



Neutral Citation Number: [2019] EWHC 557 (Admin)

Case No: CO/3006/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Cardiff Civil Justice Centre
2 Park Street
Cardiff
CF10 3PG

Date: 11/03/2019

Before :

MRS JUSTICE LAMBERT

Between :

CHIEF CONSTABLE OF AVON AND SOMERSET **Claimant**
CONSTABULARY

- and -

POLICE MEDICAL APPEAL BOARD **Defendant**

-and-

ALISTAIR MIDDLETON **Interested**
Party

George Thomas (instructed by **Avon and Somerset Constabulary, Legal Services Directorate**) for the **Claimant**

Colin Banham (instructed by **Quay Legal**) for the **Interested Party**

Hearing dates: 31 January 2019

Approved Judgment

Mrs Justice Lambert:

Introduction

1. This claim for judicial review is brought by the Claimant against the decision of the Police Medical Appeal Board (“the Board”) of 17 May 2018. The decision was made under the Police (Injury Benefit) Regulations 2006 (“the 2006 Regulations”) and concerned Mr Middleton’s entitlement to an injury on duty award. At the hearing before the Board (17 May 2018) it was not disputed that Mr Middleton was permanently disabled as a result of three conditions: back pain due to a prolapsed intervertebral disc, persistent personality traits and a chronic adjustment disorder. The only question for the Board was whether Mr Middleton’s permanent disability was a result of an injury received in the execution of his duty. The Board’s conclusion that the chronic adjustment disorder was such an injury is the focus of the challenge in these proceedings on the grounds that the Board misdirected itself on the law and wrongly took into account management failings by the Claimant in respect of Mr Middleton’s deployment.
2. This claim proceeds with the permission of Jay J who noted that the Board obviously struggled with the applicable law and appeared to make a finding of fault; that the core reasoning was confined to only three paragraphs and that arguable criticism could be made of those few paragraphs. He acknowledged that after full argument the Court might conclude however that conclusive findings of fact had been made the Board.
3. The Claimant was represented by Mr George Thomas and the Interested Party by Mr Colin Banham. I am grateful to them both for their careful and thorough submissions.

Background

4. I set out below the uncontroversial background which I have drawn from the chronologies prepared by the parties.
5. Mr Middleton joined the Avon and Somerset Constabulary on 5 December 1994 and was ill health retired on 20 April 2016. In his later years in the force he suffered a number of episodes of ill health, mainly relating to his back. It appears that his low back pain became a real problem for him in early 2010 and between February 2010 and November 2010 he was signed off work with severe low back pain and underwent two spinal surgical procedures. He attended an occupational health assessment on 7 September 2010 when it was recommended that he return to work on restricted duties only. In April 2012 Mr Middleton requested that consideration be given to his taking ill health retirement. He was assessed and found to be permanently disabled from performing ordinary duties of a constable due to his prolapsed intervertebral disc but a decision was made that he should not be retired on medical grounds, instead his role would be modified to relieve him of “front line” duties. Mr Middleton was absent on sick leave between August and September 2012 due to chronic low back pain and an acute stress reaction.
6. Following his return to work in October 2012 he performed a series of jobs of a temporary nature. Overall from September 2010, Mr Middleton performed the following series of duties:

