

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

**INDUSTRIAL INJURY DISABLEMENT BENEFIT**

Application by the claimant for leave to appeal  
and appeal to a Social Security Commissioner  
on a question of law from a Tribunal's decision  
dated 28 October 2022

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. A1/23-24(II) is a claimant's application for leave to appeal from a decision of an appeal tribunal with reference BY/2970/20/67/M. It is the first of a series of applications – the remainder are applications A2/23-24(II) to A9/23-24(II) - that arise from a claim based upon the claimant's treatment by his employer on nine separate occasions and which were decided together by an appeal tribunal on the same date. As the applications concern broadly the same circumstances and were decided by the same tribunal, I consider that it is appropriate for me to determine them all together.
2. For clarity, I have set out below the correspondences between each application reference, the tribunal reference, the date of incident and the date of the Departmental decision under appeal. The file reference numbers in the left column have been allocated by the Office of the Social Security Commissioner in respect of the appeal tribunal with the reference numbers in the second column. For ease of reference, the dates to which the applications pertain are set out in the third column. The various application reference numbers have been allocated administratively in a seemingly random manner, but it appears to me that they broadly relate to the dates of the Departmental decisions under appeal. The dates of the appealed decisions appear in the fourth column.
3. I have observed some errors in the various files, and some duplication in particular of aspects of the file relating to 3 July 2018, leading to confusion of the papers in A7 and A8. I judge that there has also been an element of confusion on the part of the tribunal arising from the mis-identification

of an individual by the Department's decision and submissions in relation to A6 (concerning 5 August 2018(B)). However, I proceed on the basis that the following correspondences are correct:

A1/23-24(II)	BY/2970/20/67/M	15 May 2019	12 May 2020
A2/23-24(II)	BY/2971/20/67/M	6 September 2019	12 May 2020
A3/23-24(II)	BY/2972/20/67/M	9 July 2018	12 May 2020
A4/23-24(II)	BY/2973/20/67/M	26 October 2017	12 May 2020
A5/23-24(II)	BY/3460/20/67/M	5 August 2019 (A)	30 June 2020
A6/23-24(II)	BY/8897/21/67/M	5 August 2019 (B)	30 June 2020
A7/23-24(II)	BY/8898/21/67/M	5 May 2018	18 October 2021
A8/23-24(II)	BY/3463/20/67/M	3 July 2018	18 October 2021
A9/23-24(II)	BY/3454/20/67/M	1 July 2018	30 June 2020

4. For the reasons I give below, I refuse leave to appeal in A1/23-24(II), A2/23-24(II), A3/23-24(II), A4/23-24(II), A5/23-24(II) and A9/23-24(II).
5. I grant leave to appeal in A6/23-24(II), A7/23-24(II) and A8/23-24(II). I allow the appeals and I set aside the decisions of the appeal tribunal in those appeals under Article 15(8)(b) of the Social Security (NI) Order 1998. I refer those appeals to a newly constituted tribunal for determination.

### **Background**

6. The appellant claimed industrial injuries disablement benefit (IIB) from the Department for Communities (the Department) on 3 January 2020. The claim was in respect of an event claimed as an industrial accident that he stated in his claim form to have occurred on 3 July 2018 at approximately 11.30 am. On 13 February 2020 the Department sought further information from the appellant about the industrial accident and he replied on 5 March 2020, referring to a number of other incidents occurring between 26 October 2017 and 6 September 2019. Each of these incidents was subsequently treated as a separate IIB claim. The Department sought further information about three of the incidents on 20 March 2020 and this was provided by the appellant on 31 March 2020, along with some documentary evidence.
7. On 12 May 2020 the Department decided that a declaration of an industrial accident could not be made in relation to the incidents of 15 May 2019, 6 September 2019, 9 July 2018 and 26 October 2017 (Applications A1-4/23-24(II)). Each of these decisions was reconsidered on 17 or 18 June 2020, but was not revised.
8. On 30 June 2020 the Department decided that that a declaration of an industrial accident could not be made in relation to the incidents of 5 August 2019 (A) and 5 August 2019 (B) (Applications A5-6/23-24(II)). Each of these decisions was reconsidered on 8 September 2020, but was not revised.

