral hearing
of appeal.

13. (1) If the claimant or Director makes a request to the Commissioner for an oral hearing of the appeal, the Commissioner shall

grant such request, unless after considering the record of the case and the reasons put forward in the request for the hearing, he is satisfied that the appeal can properly be determined without a hearing in which event he shall so inform the claimant and the Director in writing and may proceed to determine the case without a hearing.

(2) If, in accordance with the provisions of paragraph (1) of this regulation a request for an oral hearing has been granted, or if, notwithstanding that no request has been made, the Commissioner is otherwise satisfied that an oral hearing is desirable, reasonable notice of the time and place of the hearing shall be given to the claimant and the Director, and, if he think fit, to any other person appearing to the Commissioner to be interested.

(3) In any case in which an oral hearing of an appeal is held, such hearing shall be in public except in so far as the Commissioner may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(4) Any person to whom notice of the hearing has been given shall be entitled to be heard at the hearing and to be represented thereat by some other person, whether having professional qualifications or not, and for the purpose of the hearing such representative shall have all the rights to which that person whom he represents is entitled under these Regulations.

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

(6) If any person to whom notice of the hearing has been duly given should fail to appear either in person or by representative at the hearing, and has not given a reasonable explanation for his absence, the Commissioner may proceed to determine the appeal or may give such directions with a view to the determination of the appeal as he thinks proper.

(7) If it appears to the Commissioner that any appeal under this regulation involves a question of law or fact of special difficulty he may direct that in dealing with the appeal or any part thereof he shall have the assistance of an assessor or assessors.

(8) The Commissioner may, if he thinks fit, refer any question arising for his decision to a registered medical practitioner for examination and report.

(9) The decision of the Commissioner shall be in writing and signed by him, and, as soon as practicable, copies thereof shall be sent, simultaneously, one to the claimant and one to the Director.

Appointment
of Commis-
sioner.

14. There shall be a National Insurance Commissioner who shall be appointed by the Governor General and shall be a barrister or solicitor of not less than ten year's standing.

Review of de-
cisions of
Director and
appeal
tribunal.

15. (1) Any decision of the Director, appeal tribunal or Commissioner under this Part of these Regulations may be reviewed at any time by the Director, or on a reference from the Director, by an appeal tribunal, if —

- (a) he is or they are satisfied, but not without fresh evidence in the case of a decision of the Commissioner, that the decision was given in ignorance of, or was based on a mistake as to, some material fact;
- (b) there has been any relevant change of circumstances since the decision was given; or
- (c) the decision was based on the decision of any reserved question and the decision of that question has been revised.

(2) A question may be raised with a view to such a review by means of an application in writing to the Director stating the grounds of the application.

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

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

Interim
payments.

16. (1) Subject to the provisions of this regulation and of regulation 19, benefit shall be payable in accordance with an award, notwithstanding that an appeal against the award is pending.

(2) Where it appears to the Board that a question has arisen whether —

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

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

Review of
decisions
involving
payment or
increase of
benefits
other than
grants.

17. (1) Where on review a decision is revised so as to make benefit payable, or to increase the rate of benefit, the decision on review shall have effect as from the date of the application for the review:

Provided that, subject to paragraph (2) of this regulation, if in

any case the claimant proves that on a date earlier than the date on which the application for the review was made, he was (apart from satisfying the condition of making a claim therefor) entitled to benefit he shall not be disqualified by virtue of the foregoing provisions of this paragraph for receiving any benefit to which he would have been entitled in respect of the period between the earlier date and the date on which the application for the review was made.

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

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

(3) For the purpose of this regulation, where a decision is reviewed at the instance of the Director under paragraph (1) of regulation 15, the date on which it was first decided by the Director that the decision should be reviewed shall be deemed to be the date of the application for the review.

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

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

Review of decisions involving payments of grants.

(2) The provisions of paragraph (3) of regulation 17 shall apply in the application of paragraph (1) of this regulation as they apply in the application of paragraphs (1) and (2) of that regulation.

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

Adjustment of benefit.

(2) Where any benefit other than a grant is awarded by a decision on review or appeal in lieu of another kind of benefit previously awarded, that decision shall, as respects any payments made on account of the benefit previously awarded —

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

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

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

(4) Where —

- (a) on appeal against an award of benefit a decision is reversed or varied, so that such benefit is not payable or is payable at a less rate; and
- (b) on review, the decision on that appeal is revised so as to make such benefit payable or payable at a higher rate from a date before the decision on appeal, any benefit paid in pursuance of the award before the decision on appeal shall, to the extent to which it would not have been payable if the decision on appeal had been given in the first instance, be treated as having been paid on account of any benefit made payable for the same period by the decision on review, *except in so far as it has, in pursuance of the decision on appeal, been repaid or, treated as paid on account of the benefit awarded by that decision.*

(5) Where, in accordance with a decision given on a review or appeal, any benefit is required to be repaid to the Fund then, without prejudice to any other method of recovery, such benefit shall be re-

coverable by deduction from any benefit then or thereafter payable to the person by whom it is to be repaid or from any benefit payable on his death..

20. (1) If on consideration of a question the Director is of the opinion that a reserved question arises he shall — Reference of reserved questions.

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

Provided that the Director may —

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

(2) The foregoing provisions of this regulation shall apply to the appeal tribunal or the Commissioner as they apply to the Director, except that an appeal tribunal or the Commissioner instead of themselves referring a question for determination in accordance with subparagraph (a) of paragraph (1) of this regulation shall require it to be so referred by the Director.

PART IV

Miscellaneous

21. (1) Where in any proceedings —

- (a) for an offence under the Act; or
- (b) involving any question as to the payment of contributions under the Act; or

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

(c) for the recovery of any sums due to the Fund, any question arises which under the Act or the Regulations is to be determined by the Board, or by the Court in the event of an appeal on a point of law, or the Director, appeal tribunal or Commissioner the decision by the appropriate determining authority shall, unless an appeal under these Regulations is pending or the time for so appealing has not expired, be conclusive for the purpose of those proceedings.

(2) If any such decision under paragraph (1) of this regulation has not been obtained and the decision of the question is necessary for the determination of the proceedings, the question shall be referred

to the appropriate determining authority, as the case may require, in accordance with the procedure (modified where necessary) prescribed in these Regulations.

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

SCHEDULE

Regulation 7

Appeal Tribunal

1. An appeal tribunal shall consist of —

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

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

(2) If the chairman of an appeal tribunal is by reason of absence or any other cause unable temporarily to perform the functions of his office the Minister may, subject to the provisions of this Schedule, appoint another person to act in his place.

(3) Where several persons are appointed to perform the functions of chairman of an appeal tribunal, they shall as far as practicable be invited by the Board to preside over a tribunal in turn.

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

Provided that —

- (a) no person shall sit on a tribunal during the consideration of a case —

- (i) in which he appears as the representative of the claimant; or
 - (ii) by which he is or may be directly affected; \
 - (iii) in which he has taken any part as an employer or as a witness;
- (b) where the claimant is a woman, at least one of the members of the tribunal, if practicable, shall be a woman.

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

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

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

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

Made this 18th day of September, 1969.

W. CARRINGTON,
Minister of Labour and Social Security.