- a. September 2010 – October 2012: Crime Enquiry Officer;
 - b. October 2012 – December 2012: Public First (first point of contact and support to call handlers);
 - c. January 2013 to May 2013: first point of contact at Force Service Centre;
 - d. May to September 2013: Communications Department Dispatch Shadow Teams;
 - e. September to December 2013: Local Policing Team (Alcohol Recovery Centre);
 - f. January 2014 to June 2014: Strategic Services Improvement, IT procurement project;
 - g. June 2014: (last day at work) Lighthouse Pilot, victim and witness care for domestic violence.
7. In early 2015, Mr Middleton indicated that he wished to seek early retirement on medical grounds and was therefore assessed by Dr Johnson a Selected Medical Practitioner and by Professor Greenberg, a psychiatrist. Professor Greenberg reported that Mr Middleton had an emotional unstable personality disorder of the borderline type and that he should be regarded as permanently disabled for policing duties as a result of pervasive mental health difficulties (chronic adjustment disorder). In December 2015 in a joint Johnson/Greenberg determination, it was recorded that Mr Middleton was not expected to be capable of returning to work and that there was no process or adjustment which might remedy or ameliorate Mr Middleton's absence from work. On 30 April 2016 he was medically retired and formally left the force.
8. Mr Middleton made an application for an injury on duty award. On 22 December 2016 Dr Johnson provided a report which focussed upon whether any of the injuries were received in execution of his duty. He concluded that none of the injuries complained of were the result of an injury on duty. The persistent personality traits were by their nature not the result of any incident or any injury (whether in the execution of duty or otherwise). Concerning the chronic adjustment reaction, he recorded that Mr Middleton had been dissatisfied with the decision not to grant him ill health retirement, that this reaction to his circumstances were not unexpected given the underlying and long standing personality issues and that Mr Middleton's mental health issues following his redeployment were the result of his lack of control over his situation, in combination with his vulnerability due to his personality disorder. He concluded that the chronic adjustment reaction was not due to an injury received in the execution of duty and so the application for an injury on duty award was rejected.
9. Mr Middleton submitted his appeal against that decision on 29 April 2017. It was that appeal which was before the Board on 3 May 2018. Mr Middleton asserted that all three disablements were the result of injuries in the execution of his duty.

The Decision

10. The Board comprised four members: two occupational health physicians, a consultant psychiatrist and a consultant orthopaedic surgeon. The Report which is dated 17 May

2018 extends over 18 pages. It sets out the “Background to the Case,” the parties’ submissions and submissions in response, the assessments undertaken by the specialist members of the Board and the conclusions or “Detailed Case Discussion”. I set out the most relevant elements of the report below.

11. In the background to the case, the Board recorded that following Mr Middleton’s return to restricted duties in the autumn of 2012 he *“was moved from job to job whilst attempts were made to find him a permanent position. However, a permanent job was not found for him and, after complaints from the appellant, Carol Wood (HR professional) apologised to him...he had to repeatedly learn new roles and often he felt there was no training. Additionally he was not able to utilise the adaptations put in place for him because of his back pain, which included the provision of a special chair. The Appellant argued that despite a restriction from occupational health on driving he was posted to a role one and a half hours drive from his home. The appellant’s psychological health was disrupted by these events and there then followed a series of suicidal ideations when he threatened to jump from the Clifton Suspension Bridge”*. The Board also recorded that Mr Middleton *“considers that the failure to provide him with a permanent meaningful role which was contra to PMP Policy and not retiring him led to the breakdown in his psychological health”*. It noted that Professor Greenberg had commented that the adjustment reaction had come from Mr Middleton’s *“increasing frustration at not being ill health retired and found an appropriate role, set against the background of what amounted to persistent personality traits that left him vulnerable to develop psychological ill-health over and above those that would be expected by an ordinary individual.”*
12. Although a formal psychiatric assessment was not undertaken, the Board asked questions of Mr Middleton with a view to forming its own impression of his mental state. The presence of obsessional personality traits was recognised. It formed the view that *“The presence of ongoing uncertainty within his role led to a chronic level of distress in the context of his underlying personality traits. The lack of clarity and delays in him being allocated a suitable role, was a significant cause of the adjustment disorder which became more entrenched as the uncertainty was left unresolved, and which manifested itself in the form of anxiety and mood symptoms”*.
13. There followed a “Detailed Case Discussion” in which it made the following findings of fact:
 - a. It rejected the submission that the back problems which Mr Middleton suffered in 2010 were caused or substantially contributed to by an injury in execution of duty. It also rejected the submission that the persistent personality traits were due to an injury received in the execution of duty because, as the Board remarked, personality is largely fixed before adulthood and so are intrinsic to the individual and cannot therefore be due to an injury in the execution of duty.
 - b. In respect of the chronic adjustment reaction it reviewed the authorities and then said:

“we can see the (sic) both opposing Authorities do in fact make the point that it is about the carrying out of duties, which of course in this case, it was not the duty he was given that caused the chronic adjustment reaction but the (sic)

was the fact that he saw no prospect of being found a permanent job even after four years.”

