

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**(CROWN OFFICE LIST)**

**PA/2/97**  
**PA/5/96**  
**PA/8/96**

**Royal Courts of Justice**  
**Strand**  
**London WC2**

**Friday, 17 October 1997**

Before:

**MR JUSTICE ALLIOTT**

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**IN THE MATTER OF S 6 OF THE PENSIONS APPEAL TRIBUNALS ACT 1943 BETWEEN**

**SECRETARY OF STATE FOR SOCIAL SECURITY**

Appellant

-and-

**CYRIL JAMES BENNETT (PA/8/96)**

Respondent

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**MR S KOVATS** (Instructed by the Solicitor to the Departments of Health and Social Security) appeared on behalf of the Applicant.

**MR R METHUEN QC** (Instructed by Messrs Vizards, London WC1R 4LL) appeared behalf of the Respondents.

**JUDGMENT**

MR JUSTICE ALLIOTT:

**Cyril James Bennett**

The Secretary of State appeals with my leave against the decision of a Pension Appeals Tribunal that the respondent Mr Bennett suffered from a back injury attributable to his service. Mr Bennett served in the Royal Army Service Corps from 8 January 1942 to 22 December 1946, when he was released in accordance with the provisions of Class A. According to the records, he went to Normandy a few days after D-Day and served in Northwest Europe until 9 February 1945. He subsequently served in Norway from 27 May 1945 to 29 August 1945.

In April 1993, the appellant claimed pension for injuries to the base of the spine which he said he had sustained at Arromanches, France, when the base of his spine was caught by the secure bolt on the back of a field ambulance. The respondent's claim was rejected under the labels "back injury" and "lumbar spondylosis". The respondent appealed against this rejection and his appeal was heard by the Pensions Appeal Tribunal sitting at Exeter on 21 March 1996. The tribunal found that the back injury in 1944 was attributable to service, but disallowed the appeal in respect of lumbar spondylosis, which they found to be neither attributable to nor aggravated by service.

Mr Bennett was perhaps a lucky man. At paragraph 4 of his skeleton, Mr Kovats sets out matter which might have, had the Secretary of State been represented, given rise to telling cross-examination. Mr Kovats points to the fact that there was no contemporary official record of the incident; that when the respondent was medically examined on 26 September 1946 no back injury was recorded; that when the respondent was medically examined in July 1952 he said he had not suffered from any defect, disability or injury relevant to the present case, and no such abnormality was recorded by the examining doctor; that the general practitioner had said that after the war he said he had sustained a lumbar back injury and that he had worked as a coalman and in baking and catering and as a publican; and finally that the respondent did not consult a doctor about his back until sometime in the 1970s. He also pointed to some discrepancies in the account given by Mr Bennett of his injury.

But at the end of the day, the tribunal found firmly in Mr Bennett's favour. They held:

"The Appellant confirmed the circumstances when his back was struck by the door of a K2 ambulance. The Tribunal accept his evidence and find as a matter of fact that it did occur as stated by the Appellant. The Tribunal...find that the back injury 1944 is attributable to service."

Mr Kovats argues that the tribunal did not find the disablement occurred as Mr Bennett contended. I do not construe their findings in that way. The mere fact that I might have found differently on the facts does not entitle me to say their decision was against the weight of the evidence or Wednesbury unreasonable. I conclude therefore that the tribunal arrived at a decision open to it and that it adequately indicated its reasons for so doing.

This appeal is therefore dismissed.