

SAINT VINCENT AND THE GRENADINES

STATUTORY RULES AND ORDERS

1995 NO. 11

(Gazetted 18th April 1995)

IN EXERCISE of the powers conferred by section 34 of the National Insurance Act, the Minister makes the following Regulations: -

**NATIONAL INSURANCE DETERMINATION OF QUESTIONS)
REGULATIONS, 1995**

1. **Citation:** These Regulations may be cited as the National Insurance (Determination of Questions) Regulations, 1995.

2. **Interpretation:** For the purpose of these Regulations, unless the context otherwise requires –

"determining authority" means as the case may require the Board, the Director, the Appeal Tribunal, or the High Court:

"Director" means the Director of National Insurance:

grant means maternity, invalidity, age, survivors' or funeral grant:

"hearing" means oral hearing:

"Office" means any office so appointed for the purposes of the Act or these Regulations:

"reserved question" means any question set out in regulation 3:

"Tribunal" means the Appeal Tribunal established under Section 7.

PART II

DETERMINATION OF QUESTIONS BY BOARD

3. **Definitions:** For the purposes of this Part –

"claimant" includes a person whose right to be exempted from liability to pay or to be credited with a contribution, is in question.

"question" includes a claim for benefit.

4. **Questions for Determination:** The following reserved questions arising under or in connection with the Act shall be determined by the Board whose decision shall be final subject to the provisions of these Regulations

- (a) whether a person is or was employed in insurable employment pursuant to section 18(1) of the Act:
- (b) as to the class of insured persons in which a person is to be included:
- (c) at what rate contributions are or were payable in accordance with regulations made under the Act, or any question otherwise relating to a person's contributions:
- (d) who is or was liable for payment of contributions as the employer of any insured person:
- (e) as to which children should be granted survivors' benefit.

5. **Procedure for Determination of Questions:** (1) Any person desiring to obtain the decision of the Board on any question mentioned in regulation 4 shall submit to the Board an application in writing for the purpose in a form approved by the Board and shall furnish such particulars as the Board may require for the purposes of the consideration and determination of any such question.

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

(3) The Board may, if it thinks fit, before determining the question appoint a person to hold an inquiry into the matter and to report to it and any person so appointed may by summons require persons -

- (a) to attend at any such inquiry to give evidence: or
- (b) to produce documents reasonably required for the purposes of the inquiry: and
- (c) to give evidence on oath and for that purpose administer oaths.

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

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

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

(7) The applicant and any other person appearing to the Board to be an interested party shall, on request, be furnished with a statement of the grounds of the decision as will enable them to determine whether any question of law has arisen upon which they may appeal.

(8) Any person aggrieved by the decision of the Board on any question of law may, in accordance with Rules of Court may pursuant to section 34 (3) (b) of the Act, appeal from that decision to the High Court.

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

6. **Reference to High Court of Questions of Law:** (1) Any question of law arising in connection with the determination by the Board of any question as is mentioned in regulation 4 may be referred by the Board to the High Court for its decision.

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

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

(2) The Board shall not review a decision while an appeal is pending against that decision on a question of law arising, or before the time for lodging an appeal has expired.

(3) The provisions of regulation 6 shall apply in relation to a decision on review as they apply to the original determination or decision.

PART III

DETERMINATION OF CLAIMS AND QUESTIONS BY THE DIRECTOR OR APPEAL TRIBUNAL

8. **Submission of questions to Director:** (1) Any question-

- (a) as to the right to benefit: and
- (b) arising under or in connection with the Act, not being a reserved question,

shall be submitted to the Director, who shall consider the question and so far as practicable, dispose of it in accordance with these Regulations within fourteen days from the date when it was submitted to him.

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

(a) if he is satisfied that the question ought to be determined wholly in favour of the claimant, he may determine the question accordingly.