14. The report continued:

“In this case, it is our opinion that had he been found a role of a ‘permanent’ nature within his skills base, he would not have developed an adjustment reaction that was permanently disabling (although we accept Professor Greenberg’s view that it could well have happened at some time in the future, if it conflicted with his underlying personality traits).

Here is a situation where an officer was moved not once or twice but eight times in a period of four years. He was given a post for which he did not feel he had been given the appropriate training but in other posts he was congratulated on the work he had done but was nevertheless moved. This set (sic) against a policy which appears to indicate that if an officer is retained in service he should be found a permanent meaningful role. This was a reasonable expectation for this officer and he had fully complied by returning to work and engaging with the organisation which in his terms ‘let him down’.

“We are not sure that this would be a benevolent view but we do consider that over the time period there were management failures in identifying a suitable role; if there was no role, and they were not prepared to create one for him, then the decision could have been made that the best option would have been to ill-health retire him because of his underlying back problem, If he had been ill health retired at this point, whilst he may have had difficulties in adjusting to no longer being a police officer he would not have suffered the chronic adjustment reaction to work, although he might later have suffered a reaction due to his being ill health retired with his underlying personality traits”.

“In our opinion we conclude that there was a drip drip effect similar to the case of Hudson; it went on for a period of four years and the appellant could see no resolution, as a consequence he developed a chronic adjustment reaction.”

15. It noted in conclusion that the Board might have *“misinterpreted events that occurred whilst on duty with the effect of duty activities causing the ill health. However, case law that we have explored seem to have a discrepancy on these two issues and it will be for a higher authority to settle that difference”.*

The Legal Framework

16. I can take the statutory framework shortly.

- a. Regulation 11 of the 2006 Regulations provides that an officer who has ceased to be a member of the police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty is entitled to an injury award.
- b. Regulation 6 provides that an injury received in the execution of duty means an injury received in the execution of that person’s duty as a constable and at 6(2)(a) an injury is deemed as received in the execution of duty where the

member concerned received the injury while on duty or while on a journey necessary to enable him to report for duty or return home after duty.

17. Both Counsel referred me to a large number of authorities which had a bearing on the meaning of “received in the execution of duty” and the nature of the causation test which it involves. In reality, there was no difference between the parties on the principles to be distilled from the authorities, although each sought to emphasise different points along the way. The core principles are set out in *Regina (Stunt) v Mallett* where the Court of Appeal approved the approach taken by Richards J in *R v Kellam, Ex Parte South Wales Police Authority* [2000] ICR 632. I summarise them below:
 - a. The test is whether the person’s injury is directly and causally connected with his service as a police officer. The causation test is not to be applied in an overly legalistic way as it is a relatively straightforward concept and one which falls to be applied in practice by medical rather than legal experts. The reference to a direct causal link does not therefore mean that fine distinctions are to be drawn between direct and indirect causes of the injury but there must be a substantial causal connection between the injury and the person’s service as a police officer.
 - b. The causal connection must be with person’s service as a police officer, not simply with his being a police officer. In this context, duty is not to be given a narrow meaning. It relates not just to operational police duties but to all aspects of the officer’s work and to the officer’s work circumstances. A sufficient causal connection may be established with events experienced by the officer at work, whether inside or outside the police station and including such matters as things said or done to him by colleagues at work. It is not necessary to establish that work events or work circumstances are the sole cause of the injury provided that there is a substantial causal connection.
 - c. The “one common element” in each case in which the injury was held to have been sustained in execution of duty as the existence of an event or events, conditions or circumstances which impacted directly on the physical or mental condition of the claimant while he was carrying out his duties which caused or substantially contributed to physical or mental disablement (*per MR at [56]*).
18. The case law illustrates the application of the principles above to the many and various circumstances in which psychiatric injuries are sustained by those working in the police force. Predictably, the application of the principles has led to cases falling on either side of the line. I do not set out below every case to which I was referred in the Grounds and skeleton arguments, only those which seem to me to be of particular relevance.
 - a. In *Kellam* the police officer was subjected to harassment and victimisation from fellow officers at work and suffered a psychiatric injury in the form of anxiety and depression as a result. Having set out the principles which he distilled from the previous case law, Richards J found that the correct test had been applied (which was the only issue pursued before the court, not whether the conclusions reached were ones which were reasonably open to the decision maker). He dismissed the challenge, observing that the decision letter should be looked at as a whole “*without undue rigidity and should not be scrutinised as if it were a legal judgment*”.