9. On 12 May 2020 the Department decided that a declaration of an industrial accident could not be made in relation to the incident of 5 May 2018 (Application A7/23-24(II)). However, this decision was reconsidered by the Department on 17 June 2020 and revised to accept that an industrial accident had occurred. Nevertheless, on 18 October 2021 the Department decided that IIB was not payable as there was no loss of faculty after the expiry of 90 days beginning with the date of the accident. This decision was reconsidered on 12 November 2021 but not revised.
10. On 12 May 2020 the Department further decided that a declaration of an industrial accident could not be made in relation to the incident of 3 July 2018 (Application A8/23-24(II)). The appellant sought reconsideration of the decision and it was reconsidered on 17 June 2020 and revised to accept that an industrial accident had occurred. Nevertheless, on 18 October 2021 the Department decided that IIB was not payable as there was no loss of faculty after the expiry of 90 days beginning with the date of the accident. This decision was reconsidered on 10 November 2021 but was not revised.
11. On 30 June 2020 the Department had decided that a declaration of an industrial accident could not be made in relation to the incident of 1 July 2018 (Application A9/23-24(II)). On 24 August 2020 this decision was reconsidered but not revised.
12. The appellant appealed each of the unfavourable decisions, but waived his right to an oral hearing. Certain of the appeals were received after the expiry of the statutory time limit, but were admitted by the Department.
13. The appeals were considered together on 28 October 2022 by an appeal tribunal consisting of a legally qualified member (LQM) and two medical members. The tribunal disallowed the appeals. The appellant requested a statement of reasons for the tribunal's decisions and this was issued on 27 June 2023. The appellant applied to the LQM for leave to appeal from the tribunal's decisions but leave to appeal was refused by a determination issued on 12 September 2023. On 9 October 2023 the appellant sought leave to appeal from a Social Security Commissioner. On 11 November 2024 the file was passed to a Commissioner for determination.

### **Grounds**

14. The appellant submits that he has suffered mental injury over the course of a series of incidents and that the tribunal has made decisions that are tainted by irrationality or mistakes as to material fact. He submits that two of the Departmental decisions in his favour were overturned by the tribunal without notice. He submits that proper inquiry was not made into his state of health and the question of what caused it.
15. The Department was invited to make observations in response to the application. Mr Clements of Decision Making Services (DMS) responded on behalf of the Department by way of lengthy and detailed submissions.

He submitted that the tribunal had not erred in law and indicated that the Department did not support the application in respect of six of the applications, but he accepted that there may have been an error of law in respect of three of the applications.

16. The appellant duly replied to Mr Clements with further submissions. Mr Clements responded to indicate that he was content to rely on his earlier observations.

### **The background circumstances in more detail**

17. As there are multiple applications, it may be helpful to set out the background circumstances in a little more detail and to place them in chronological order in the interests of clarity.
18. The appellant was employed as a police officer by the Police Service of Northern Ireland (PSNI). Following his claim for IIB he submitted that a number of events gave rise to injury in the course of his employment. Each of the events corresponds to an application before me. I set these out below in order of date.
19. In and around 26 October 2017, the appellant was promoted to Acting Sergeant ahead of two other colleagues following a competition. Although he was in this role, his team members bypassed him and spoke directly to Sergeant M and Acting Inspector A instead. He felt undermined. He believed that a WhatsApp group had been set up by staff that mainly discussed him. He felt that he was not spoken to by colleagues and that he was being laughed at. Sergeant M and Acting Inspector A only spoke to him when there was a professional need. He asked them for help but they did not assist. (A4/23-24(II))
20. In and around 5 May 2018 he had returned to his previous rank. He spoke to Acting Inspector A, who had now returned to the rank of Sergeant, about the WhatsApp group, about his feelings of being excluded and laughed at. He was offered a possible move to a new section but said that he instead wanted the bullying and harassment to stop. He was told that he was condescending and his work was criticised. Sergeant A told him to get out of her office. He felt intimidated and disrespected. He reported the incident to his employers. (Application A8/23-24(II))
21. On 1 July 2018 a work colleague came in on his day off to speak with members of the appellant's section. The appellant asked the colleague if he was wanting to move to his section and he replied "yes", that there was a grievance raised against the appellant and that he might get his job. He spoke about what had been said to Sergeant M, who became angry at him, told him he was paranoid and told him to leave his office. He felt abused, intimidated, threatened and disrespected. He reported the incident to his employers. (Application A9/23-24(II))

22. On 3 July 2018 he was in the office on his day off for a training event. He observed that Sergeant A and Sergeant M were at work earlier than was normal and felt nervous as he thought that this was to do with him. During a tea break without warning he was called into a meeting with Inspector M, his line manager, and Chief Inspector M. He was accused of whistling the Irish national anthem and annoying people in his section and of being disruptive. He was informed that he was being moved from his present section. He felt abused, intimidated, and disrespected. His stomach was upset and he had diarrhoea. He reported the incident to his employers. (A7/23-24(II))
23. On 9 July 2018 he was moved to a different section at his place of work. This caused him anger and stress. He reported the incident to his employers. (A3/23-24(II))
24. At some point, which is not indicated by the evidence, he went on sick leave. On 15 May 2019, while on sick leave, he attended a PSNI station and checked his sickness reports. He observed that Inspector M had sought advice from occupational health as to whether his illness would have an effect on his ability to carry out the role of police officer. He felt angry and upset. He sent a message to Inspector M. The inspector telephoned him and apologised for any upset and harm to the appellant. He felt fearful and disrespected. He reported the incident to his employers. (Application A1/23-24(II))
25. On 5 August 2019 (A) he was called to a meeting with Chief Inspector P and Sergeant W. He was asked when he would be returning to work. When he said to the Chief Inspector to consult occupational health, the Chief Inspector became angry, saying that he would decide, not occupational health. He challenged a comment made by the Chief Inspector that "people like me need structure". This was "brushed aside". He felt angry, tearful, violated, bullied and degraded. He was experiencing daily abdominal pain and diarrhoea. He reported the incident to his employers. (A5/23-24(II))
26. On 5 August 2019 (B) at around 7pm, he received a telephone call at home from Sergeant W. He was told he would be receiving a stage 1 warning. He questioned the Sergeant about this and she became very aggressive and terminated the call. He was breathless and contemplated suicide. (A6/23-24(II))
27. On 6 September 2019 he attended a PSNI station to meet with Inspector M, who removed the stage 1 warning that had been issued by Sergeant W. He was relieved but angry. He reported the incident to his employers. (A2/23-24(II))
28. Subsequently, the appellant initiated Industrial Tribunal proceedings against his employer, but it does not appear that they were resolved by the time of the hearing of the present appeals. At any rate, the outcome