(b) in so far as he is not satisfied, he may either-

(i) refer the question so far as is practicable within fourteen days from the date on which it was submitted to him to a Tribunal for its decision, or

(ii) himself determine the question in whole or in part adversely to the claimant.

(3) Where the Director refers a question to the Tribunal in accordance with paragraph (2) notice in writing of such reference shall be given to the claimant.

9. **Appeals to Tribunal:** (1) Pursuant to section 34 of the Act there shall be a Tribunal having a constitution as laid down by the Schedule to these Regulations.

(2) The claimant shall, subject to this regulation have a right of appeal to the Tribunal, and where the Director has determined a question in whole or in part adversely to the claimant, he shall be notified in writing of the decision and the reasons therefor and of his right of appeal.

(3) Where a reserved question has arisen in connection with the decision of the Director and has been determined by the proper authority, and the Director certifies that the decision on that question is the sole ground for his decision, no appeal shall lie without the leave of the chairman of the Tribunal.

(4) An appeal against a decision of the Director shall be brought by giving notice of appeal at the office of the Board within twenty-one days after the date of the decision or within such further time, not exceeding four months, as the chairman of the Tribunal may allow.

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

10. **Time and place of hearing:** (1) Reasonable notice of time and place of the hearing before

the Tribunal shall be given to the claimant, and to any other person who may appear to the chairman of the Tribunal to be an interested party and except with the consent of the claimant, the Tribunal shall not proceed with the hearing of any case unless such notice has been given.

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

(3) The Tribunal may with the consent of the claimant but not otherwise proceed with any case in the absence of any member other than the Chairman and in any such case the Chairman shall if the number of the members of the Tribunal is an even number have a casting vote.

11. **Hearing before Tribunal:** (1) Every hearing by Tribunal shall be in public except in so far as the chairman of the Tribunal may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that consideration of public security are involved.

(2) The following persons shall be entitled to be heard at the hearing of any case by the Tribunal -

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

and any person appearing to the Tribunal to be an interested party shall have the right to be present notwithstanding that the hearing of the case is not in public.

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

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

(5) If it appears to the Tribunal that any appeal under this regulation involves a question

of law or fact of special difficulty, it may direct that in dealing with the appeal or any part thereof, it shall have the assistance of an assessor or assessors.

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

12. Decisions of Tribunal: (1) The Tribunal shall -

(a) record its decision in writing in such form as may from time to time be approved by the Board, and

(b) include in the record of every decision, which shall be signed by all the members of the Tribunal, a statement of the reasons for its decision including its findings on all questions of material fact.

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

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

13. Review of decisions of Director or Tribunal: (1) Subject to paragraph (2) any decision of the Director or Tribunal under this Part, may be reviewed -

(a) by the Director if the decision was made by him:

(b) by the Tribunal on a reference from the Director where the decision was made by the Tribunal.

(2) There shall be a review only where -

(a) the Director or the Tribunal as the case may be, is satisfied (but not without fresh evidence in the case of a decision of the Tribunal) that the decision was given in ignorance of, or was based on a mistake as to, some material fact or was wrong in law:

(b) there has been any relevant change of circumstances since the decision was given: or

(c) the decision was based on the decision of any reserved question and the decision of that question has been revised.

in (3) A question may be raised with a view to such a review by means of an application writing to the Director stating the grounds of that application.

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

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

14. **Interim payments:** (1) Subject to these Regulations, benefit shall be payable in accordance with an award, notwithstanding that an appeal against the award is pending.

(2) Where it appears to the Director that a question has arisen as to whether-

(a) the conditions for the receipt of benefit payable under an award is fulfilled, or

(b) an award of benefit ought to be revised in accordance with these Regulations,

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

15. **Review involving increase of benefits other than grants:** (1) Subject to these Regulations, where on review a decision is revised so as to bestow a benefit, or increase a benefit, the decision on review shall have effect as from the date of the application for the review.