- b. In *Stunt*, the Court allowed the appeal from the judgment of Grigson J and found that a stress injury resulting from a disciplinary investigation was not an injury received in the execution of duty. The Court stated at [46] that a stress injury due to disciplinary proceedings is an injury which is properly to be characterised as resulting from the officer's status as a constable, that is, "*simply [from] his being a police officer*" and not received in execution of duty. The Court commented that "*however elastic the notion of execution of duty may be, it cannot be stretched wide enough to encompass stress related illness through exposure to disciplinary proceedings*".
- c. In *Clinch v Dorset Police Authority* [2003] EWHC 161 (Admin) McCombe J found that a psychiatric condition caused by an officer's disappointment at repeated failures to obtain promotion was not an injury received in the execution of that person's duty. His view was that *Kellam* carried the test to its limits and that the relevant events did not impact on Mr Clinch's condition when he was carrying out his duties but when, having sought to obtain other duties, he was disappointed at not being given them. The injury derived simply from "being a police officer and wanting promotion that he failed to attain."
- d. In *Lothian and Borders Police Board v MacDonald* [2004] SLT 1295 a police officer suffered a stress injury as a result of his frustration at having been prevented from continuing his work with, and continue research into, policing issues affecting the traveller community. He felt that his abilities and skills were not being recognised. The Outer House (Lord Reed) found no relevant causal connection between the injury and the execution of the officer's duties. Lord Reed drew together the threads of some of the earlier decisions and observed that an officer who is stressed at work because he thinks that he is in a dead end job (*Clinch*), or because he thinks he is being marginalised (*Ward*), or because he thinks that his abilities are not being recognised or because he is required to undertake routine duties does not suffer stress as a result of anything arising out of the execution of his duties but "*as a result of his feelings about the duties to which he has been allocated or his concerns about the progress of his career*". For the causation test to be met, something more is needed. He identified that as "something external" which impacts on the claimant while he is carrying out his duties: a feeling or emotion (such as disappointment or a perception of being undervalued) contemporaneously with the carrying out of police duties is not sufficient even though that feeling might be connected with the duties. He observed that in *Clinch*, disappointment at being in a dead end job and failing to obtain promotion was not sufficient, since the cause of the disappointment was not anything which happened in the course of the officer's execution of his duty, but rather his failure to succeed in obtaining other duties. In the present case, no event was identified which caused the perception that his abilities were not recognised. He considered that it would be an affront to common sense to describe an injury caused by being required to patrol the beat instead of attending conferences as an injury in the execution of duty as a constable.
- e. *R (on the application of Edwards) v Police Medical Board and Derbyshire Police Authority* [2005] EWHC 1780 Tucker J considered a challenge by a police officer to the refusal of his appeal from the decision of the SMP that

psychiatric injury caused by his notification that he was to be returned to uniform duties following 12 years in CID. Tucker J noted that execution of duty does not mean the same as being “on duty” and that when he received the notification, he did so as a police officer but not in the execution of his duty. Its effect would have been the same if he had received the information by post while he was off duty.

