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# Reception of Evidence by the Social Security Appellate Board

**by**

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1. Part V of the Employees' Social Securities Act 1969 [the Act] provides for the adjudication of dispute and claims made by the insured against Socso, which have been dismissed. For this purpose, the Social Security Appellate Board [the Board] has been set-up. The proceedings before the Board are commenced by application known as "Borang A". Sosco then investigates the matter and prepares a blue file. The blue file will contain the statement of defence of Socso and supporting documents such as accident report, the insured claim form, statements recorded from the insured and employer under section 12c[2] of the said Act, investigation report and medical reports. At the hearing of the appeal, the Board relies on the information contained in the blue file. In addition, section 87[1] of the said Act provides that the Board shall have all the powers of a Sessions Court Judge to compell the attendance of witnesses and production of documents. But the Act and Regulations are silent on the reception of evidence by the Board and this means that the general law on the reception of evidence by quasi-judicial bodies will apply.

2. The Board in deliberating on the dispute will first ascertain the facts as disclosed by the documents in the blue file and at times will also rely on sworn testimony given

by witnesses before it. It will then apply the relevant law to the relevant facts and arrive at its decision. This is why it is called quasi-judicial, in other words acting like a judge. So how does the Board look at the information both sworn and unsworn which is presented before it. When can it reject a piece of information and on what basis?
In addressing this issue, I would first like to point out that section 2 of the Evidence Act 1950 states inter alia "This Act shall apply to all judicial proceedings in or before any court." As stated above, the Board is only a quasi-judicial body and as such the Act does not apply lock, stock and barrel to the proceedings before the Board. But this is not to say that the underlying principles codified in the Act do not apply. They do but with modification depending on the facts which are established. A good example of how this is done is the decision of Lord Denning M.R. in the case of T. A. Miller Ltd v Minister of Housing And Local Government And Anor [1968]1 WLR992.

In Miller's case, company A occupied an area and used it as a nursery and sold seeds and plants. Their business was poor and they sold their business to company B. (Miller). When company B took over the business, they started to sell garden furniture and other things. The local planning authority took the view that there was material change of the use of the land and that permission had not been obtained for it. So the District Council issued an enforcement order calling on company B to give up this use of the land. Company B then appealed to the Minister. An inquiry was held on behalf of the Minister, conducted by an inspector. Evidence was given on oath by 4 witnesses who were cross-examined and re-examined. In addition, the the planning authority put before the inspector a letter written by the managing director of company

A wherein it was stated that company A did not keep garden furniture at the premises. The managing director had also written stating that he had now moved and that it would be difficult for him to attend the inquiry. The lawyer of company B objected to the said letter being produced. He said that the letter should not be received in evidence. But the inspector admitted it. It was put to the witnesses. They did not accept it as accurate. But the inspector accepted it and it formed an important item in his findings. The Minister had also relied on the letter in making his decision. The lawyer for company B contended that they should not have relied on it at all. That it ought not even to have been admitted because it was hearsay. It was not on oath. No opportunity was given to test it by cross-examination and it was objected to. In the circumstances, it was contrary to natural justice for it to be admitted. In response, Lord Denning rejected the submission on the following grounds:

> "In my opinion this point is not well founded. A tribunal of this kind is master of its own procedure, provided that the rules of natural justice are applied. Most of the evidence here was on oath, but that is no reason why hearsay should not be admitted where it can fairly be regarded as reliable. Tribunals are entitled to act on any material which is logically probative, even though it is not evidence in a court of law : *see Reg. v. Deputy Industrial Injuries Commissioner, Ex parte Moore.*[1] During this very week in Parliament we have had the second reading of the Civil Evidence Bill. It abolishes the rule against hearsay, even in the ordinary courts of the land. It allows first-hand hearsay to be admitted in civil

proceedings, subject to safeguards. Hearsay is clearly admissible before a tribunal. No doubt in admitting it, the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contradicting it : *see Board of Education v. Rice* [2] *; Reg. v. Deputy Industrial Injuries Commissioner, Ex parte Moore* [3]. The inspector here did that. Mr Fogwill's letter of November 19, 1964, was put to the witnesses and they contradicted it. No application was made for an adjournment to deal further with it. In these circumstances I do not see there was anything contrary to natural justice in admitting it."

3. In applying the principle to the reception of evidence by the Board, it is my humble view that it is entitled to act on any material which can fairly be regarded as reliable and so long as the other side is given an opportunity of contradicting it. But this does not mean that it must be tested by cross-examination. An example of this is the statement recorded from the insured, where the contents are disputed by the insured. There is no need to hold a trial within a trail to determine whether the insured did make the statement. The Board merely has to give an opportunity to the insured to contradict the statement without calling the recorder and thereafter make a decision whether to accept or reject the statement. Another underlying principle is that documents made in the course of official duties are presumed to true [ section 114(e) Evidence Act ].

4. Medical evidence

Where a claim is made in respect of employment injury and it has been rejected by Socso, the medical reports produced by Socso sometimes merely describe the injury but do not state whether the injury suffered by the insured did or did not arise in the course of employment. Now is there a need for the Board to call the doctor?

My humble opinion is that the burden is on Socso to establish that there is no causal link between the personal injury suffered by the insured and his employment. This is because section 23 of the Act provides that an accident arising in the course of employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment. Hence, if the medical evidence before the Board does not show the contrary, the presumption will apply and the appeal must be allowed, without calling the doctor. As stated above, the medical reports are made in the course of official duty and they are presumed to be accurate and true.