of the Industrial Tribunal proceedings was not made known to the tribunal and recorded in the evidence.

### **The tribunal's decisions**

29. The LQM has prepared a statement of reasons for each of the tribunal's decisions. From this I can see that the tribunal had the same documentary evidence before it in relation to each of the appeals, including the Department's submission and the documents scheduled to it. It had an email dated 2 June 2021 attaching consultant clinical psychologist reports, an undated letter from the appellant, a memorandum from Industrial Injuries Branch, a letter from the appellant dated 3 March 2022 and two chains of email correspondence between the appellant and the Appeals Service ending on 30 March 2022 and 20 April 2022 respectively. It also had sight of further medical evidence. The appellant had waived his right to attend the hearing and therefore there was no oral evidence. As the appeals were to be determined solely on the documentary evidence without an oral hearing, the Department was also not represented.
30. The LQM records that consideration of the appeals began at 9.30am and ended at 5.15pm. The panel commenced by discussing the statutory and case law principles governing entitlement to IIB. It placed particular reliance on the guidance offered in the Northern Ireland Commissioner's decision *BM v Department for Communities* [2016] NI Com 67. In particular, it noted that words and written communications between an employer and employee are capable of constituting an accident. It noted that the accident must be caused by some untoward aspect to the ordinary routine work task and this was not to be confused with the claimant's untoward subjective reaction to a workplace incident. It then conducted a detailed examination of all the evidence and made a determination in each case.
31. In the case considered under reference A1/23-24(II) the tribunal found nothing in the reports of the incident of 15 May 2019 that constituted an untoward aspect to the ordinary routine work task. It held that the appellant had failed to discharge the burden of proof that the conversation with Inspector M amounted to an industrial accident. It further did not accept that there was a causal connection established on the basis of the medical evidence between the events of 15 May 2019 and any injury.
32. In the case considered under reference A2/23-24(II) the tribunal found nothing in the reports of the incident of 6 September 2019 to make it an untoward event. It found that the meeting with Inspector M was a routine personnel/management encounter which upheld the appellant's appeal against a warning issued previously, and that nothing out of the ordinary appears to have been said in the course of the encounter. It held that the appellant had failed to discharge the burden of proof that the conversation with Inspector M amounted to an industrial accident. It further held that there was insufficient evidence to establish a causal link between the appellant's medical symptoms and the workplace event.

33. In the case considered under reference A3/23-24(II) the tribunal found nothing in the encounter with Sergeant A on 9 July 2018 and the appellant's transfer to a different workplace section that would elevate it into an industrial accident within the meaning of that term. Again it was not satisfied that the causative connection between the workplace event and the resulting injury claimed.
34. In the case considered under reference A4/23-24(II) the tribunal was not satisfied that the events of 26 October 2017 and following could properly be classified as a workplace accident. It was further not satisfied that a causative connection between the workplace accidents and the appellant's health had been established.
35. In the case considered under reference A5/23-24(II) the tribunal was satisfied that the first reported incident of 5 August 2019 had the potential to amount to an industrial accident due to the alleged behaviour of the appellant's senior police colleagues. However, it was not satisfied that there was sufficient corroboration of the appellant's description of the events in the absence of a report of the outcome of the appellant's formal complaint. The appellant had also not attended the tribunal hearing. In his absence the tribunal considered that the appellant had not satisfied the burden of proof. It was also not satisfied that there was a causative connection established between any workplace accident and the resulting injury.
36. In the case considered under reference A6/23-24(II) the tribunal was not satisfied that the second reported incident of 5 August 2019 involving Sergeant W (and I observe here that the Department's decision of 30 June 2020 erroneously refers to Sergeant A) amounted to an industrial accident. It was further not satisfied that a causative connection between the workplace accidents and the appellant's health had been established.
37. In the case considered under reference A7/23-24(II) the tribunal was not satisfied that the events of 5 May 2018 could properly be described as a workplace accident, contrary to the Department's findings to the opposite effect. It found that the events were part of routine workplace personnel procedure with no evidence of untoward aspects. Moreover, the tribunal was not satisfied that a causative connection between the workplace event and the appellant's health had been established.
38. In the case considered under reference A8/23-24(II) the tribunal considered that the events of the evening of 5 August 2019 – namely a telephone call from Sergeant W – was the closest the appellant came to establishing that there had been an untoward event. Nevertheless, in the absence of oral evidence of relevant procedures, and in the light of the contractual breaches being later rescinded, it found on balance that there had not been an industrial accident. Thus it disagreed with the revised Departmental decision of 17 June 2020. It further did not accept that there

was a causal connection established between any injury and the workplace events.