- f. In *R (on the application of Merseyside Police Authority v Police Medical Appeal Board)* [2009 EWHC 88 (Admin) (“Hudson”), Cranston J reviewed the cumulative body of caselaw and expressed difficulty with the distinction which had been drawn in some cases between being on duty and being in the execution of duty, stating that in some cases the distinction may have been a rationalisation of a particular conclusion, rather than a useful tool for analysis. However, he stated that it was clear that not everything which happens to an officer on duty resulting in an injury involves an injury caused in the execution of duty. In Hudson, 21 matters were relied upon including work restrictions, treatment by senior officers and grievance/disciplinary matters. The Board’s findings that there was a pattern of conduct over a number of years justified the conclusion that the psychiatric injury which resulted was received in the execution of duty were upheld by Cranston J. Taking the 21 matters as a whole their “drip drip effect was capable of causing injury in the execution of his duty”.

The Parties’ Arguments

19. It is with these principles in mind that I deal with the Claimant’s grounds of challenge. There are two grounds, but they are intertwined.
20. Mr Thomas submits that the Board misdirected itself on the law, failing to recognise the existence of the common line of authority establishing the need to make a causal connection between service as a police officer and injury as opposed to simply being a police officer and suffering an injury. He submits that the recitation of authority in the report was scanty and limited only to a few cases; the Board failed to grasp the essential points to be derived from those cases, in particular that a psychiatric injury caused by a perception of being in a dead end job or having no prospects was not sufficient to amount to an injury received in execution of duty.
21. Set against the factual findings which the Board did make, the Board then failed to address lawfully the effect of those findings. Mr Thomas submits that it is clear from the report that the Board found that the cause of Mr Middleton’s chronic adjustment reaction was his uncertainty and frustration at not having found a full-time job. On this basis, the case falls into classic “*Clinch*” territory: it is analogous with the claimant who is dissatisfied because he is in a dead end job. On a proper application of the test to the facts as found by the Board, the appeal should have been refused.
22. Mr Thomas submits that the Board then compounded its failure to direct itself correctly on the legal test by involving the concept of fault. It was argued by Mr Thomas that whether a set of circumstances leading to an injury is the fault of management (or any other body) is irrelevant. In the context of this claim, whether or not Mr Middleton should have been offered a permanent placement sooner, or at all, is irrelevant to the question of whether the injury was causally related to his execution of his duty. Mr Thomas relies on *R v Fagin and Anor ex parte Mountstephen* [1996] Lexis Citation

1894 per Brooke J. He accepts that in certain circumstances, the Board may have to resolve disputed questions of fact which may be relevant to the issue of causation, but the question of fault is not relevant to the link between the injury and the execution of duty. Failings on the part of police management are not capable of turning an injury received whilst on duty into an injury received in service as a police officer. The principle purpose behind the (generous) injury payment scheme is to ensure that officers receive a pension when they have been disabled as a result of an injury sustained in police service irrespective of fault. If there has been a breach of duty by police management, the officer has an alternative remedy in the form of a personal injury claim.