(2) Subject to paragraph (3), if in any case the claimant proves that on a date earlier than the date of application for the review he was (apart from satisfying the condition of making a claim therefor) entitled to benefit, he shall not be disqualified by virtue of the provisions of paragraph (1) from receiving any benefit to which he would have been entitled in respect of the period between the earlier date and the date on which the application for the review was made.

(3) Notwithstanding anything contained in this regulation, the following provisions shall have effect-

(a) paragraph (2) shall apply subject to the condition that no sum on account of benefit shall be paid to any person in respect of any part of the period referred to in that paragraph earlier than six months before the date of application for the review.

(b) the decision on review shall not have effect for any period before the date on which the original decision took effect or would have taken effect if an award had been made:

(c) if the said decision on review was based on material change of circumstances subsequent to the date from which the original decision took effect, it shall not have effect for any period before the date declared by the Director or the Tribunal, to be the date on which such material change of circumstances took place.

(4) For the purposes of this regulation, where a decision is reviewed at the instance of the Director under regulation 16 (1), the date on which the Director first decided that the decision should be reviewed shall be deemed to be the date of the application for the review.

(5) For the purposes of this regulation "benefit" does not include an invalidity, age, survivors, or funeral grant.

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

(2) Where on review or appeal a benefit other than a grant replaces a previous benefit the decision on appeal or review shall contain directions that

(a) where the amount is not in excess of any arrears payable by way of benefit the payment shall be treated as payment on account of such arrears:

(b) any amount in excess of the arrears (except any amount to be repaid under this regulation) shall be treated as made on account of any sum payable as benefit as a result of the decision made on review or appeal.

(3) Where on review or appeal a decision is revised, or reversed or varied so as to take away or reduce a benefit the decision shall require the repayment to the Fund of the whole or part, as the case may be, of any benefit overpaid as a result of the decision appealed.

(4) Where

(a) on appeal against an award or benefit a decision is reversed or varied so as to take away or reduce a benefit: and

(b) subsequently on review, the decision on appeal referred to at sub-paragraph (a) is revised so as to restore or increase such benefit from a date prior to the decision made on appeal at sub-paragraph (a):

then any benefit paid prior to the appeal shall be credited to the account of any benefit payable at the review rate for that period except where pursuant to paragraph (3) it has been repaid or treated as paid on account of the decision appealed.

(5) Where, in accordance with a decision given on a review or appeal, any benefit is required to be repaid to the Fund then, without prejudice to any other method of recovery, such benefit shall be recoverable by deduction from any benefit then or thereafter payable to the person by whom it is to be repaid or from any benefit payable on his death.

(6) Nothing in this regulation shall be construed as preventing the operation of regulation 59 of the National Insurance (Benefits) Regulations (which regulation concerns the adjustment of benefits where there is entitlement to more than one benefit).

17. **Reference of Reserved Questions:** (1) If on consideration of a question the Director is of the opinion that a reserved question arises he shall -

(a) refer the reserved question for determination to the Board: and

(b) deal with any other questions as if the reserved question had not arisen.

(2) The Director may -

(a) postpone the reference of or determination of any question until after other questions have been determined:

(b) in cases where the determination of a question disposes of a claim or part of a claim, make an award or otherwise as to the claim or part of a claim, before the determination of, any other question.

(3) The foregoing provisions of this regulation shall apply to the Tribunal as they apply to the Director, except that the Tribunal shall refer a question for determination in accordance with sub-paragraph (a) of paragraph (1) through the Director.

PART IV

MISCELLANEOUS

18. **Miscellaneous powers of Board and Tribunal:** (1) Subject to the Act and these Regulations the procedure on the determination of any question by the Board or the Tribunal shall be such as the Board or the Tribunal may determine.

(2) The Board or Tribunal, may refer to a medical practitioner for examination and report any question relating to health arising for its determination.