39. In the case considered under reference A9/23-24(II) the tribunal found that the events of 1 July 2018 could not properly be classed as a workplace accident. In respect of the first conversation with a police officer colleague, it found that there had been a normal conversation between colleagues. In respect of the conversation with Sergeant M it was not satisfied that the event occurred as described in the absence of the appellant's oral evidence or any objective evidence of the outcome of a grievance raised by the appellant. It was also not satisfied that a causative connection between the workplace event and the appellant's health had been established.

### **Legislation**

40. The legislation governing the present case is to be found in the Social Security Contributions and Benefits Act (NI) 1992 (the 1992 Act). IIB is established by section 94. This provides:

94.—(1) Industrial injuries benefit shall be payable where an employed earner suffers personal injury caused by accident arising out of and in the course of his employment, being employed earner's employment.

(2) Industrial injuries benefit consists of the following benefits—

(a) disablement benefit payable in accordance with sections 103 to 105 below, paragraphs 2 and 3 of Schedule 7 to this Act and Parts II and III of that Schedule;

...

41. Calculation of the amount of an award of IIB disablement benefit is governed by section 103 of the 1992 Act. It provides, so far as relevant:

103.—(1) Subject to the provisions of this section, an employed earner shall be entitled to disablement pension if he suffers as the result of the relevant accident from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 14 per cent. or, on a claim made before 19th November 1986, 20 per cent.

...

(5) In this Part of this Act "assessed", in relation to the extent of any disablement, means assessed in accordance with Schedule 6 to this Act; and for the purposes of that Schedule there shall be taken to be no relevant loss of faculty when the extent of the resulting disablement, if so assessed, would not amount to 1 per cent.

(6) A person shall not be entitled to a disablement pension until after the expiry of the period of 90 days (disregarding Sundays) beginning with the day of the relevant accident.

...

42. By Article 29 of the Social Security (NI) Order 1998, provision is made for the adjudication of IIB claims.

29.—(1) Where, in connection with any claim for industrial injuries benefit, it is decided that the relevant accident was or was not an industrial accident—

(a) an express declaration of that fact shall be made and recorded; and

(b) subject to paragraph (3), a claimant shall be entitled to have the issue whether the relevant accident was an industrial accident decided notwithstanding that his claim is disallowed on other grounds.

(3) The Department, an appeal tribunal or a Commissioner (as the case may be) may refuse to decide the issue whether an accident was an industrial accident if satisfied that it is unlikely to be necessary to decide the issue for the purposes of any claim for benefit; and this Chapter shall apply as if any such refusal were a decision on the issue.

(4) Subject to Articles 10 to 15 and to section 22 of the Administration Act, any declaration under this Article that an accident was or was not an industrial accident shall be conclusive for the purposes of any claim for industrial injuries benefit in respect of that accident.

(5) Where paragraph (4) applies—

(a) in relation to a death occurring before 11th April 1988; or

(b) for the purposes of section 60(2) of the Contributions and Benefits Act,

it shall have effect as if at the end there were added the words “whether or not the claimant is the person at whose instance the declaration was made”.

(6) For the purposes of this Article (but subject to Article 30), an accident whereby a person suffers personal injury shall be deemed, in relation to him, to be an industrial accident if—

(a) it arises out of and in the course of his employment;

(b) that employment is employed earner's employment for the purposes of Part V of the Contributions and Benefits Act; and

(c) payment of benefit is not under section 94(5) of that Act precluded because the accident happened while he was outside Northern Ireland.

(7) A decision under this Article shall be final except that Articles 10 and 11 apply to a decision under this Article that an accident was or was not an industrial accident as they apply to a decision under Article 9 if, but only if, the Department is satisfied that the decision under this Article was given in consequence of any wilful non-disclosure or misrepresentation of a material fact.

### **Submissions**

43. An appeal lies to a Commissioner from any decision of an appeal tribunal on the ground that the decision of the tribunal was erroneous in point of law. However, the party who wishes to bring an appeal must first obtain leave to appeal.
44. Leave to appeal is a filter mechanism. It ensures that only appellants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
45. An error of law might be that the appeal tribunal has misinterpreted the law and wrongly applied the law to the facts of the individual case, or that the appeal tribunal has acted in a way which is procedurally unfair, or that the appeal tribunal has made a decision on all the evidence which no reasonable appeal tribunal could reach.
46. The grounds advanced by the appellant essentially submit that the tribunal has made mistakes as to material facts and have made findings of fact that are perverse. The main element of the submissions consists of factual assertions relating to the appellant's treatment by his employers. He further queries how the tribunal has overturned two Departmental decisions (in A7/23-24(II) and A8/23-24(II)) declaring that an industrial accident had occurred, which were in his favour, as these were not part of the appeal. He further submits that it is evident that his ill health results from his work situation as there is no other explanation.
47. Mr Clements for the Department has advanced some support for the appellant's grounds in relation to some of the applications. These are the applications with reference A6/23-24(II), A7/23-24(II) and A8/23-24(II). The basis for Mr Clements' support is as follows.
48. Firstly, in respect of the events of 5 August 2019(B), which were properly the subject matter of A6/23-24(II) but discussed by the tribunal in A8/23-24(II), Mr Clements submitted that the tribunal relied upon the fact of a senior officer subsequently rescinding the warning given on 5 August