23. As I commented above, there was when drilled down, no real difference between Mr Thomas and Mr Banham on the relevant legal principles. Mr Banham accepted the statement of the Master of the Rolls in *Stunt* as the authoritative statement of principle. He made the following points however:
- a. The *Stunt* test is deliberately broad and intended to reflect what is a generous scheme designed to compensate officers who undertake dangerous frontline work. The need for a benevolent approach was understood by the Board and should be adopted by this Court in respect of this application.
 - b. The test was accurately identified in the report and the Board applied the test to the facts in a sensible and logical way. The Board did not fall into error in describing opposing lines of authorities: this was an apt description to reflect that some claims were allowed and others disallowed in the very wide range of circumstances in which applications for injury on duty awards were made.
 - c. Mr Banham further submitted that, having identified the correct legal test, the Board then applied it appropriately to its factual findings. On his interpretation of the report, the Board identified, as findings of fact, the presence of a set of circumstances which impacted directly upon Mr Middleton and which was causally connected with his injury. Mr Middleton had to change jobs every few months over a period of years. He had 8 jobs in four years which was destabilising for someone with Mr Middleton's particular vulnerability. He was inadequately trained for those jobs. Unlike therefore the applicants, Mr Clinch or Mr MacDonald, whose injuries were based upon perception only, Mr Middleton's sense that he would never get a permanent job was firmly rooted in the reality of his predicament. He felt as though he was in limbo for four years but this was because he was, in fact, in limbo, being pushed from job to job and "pillar to post". The Board was therefore correct in finding that this was an injury which was causally related to the circumstances of Mr Middleton's execution of his duty.
 - d. Mr Banham did not accept that the Board took into account an irrelevant factor: fault or management failings. He submitted that there is no such reference in the report. To the extent that the Board did find that there were management failures, this was consistent with the duty to decide on questions of fact as and when they arose which were necessary to enable proper consideration of the question of whether the injury arose out of the officer's duty or alternatively whether it arose out of his perception about his treatment.

Discussion

Did the Board misdirect itself on the applicable legal principles?

24. I have no doubt that the Board did misdirect itself on the appropriate legal approach to the question of whether Mr Middleton's psychiatric injury was received in execution of his duty. I reach this view for the following reasons:
- a. The Board identified the existence of two "*opposing Authorities*," perceiving a line of authority which encouraged a "*benevolent interpretation*" of the meaning of "execution of duty" as reflected in the authorities of *Kellam* and *Hudson*, and another (for example *Stunt* and *MacDonald*) where a different and, it must be assumed the Board considered, a stricter approach had been taken. Having identified the existence of these two opposing lines, the Board then considered that it had to "*reach a decision*" no matter how imperfect it might be, apparently by choosing to follow one of the two lines.
 - b. The Board took a wrong turn at the outset. There are not two diverging lines of authority. In those cases to which my attention has been drawn the courts have sought to apply the *Stunt* principles to different sets of circumstances in which permanently disabling psychiatric injuries are suffered by police officers. When those principles are applied, some cases fall one way, others fall the other way. Some it may be said are more generous than others. However, it is clear from all of the authorities that for an injury to be received by an officer in the execution of duty there must be a substantial causal connection between the injury and the execution of duty and it is not sufficient that the officer is "on duty." The connection must be with his service as a police officer. The injury must arise out of duties the officer is undertaking or the conditions or circumstances in which he was undertaking those duties. Although the application of the principle to the various facts found by courts and boards have led to different conclusions, the line remains a clear one (at least to state, if not always to apply). Although, as the Court noted in *Clinch*, the line may have a quality of elasticity, which was stretched to the limit in *Kellam*, the key distinction which the Board should have focussed upon was whether Mr Middleton's chronic adjustment reaction was causally related to his status as a policeman or to his service as a policeman.
 - c. In quoting from *Hudson*, the Board focussed upon the nature of the causation link (sole cause or contributing cause) but did not isolate the wider test which it should be addressing. The Board came close to confronting the relevant distinction in its recitation of the Claimant's submissions below, when it noted that "*the PPA argue a similar situation (to that taken in MacDonald) and that not obtaining a permanent position resulted in deterioration in the appellant's mental health is not therefore in execution of duty... it was not the work that caused the stress.*" However, having noted the Claimant's submission below, it expressed no view on the submission, noting only (and erroneously) that "*however, on the other hand Kellam discusses taking a benevolent interpretation.*"

