



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No: JR/2716/2018

Between:

TD

Applicant

- v -

The First-tier Tribunal (Social Entitlement Chamber) (Criminal Injuries)

Respondent

and

Criminal Injuries Compensation Authority

Interested Party

Before: Upper Tribunal Judge K Markus QC

Decision date: 21st October 2019
Decided on consideration of the papers

Representation:

Appellant: His mother
Respondent and Interested Party: None

Decision:

**The application for judicial review is allowed.
The decision of the First-tier Tribunal dated 11th October 2018 is
quashed.**

REASONS FOR DECISION

1. This is an application for judicial review of a decision dated 11th October 2018 to strike out the Applicant's appeal to the First-tier Tribunal. On 28th May 2019 I gave the Applicant permission to bring judicial review proceedings on the ground that, when the First-tier Tribunal judge struck out the appeal, he was not aware of important relevant information.
2. The Interested Party, the Criminal Injuries Compensation Authority ('CICA') has not provided detailed grounds for contesting or supporting the application.

The First-tier Tribunal, as is its usual practice, has acknowledged service and stated that it did not intend to make a submission.

Background

3. The Applicant appealed to the First-tier Tribunal against a decision of CICA withholding compensation under paragraph 23 of the 2012 Scheme. The tribunal made directions including that CICA should obtain a report from the hospital attended by the Applicant. CICA notified the tribunal that they had been informed that the Applicant was in Australia, and it was unable to obtain his consent to obtaining the hospital report. It appears that the Applicant had advised that his mother was handling matters. A judge of the First-tier Tribunal gave directions on 26th October 2017 stating that, if the Applicant wanted his mother to handle his appeal, he must appoint her formally (setting out what was required in that regard), and directing him to provide to CICA his consent to obtaining hospital records and his contact details. On 3rd May 2018 a tribunal caseworker noted that the Applicant's mother had said that she would attend the hearing but had not formally applied to "act as his Appointee". The caseworker directed the Applicant to provide his signed consent to obtaining the hospital report and authority for his mother to act. The directions warned him that failure to comply would result in his case being struck out under rule 8(1).
4. On 1st October 2018 the judge struck out the appeal for non-compliance with the directions. The notice of strike out stated that the Applicant could apply to have the appeal reinstated once he had complied with the directions. The strike out notice was issued on 11th October.
5. The judge did not state which directions had not been complied with, but the clear implication in the decision was that the judge believed that none of the directions had been complied with. Unfortunately, it now appears that the judge was mistaken in this regard. The First-tier Tribunal's case management records show that signed authority for the Applicant's mother to act was in fact provided on 5th June 2018 and the mother was added to the file as the representative.
6. The case management records also show that on 2nd October the Applicant's mother contacted the tribunal and was told that the file was with the judge as no "consent form" had been received. I infer that the consent referred to is that relating to the hospital report, as CICA had sent to the Applicant a consent form for that purpose and because the Applicant's mother talked of sending the consent form to CICA, the intended recipient of the hospital consent form. The Applicant's mother told the First-tier Tribunal's administration that she had sent all the information requested. She phoned back a little later to say that she had been trying to email a consent form to the CICA inbox but that it was not accepting emails. This information was not passed to the judge.
7. The case management records state that the mother contacted the tribunal again on 15th October objecting to the strike out and saying that she had emailed and called on numerous occasions regarding the return of

documents. In a further phone call later that day, the mother repeated that she had tried to send the consent to the tribunal and to CICA. The Applicant's mother was told that the strike out was final and she was provided with the Upper Tribunal's address. She then wrote to the Upper Tribunal challenging the strike out application.

8. In the light of the above background, it seemed to me that the most direct and effective way of resolving the matter would be to give the Applicant an opportunity to apply to the First-tier Tribunal for the appeal to be reinstated. Without now going into the detail of what happened next, it subsequently became apparent that the Applicant's mother did not understand what was expected of her and she did not do it. On 28th May I gave the Applicant permission to bring the judicial review proceedings.

Discussion and conclusion

9. I am satisfied on balance of probabilities that, when he struck out the appeal, the First-tier Tribunal judge was not aware of and therefore failed to take into account a material fact, that being that the Applicant had in fact provided signed authority for his mother to act. I appreciate that this, of itself, may not have been enough to avoid a strike out as the direction for consent to obtaining hospital records had not been provided, but I cannot say that it would have made no difference if the judge had known that the authority had been provided.
10. For that reason I allow the application for judicial review and quash the strike out order. The effect is that the appeal in the First-tier Tribunal is not struck out.
11. Pursuant to section 17 of the Tribunals Courts and Enforcement Act 2007, I have a discretion either to remit the matter to the First-tier Tribunal to consider again whether to strike out the appeal or to substitute a decision. I do not do either in this case. Much time has passed. The Applicant has not been well served by the First-tier Tribunal administration to date. In addition to the failure to inform the judge that the Applicant had provided consent for his mother to represent him, there were two other particular administrative failings in this case without which these proceedings may not have been necessary.
12. First, the day after the strike out order was signed by the judge the Applicant's mother had contacted the tribunal to explain her difficulties in sending the hospital consent form to either CICA or the tribunal. The strike out order had not been issued at that time. The judge should have been made aware of that recent contact. Had the judge been told, it may well be that he would have recalled the order before it was issued and reconsidered the position. He may well have decided not to strike out the appeal in the light of the mother's engagement with the tribunal.
13. The second failing is that, when the Applicant's mother contacted the First-tier Tribunal on 15th October objecting to the strike out order, she was told that the order was final and that she had to apply to the Upper Tribunal. This was incorrect, as it was open to her to apply for reinstatement. I see no reason

why the First-tier Tribunal could not have treated her contact as an application for reinstatement or could not have advised her at that stage to make such an application in writing. It seems to me that, had either of these occurred, it is likely that the appeal would have been reinstated. One of the directions had been complied with and the Applicant's mother had tried to comply with the other. Arrangements could have been made for her to provide the hospital consent form.

14. The Applicant's appeal has been considerably delayed due to the above. The fair way of proceeding now is for the First-tier Tribunal to progress and determine the appeal, subject to future compliance with directions. Of course, it will be incumbent on the Applicant's mother to provide the hospital consent form to CICA and/or to the First-tier Tribunal. The tribunal should consider whether to give directions to that end.

**Signed on the original
on 21st October 2019**

**Kate Markus QC
Judge of the Upper Tribunal**