2019(B) when finding that the telephone call in which the warning was given did not amount to an industrial accident. He submitted that fact that the warning was rescinded could not have any bearing on whether there was an untoward aspect to the telephone call. He submitted therefore that the tribunal had given weight to an immaterial matter in what it had called a “finely balanced decision” on this issue.

49. Secondly, in respect of A7/23-24(II) and A8/23-24(II), Mr Clements pointed out that these cases involved the Department making an initial decision that there had not been an industrial accident. Subsequently, in each case the Department revised this view and accepted that there had been an industrial accident. However, in each case it also found that there was no loss of faculty after the expiry of 90 days beginning with the date of the accident, and that the claim should be refused on that ground.
50. Mr Clements observed that the tribunal had engaged in each case with the original decision and had reversed that, holding that there had not been an industrial accident. He submitted that a procedural irregularity arose from these circumstances, as the appellant would not have been aware that this issue would be considered. He would not have been given a fair opportunity to make submissions or give evidence on whether there had been an industrial accident. For this reason, he submitted that the tribunal had erred in law in respect of the two applications. He further submitted that the tribunal exceeded its jurisdiction by addressing the issue of whether an industrial accident had occurred, and that it was prevented by Article 29(7) of the Social Security (NI) Order 1998 from doing so.
51. Mr Clements, in his role of *amicus curiae*, proceeded to make further submissions on aspects of these applications. He noted the relevant law and submitted that neither of the two events that the Department had accepted were accidents were in fact accidents, although accepting that the Department was now bound by Article 29(7) to hold that they were.
52. As I have said in previous cases, the fact that the Department offers support for an application tends to confirm that an arguable case of error of law arises. Mr Clements has offered support in relation to three applications. I therefore grant leave to appeal in respect of the three applications in question – namely A6/23-24(II), A7/23-24(II) and A8/23-24(II).

### **Assessment of applications**

53. As stated above, the tribunal had particular regard to my decision in *BM v Department for Communities*. That case related to a civil servant who – among others - was called to an interview by his employer in order investigate a data breach, who was sent an email to clarify that it would be a disciplinary matter if he failed to attend, who attended the interview and who was later notified that the employer was satisfied that he was not involved in the data breach. The civil servant had nevertheless

experienced anxiety and what he termed a “huge negative psychological effect” as a result of the investigatory procedure, resulting in sick leave, part-time working and his IIB claim.

54. In deciding *BM v Department for Communities*, I had regard to the principles developed over a long line of case law. I observed that an industrial accident could arise from a communication by an employer in the form of spoken word or in writing. However, the guidance of the case law indicated that an untoward aspect would have to be demonstrated in order to turn an ordinary conversation or an ordinary work communication by e-mail or letter into an “accident”. As “industrial accident” was not defined in the legislation, it had to be given its ordinary English language meaning. Therefore – taking account of principles articulated in *Brutus v Cozens* [1972] UKHL 6 - on an appeal on point of law from a decision that there had not been an industrial accident, the question was whether a tribunal reasonably acquainted with the ordinary use of language could reasonably reach the conclusion that there was not an accident.
55. There are six remaining applications and three appeals before me. I will address each of them below.

*A1/23-24(II)*

56. This relates to the events of 15 May 2019. These involved the appellant, then on sick leave, attending Ballycastle police station to check his sickness reports file. He noticed an entry of the file whereby an Inspector asked if his absence would have an effect on continuing to fulfil the role of police officer. He was upset. He contacted the Inspector directly and the Inspector telephoned him back to apologise for misreading a related e-mail and for causing upset.
57. The Department found that this was not an industrial accident. The tribunal similarly found that it was not an industrial accident.
58. On the basis of the relevant case law, I consider that the tribunal will only have erred in law if it has reached a conclusion that no tribunal acquainted with the ordinary meaning of an industrial accident could reasonably reach.
59. In this instance the appellant independently accessed his own files while on sick leave. He noticed a query about his fitness to return to his normal duties. He initiated contact with a senior officer who subsequently contacted him and apologised for misunderstanding an e-mail. It does not strike me that any untoward aspect is present. I do not accept that it is arguable that the tribunal irrationally decided that this event was not an industrial accident. I refuse leave to appeal.