- d. The Board also appeared to tilt in the direction of the correct approach in the sentence which is set out in paragraph 13(b) above. The meaning of the sentence is difficult to grasp given its linguistic errors but in its reference to “*both opposing Authorities do make the point that it is about the carrying out of duties*” and the observation that in Mr Middleton’s case “*it was not the duty he was given*” that caused his chronic adjustment reaction, the Board may have been trying to discriminate between injuries suffered whilst on duty and those suffered in execution of duty. But it is by no means clear. Furthermore, such an approach is inconsistent with the Board’s conclusion that there are two diverging tests, one benevolent, the other not benevolent and that in considering “*events that occurred whilst on duty*” as opposed to “*the effect of duty activities causing ill health*” there exists “*case law that we have explored seem to have a discrepancy on these two issues*” which it would be for “*a higher authority to settle.*” The reasons for the Board choosing to follow what it regarded as the “benevolent interpretation” as a matter of principle (or otherwise) are not stated.
- e. The Board did not identify and state the correct test which it should apply and, unsurprisingly, having failed to state it, it failed to grapple with it. In granting permission, Jay J expressed the view that the Board obviously struggled with the applicable law. I agree. Having misunderstood the case law it appears that the Board took the view that it was entitled to apply a benevolent approach, not to the facts that it was applying to the relevant *Stunt* test, but to the test itself. This was wrong. The decision of the Board must be quashed therefore on this basis: it misdirected itself on the law and applied the wrong test to the facts.
- f. However, I also accept that the Board fell into further error in finding that there were management failures in identifying a suitable role for Mr Middleton. It appears to me, on a plain reading of the report, that (perhaps because the Board was admittedly troubled by the correct legal approach to take) it buttressed its conclusion by enlisting the admitted management failures in finding Mr Middleton a permanent job in a reasonable period of time. The finding of failures by management were not necessary to resolve any causation issue (those failures had been admitted by the force). Although, the management failures were used in part to support the Board’s view that Mr Middleton had a reasonable expectation of being found a permanent job, the Board went further using the fact of management failures to support “a benevolent view” of what amounts to an injury in the execution of duty. This was wrong. For this reason also, the decision cannot stand and must be quashed.

Remedy

25. Having determined that the decision should be quashed, I address Mr Thomas’ submission that this is one of those rare cases in which, given the findings of fact which were made by the Board, on an application of the appropriate legal test only one conclusion is possible and that I should substitute my own view and give a declaration that Mr Middleton’s chronic adjustment reaction was not sustained in the execution of his duty. I decline to do so.
26. I am not satisfied that there are sufficient clear findings of fact which would permit only one possible decision. I bear in mind that I should consider the report as a whole and that I should not read the report as if it were a judgment by a lawyer or other legal

ruling. Without in any way wishing to bind or influence any future decision based on the findings made by the Board in its report of 17 May 2018, I am not satisfied that the Board necessarily concluded that the sole cause of Mr Middleton's mental illness was the fact that he saw no prospect of being found a permanent job. Although the sentence which is affected by grammatical errors is capable of bearing that meaning, it is not clear. There are references, not just in the Background section of the report but elsewhere in the report (including in its conclusion section) to the fact that Mr Middleton had a large number of jobs (the Board counted 8, I count 7 only) in only four years; there are references to lack of training; to Mr Middleton being congratulated for the work which he had done and yet moved on to another post; to him having to drive long distances notwithstanding his bad back and his inability to use his special chair, some features of which the Board concluded disrupted his mental state and led to suicidal ideation. The presence of these features may explain the reference to *Hudson* and the "drip drip" effect of an accumulation of small incidents leading to the injury. For these reasons therefore I am not prepared to substitute by own conclusion for that of the Board. Whether or not the matter should be remitted back for a fresh determination by the Board armed with this judgment or remitted back for a wholly fresh hearing is an issue upon which I invite further submissions.

27. I therefore grant the application for judicial review. The decision is quashed for the reasons which I have stated. I decline however to make the declaration sought and I will receive written submissions on further relief and directions from the parties and any consequential orders.