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

19. **Decision conclusive for purpose of proceedings under Act, etc.:** (1) Where in any proceedings -

(a) for an offence under the Act: or

(b) involving any question as to the payment of contributions under the Act:
or

(c) for the recovery of any sums due to the Fund,

any question arises which under the Act or Regulations is to be determined by the Board, or by the High Court in the event of an appeal on a point of law, or by Director of the Tribunal, the decision by the appropriate determining authority shall, unless an appeal under these Regulations is pending or the time for so appealing has not expired, be conclusive for the purpose of these proceedings.

(2) If any such decision under paragraph (1) has not been obtained and the decision is necessary for the determination of the proceedings the question shall be referred to the appropriate determining authority, as the case may require, in accordance with procedure (modified where necessary) prescribed in these Regulations.

(3) Where any such appeal as is mentioned in paragraph (1) is pending, or the time for

so appealing has not expired, or where any question has been referred under paragraph (2), the authority dealing with the case shall adjourn the proceedings until such time as a final decision upon the question has been obtained.

20. **Authority for payment of Expenses:** There shall be paid out of the Fund to the Chairman and members of the Tribunal such salary or other remuneration and such expenses as the Minister from time to time determines.

21. **Remuneration and allowances:** (1) There shall be paid to persons appointed by the Board under regulation 4 (3) such remuneration and such travelling or other allowances as the Board may determine and such sums shall properly be payable out of the Fund.

(2) There shall be paid to persons required to attend on the consideration or a case before the Tribunal or the Board, such travelling or other allowances as the Board may by Resolution declare and such sums shall be properly payable out of the Fund.

(3) There shall be paid such other expenses incurred in connection with the work of the Tribunal or the Board as the Board may determine and such sums shall be properly payable out of the Fund.

(4) For the purposes of this regulation references to travelling or other allowances include references to compensation for loss of remuneration:

Provided that such compensation shall not be paid to any person in respect of any time during which he is in receipt of remuneration under this regulation.

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

SCHEDULE APPEAL TRIBUNAL (Regulation 9)

1. An Appeal Tribunal shall consist of three members as follows:

(a) a chairman, appointed by the Minister by instrument in writing, who shall be a legal practitioner of not less than five years standing;

(b) two members, one each representing employer and insured persons respectively, appointed by the Board from a standing panel of persons nominated by organizations representing employers and insured persons

2. **Tenure of Chairman:** (1) The Chairman of the Tribunal shall hold office for a term of two years and shall be eligible for re-appointment:

Provided that he shall not hold office for a period exceeding two terms.

3. **Tenure of Members of Panel:** (1) The members of each panel shall be three nominees of recognised organizations representing the interest of employees and insured persons respectively.

(2) As far as practicable, the members of each panel shall be summoned by the Board to serve in turn on the Appeal Tribunal, and shall hold office for such term and on such conditions as may be determined by the Board.

(3) Where the claimant is a woman at least one of the members of the Tribunal if practicable shall be a woman.

4. **Disclosure of interest:** A member of the Tribunal shall reveal his interest where he is sitting in a case -

(a) in which he appears as the representative of the claimant:

(b) by which he is or may be directly affected;

(c) in which he has taken part as an employer or witness

and in such circumstances shall not take part in the proceedings.

5. **Revocation of appointment:** The Minister may, at any time revoke the appointment of the Chairman and the Board may, if it considers it expedient so to do, at any time revoke the appointment of any member of a panel.

6. **Resignation of chairman and members:** (1) The Chairman of the Tribunal may resign his office by notice in writing addressed to the Minister.

(2) A member of the Tribunal may resign his office by notice in writing to the Board through the Chairman.

7. **Board Member prohibited from membership of Tribunal.** No member of the Board shall be

eligible for appointment as a Chairman or member of the Tribunal.

8. **Procedure:** Subject to the provisions of this Schedule the Tribunal may regulate its own proceedings.

Dated the 6th day of April 1995.

J.F. MITCHELL
Minister of Finance

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