*A2/23-24(II)*

60. This relates to the events of 6 September 2019. On that day the appellant attended Coleraine police station and met with Inspector M, who withdrew a stage 1 warning that had been issued on the previous day. The warning was withdrawn on the basis that the relevant procedures had not been followed.
61. The Department found that this was not an industrial accident. The tribunal similarly found that it was not an industrial accident, holding that this was a routine management meeting.
62. On the basis of the relevant case law, I consider that the tribunal will only have erred in law if it has reached a conclusion that no tribunal acquainted with the ordinary meaning of an industrial accident could reasonably reach.
63. In this instance the appellant attended a management meeting at which it was confirmed that a Chief Inspector upheld his grievance about the earlier issuing of a stage 1 warning to him. It does not strike me that any untoward aspect is present. I do not accept that it is arguable that the tribunal irrationally decided that this event was not an industrial accident. I refuse leave to appeal.

*A3/23-24(II)*

64. This relates to the events of 9 July 2018 when the appellant was transferred to duties in a different section to the one in which he had reported particular difficulties.
65. The Department found that this was not an industrial accident. The tribunal similarly found that it was not an industrial accident, holding that there was no untoward aspect to the workplace situation of the appellant being transferred to a different work environment.
66. I observe that the tribunal in this part of its decision refers to an incident involving Sergeant A (see statement of reasons in BY/2972/20/67/M at paragraph 3.5.2). I consider that this is an accidental error in the tribunal's decision. I am satisfied that nothing turns on this error, and that it is immaterial to the conclusions of the tribunal regarding the events of 9 July 2018.
67. On the basis of the relevant case law, I consider that the tribunal will only have erred in law if it has reached a conclusion that no tribunal acquainted with the ordinary meaning of an industrial accident could reasonably reach.
68. In this instance the tribunal held that the transfer of the appellant to a different workplace setting was not an industrial accident. I do not accept

that it is arguable that the tribunal irrationally decided that this event was not an industrial accident. I refuse leave to appeal.

*A4/23-24(II)*

69. This relates to the events of 26 October 2017, when the appellant had been given a temporary promotion. He felt that he was disrespected and laughed at by his colleagues who, he believed, discussed him on a WhatsApp group, and he felt ostracised in his workplace.
70. The Department found that this was not an industrial accident. The tribunal similarly found that it was not an industrial accident, holding that the circumstances could not be properly classified as a workplace accident.
71. On the basis of the relevant case law, I consider that the tribunal will only have erred in law if it has reached a conclusion that no tribunal acquainted with the ordinary meaning of an industrial accident could reasonably reach.
72. In reaching its decision that events of 26 October 2017 did not constitute an industrial accident the tribunal stated that it could not discern any “untoward aspect to the ordinary routine work task”.
73. I do not accept that it is arguable that the tribunal irrationally decided that this event was not an industrial accident within the ordinary meaning of that expression. I refuse leave to appeal.

*A5/23-24(II)*

74. This relates to the daytime events of 5 August 2019 (A). This consisted of a meeting involving the appellant, Chief Inspector P and Sergeant W. The appellant maintained that the meeting was inappropriately called, that Chief Inspector P was aggressive, asked him repeatedly when he was returning to work and made discriminatory comments regarding his disability.
75. The Department found that this was not an industrial accident, as it was not capable of coming within the ordinary meaning of that expression.
76. The tribunal similarly found that it was not an industrial accident, but on a different basis. It held that the alleged conduct of the Chief Inspector - if proven - was not within the band of reasonable responses of an employer and that the event as described was capable of amounting to a workplace accident. However, in the absence of related documentary evidence or oral evidence from the appellant to corroborate his written account, it found that it was not so satisfied. In particular, it observed that the Department had asked the appellant if he had made a formal complaint about the incident and the outcome of that process. Whereas the appellant referred to an outcome report dated 31 March 2020 in his reply

to the Department, he did not provide a copy of that document to the tribunal. In the circumstances, the tribunal judged that he had failed to satisfy the burden of proof that the event occurred as he had said.

77. It is well established that there is no general requirement for the evidence of an appellant to be corroborated (see for example *R(SB)33/85*). However, that does not mean that a claimant's account of circumstances must always be accepted in the absence of any evidence to the contrary. It may still be rejected if it appears, for example, to be inherently improbable or potentially overstated. In the particular case the appellant claimed that his complaint about the incident was upheld. The record of the procedure followed and the outcome of the complaint process could have corroborated the appellant's account of what took place on the particular date. However, he did not produce documentary evidence that his complaint was upheld.
78. I acknowledge that the state of the appellant's mental health may have influenced his choice not to attend the tribunal hearing. However, in this context, having averred that a document contained particular supportive evidence, his failure to produce it became significant. In the circumstances, I consider that the tribunal was entitled to find itself not satisfied on the balance of probabilities that the meeting occurred as described. I refuse leave to appeal.

*A9/23-24(II)*

79. This relates to the events of 1 July 2018. There the appellant learned of possible grievance proceedings against him from a work colleague. He spoke to Sergeant M about what he had been told. Sergeant M became angry at him, told him he was paranoid and told him to leave his office.
80. The Department found that the events of this day did not constitute an industrial accident, as they were not capable of coming within the ordinary meaning of that expression. The tribunal similarly found that the conversation with the work colleague could not amount to an industrial accident within the ordinary meaning of those words. It found that the conversation with Sergeant M had more possibility of amounting to an industrial accident.
81. However, in the absence of related documentary evidence or oral evidence from the appellant to corroborate his written account, it could not be so satisfied. In particular, it observed that the Department had asked the appellant if he had made a formal complaint about the incident and the outcome of that process. The appellant said that he had reported it to Inspector M and Chief Inspector M at their meeting of 3 July 2018 and to Human Resources as part of a general complaint. He referred to an e-mail of 6 July 2018 indicating that Chief Inspector M "had already addressed some of the matters you raise with Sergeant A and Sergeant M".

82. In the circumstances, the tribunal judged that he had failed to satisfy the burden of proof that the event with Sergeant M occurred as he had said. It found that there was no corroborative evidence of the statement of Sergeant M, of the outcome of grievance proceedings or to indicate that the event with Sergeant M was part of the Industrial Tribunal proceedings the appellant had lodged.
83. As noted above, it is well established that there is no general requirement for the evidence of an appellant to be corroborated (see for example *R(SB)33/85*). However, that does not mean that a claimant's account of circumstances must always be accepted in the absence of any evidence to the contrary. It may still be rejected if it appears, for example, to be inherently improbable or potentially overstated. In the particular case the appellant claimed that his complaint about the incident was upheld. The record of the procedure followed and the outcome of the complaint process could have corroborated the appellant's account of what took place on the particular date. However, he did not produce documentary evidence that his complaint was upheld.
84. I acknowledge that the state of the appellant's mental health may have influenced his choice not to attend the tribunal hearing. However, in this context, having averred that a document contained particular supportive evidence, his failure to produce it became significant. In the circumstances, I consider that the tribunal was entitled to find itself not satisfied on the balance of probabilities that the meeting occurred as described. I refuse leave to appeal.

### **Assessment of appeals**

85. I now turn to the applications in which I have granted leave to appeal. As I have indicated above, I have observed some errors in the various files, and some duplication in particular of aspects of the file relating to 3 July 2018, leading to confusion of the papers in A7/23-24(II) and A8/23-24(II). There has also been an element of confusion on the part of the tribunal arising from the mis-identification of an individual by the Department's decision and submissions in relation to A6/23-24(II) (concerning 5 August 2018(B)).

#### *Application A6/23-24(II) – now Appeal C1/23-24(II)*

86. It is evident that mistakes of fact have occurred in this case. The appeal concerns a decision dated 30 June 2020 addressed to events taking place on 5 August 2019. The initial error appears on the face of the Department's decision, where it refers to Sergeant A, as opposed to Sergeant W. Subsequently, a Departmental reconsideration decision was made on 8 September 2020. This correctly refers to Sergeant W and the later events of 5 August 2019 where the Sergeant telephoned the appellant at home about his work attendance. The Department found that this was not an industrial accident, as it was not capable of coming within

the ordinary meaning of that expression. The Department's submission to the tribunal addressed the correct dates and correct facts.

87. Unfortunately, however, the tribunal continued the original error in its consideration of the appeal. It says:

“Somewhat curiously, and somewhat impenetrably, the decision of the Department of 30 June 2020 ascribes this incident involving Sergeant A to 5 August 2019, although the Tribunal could find no direct involvement by Sergeant A to the two incidents of 5 August 2019”.

88. The tribunal does not consider the possibility that Sergeant W had been erroneously referred to as Sergeant A by the Department in its decision in relation to the events of 5 August 2019 (B), but has instead assumed that it was dealing with Sergeant A's involvement on a different date or dates.

89. It goes on to say:

“The Tribunal upheld the decision of 30 June 2020 because it found inadequate proof amongst the catalogue of papers provided by the Appellant to connect Sergeant A to what he asserted was an industrial accident involving, caused by or contributed to by Sergeant A from October 2017, including 5 May 2018 and up to 5 August 2019. There was before the Tribunal no proof of a grievance taken by the Appellant regarding Sergeant A or of any appeal from such a grievance, as the Appellant had provided in respect of the incident on 5 August 2019 involving Sergeant W...”.

90. It appears to me that the tribunal misunderstood the subject matter of the particular appeal, having been misled by the original decision of 30 June 2020. Had the tribunal addressed the correct incident in this particular file, it is evident that there was potential evidence, relating to a grievance regarding Sergeant W, that it did not take into account in reaching its decision. I also consider that Mr Clements' point regarding the rescinding of the Stage 1 warning – namely that this retrospective action could not alter the character of the incident of 5 August 2019(B) and whether it was an untoward event or not – is well made. However, the particular decision did not turn on that issue, due to the confusion regarding the subject matter of the appeal.

91. Simply as a matter of procedural fairness, it seems to me that I must allow this appeal and set aside the decision of the appeal tribunal on file BE/8897/21/67/M.

*Application A7/23-24(II) – now Appeal C2/23-24(II)*

92. It is also evident that mistakes of fact have occurred in this case. This appeal relates to the events of 5 May 2018 and the correct decisions appear on file. However, unhelpfully, the related Departmental submission to the tribunal erroneously referred to the events of 3 July 2018 instead. The appellant had recounted that on 5 May 2018 he went to speak to Sergeant A in her office about feeling excluded. He was offered a move to another section. When he asked for support to prevent bullying and harassment he was instead ordered out of the office.
93. The Department initially found that this was not an industrial accident. However, on reconsideration it accepted that an industrial accident had occurred. The appellant was referred for medical examination. Following this, a decision was made that he was not entitled to IIB as there was no loss of faculty after the expiry of 90 days beginning with 5 May 2018.
94. The tribunal has erroneously dealt with the events of 3 July 2018, which is properly the subject matter of BE/3463/20/67/M, when reaching its decision in this case. Although the Department had accepted on reconsideration that there had been an industrial accident on 5 May 2018, the tribunal decided otherwise, on the basis that the events of 3 July 2018 had been a routine workplace personnel procedure.
95. As the appeal was disallowed on grounds relating to a distinctly different case, I consider that the tribunal has erred in law. I must allow this appeal and set aside the decision of the appeal tribunal on file BE/8898/21/67/M.

*Application A8/23-24(II) – now Appeal C3/23-24(II)*

96. This file properly relates to the events of 3 July 2018. This involved the appellant being surprised to have to attend a meeting with Inspector M and Chief Inspector M. The appellant says that he was accused of whistling the Irish national anthem and annoying people in his section and of being disruptive. He was informed that he was being moved from his present section.
97. The Department initially found that this was not an industrial accident. However, the decision was reconsidered and the Department accepted that an industrial accident had occurred on 3 July 2018. The appellant was referred for medical examination. Following this, a decision was made that he was not entitled to IIB as there was no loss of faculty after the expiry of 90 days beginning with 3 July 2018.
98. The tribunal, having addressed the events of 3 July 2018 in BE/8898/21/67/M, instead addressed the events of the second incident of 5 August 2019, which are properly the subject matter of BE/8897/21/67/M. It reasoned that the telephone call from Sergeant W to the appellant was clearly work-related and considered that it had about it an “untoward aspect”. However, in the absence of evidence of PSNI procedures, it was

not evident to the tribunal whether any normal contractual or statutory procedures had been breached. Whereas the Department had accepted that there had been an industrial accident on 3 July 2018, the tribunal disallowed the appeal on grounds that there had not been an industrial accident on 5 August 2019.

99. Again, as the appeal was disallowed on grounds relating to a distinctly different case, I consider that the tribunal has erred in law. I must allow this appeal and set aside the decision of the appeal tribunal on file BE/3463/20/67/M.
100. Mr Clements advances a further point in the appellant's interests relating to the adjudication scenario common to the latter two appeals. In each case the Department had accepted that an industrial accident had occurred. The case had proceeded to the next step, whereby a medical opinion was obtained as to whether the degree of any disablement incurred and present from a date 90 days after the date of the accident (see section 103 above) exceeded one percent. The actual subject matter of the two appeals was therefore an appeal from the assessment of the degree of disablement, rather than an appeal from the determination as to whether there had been an industrial accident.
101. Mr Clements submits that whereas a tribunal, on determining an appeal from a decision that a sufficient loss of faculty had not occurred, might not be precluded from considering a different condition of entitlement to IIB, the requirement of procedural fairness meant that it should give an appellant the opportunity to make submissions on whether or not he meets that condition of entitlement. I consider that there is force in this submission as it applies to the two appeals and accept that this is also a ground on which I should allow the appeals in C2/23-24(II) and C3/23-24(II).
102. Mr Clements submits that a jurisdictional error may also have occurred in the circumstances of these two appeals, arising from the principle of finality set out in Article 29(7) of the Social Security (NI) Order 1998. As I have decided these appeals on other grounds, I will not address that further ground.

### **Disposal**

103. I allow the above three appeals and I set aside the decisions of the appeal tribunal under Article 15(8)(b) of the Social Security (NI) Order 1998.
104. I refer those appeals to a newly constituted tribunal for determination. For avoidance of doubt, these are the appeals arising from the following and concerning the following dates of incident and decision:

A6/23-24(II)	BY/8897/21/67/M	5 August 2019 (B)	30 June 2020
A7/23-24(II)	BY/8898/21/67/M	5 May 2018	18 October 2021
A8/23-24(II)	BY/3463/20/67/M	3 July 2018	18 October 2021

105. The appellant should be aware that these are complete re-hearings of the issues in those cases.
106. The appeal in *C1/23-23(II)* is from the decision not to declare that an industrial accident occurred on 5 August 2019(B) – that is to say the events of the evening when he received a telephone call from Sergeant W.
107. The impact of my decisions in *C2/23-24(II)* and *C3/23-24(II)* is that the original declarations of industrial accident are now restored in relation to the events of 5 May 2018 and 3 July 2018. The appeal in those cases is from the decision that he was not suffering any loss of faculty greater than one per cent more than 90 days after the date of the respective accidents.

(Signed): O STOCKMAN

COMMISSIONER

6 January 2025