1988 February 26

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS GEORGHIOU YENIAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 192/86).

Judicial control—Experts, conclusions of—Their correctness, from the scientific point of view, not subject to review.

Disability allowances—The Dependants of Persons Killed or Incapacitated (Allowances) Law, 1978 (69/78) and the National Guard (Allowances to Dependants of Persons Killed and to Incapacitated Persons) Regulations, 1978—"Partly disabled" (Μερικώς ανάπηρος) as defined by section 2 of said law—Personal, family and financial circumstances (Reg. 11(1))—Do not come into play, unless applicant qualifies for an allowance.*

The applicant was injured in Kyrenia on 27 July, 1974, while serving in the National Guard as a reservist during the Turkish invasion.

The applicant applied for a disability allowance under the provisions of Law 69/78 and the aforesaid Regulation. The Medical Board assessed his disability at 10%.

As a result, and in the light of the definition of the term "partly disabled" in section 2 of Law 69/78, the Grants Committee turned down the application.

* *(The definition reads as follows: "Partly disabled" means every Greek Cypriot who became, temporarily or permanently, disabled at a percentage ranging between sixteen and ninetynine per cent, both inclusive, for the carrying out of any work.*

Hence this recourse.

The applicant complained that the Grants Committee laboured under a misconception of fact, that it did not take into account applicant's personal, financial and family circumstances and that it did not take into account a medical report by Dr. Savvides.

Held, *dismissing the recourse:* (1) The Medical Board had before it, and it is presumed that proper weight was given in this respect, the medical report of Dr. Savvides.

(2) Nothing was put before the Court substantiating the allegation that the Grants Committee was labouring under a misconception, when reaching the sub judice decision.

(3) The personal, financial and family circumstances of the applicant ought to have been taken into account in case it was found that he was entitled, prima facie, to the grant of an allowance, so as to define the amount of such an allowance.

(4) The assessment of the percentage of applicant' s disability falls within the exclusive province of the Medical Board and it would be beyond the competence of this Court to examine the correctness, from the scientific aspect, of the report of the Medical Board.

Recourse dismissed.
No order as to costs.

Cases referred to:

Eraclidou v. The Compensation Officer (1968) 3 C.L.R. 44;

Diosmis v. Republic (1975) 3 C.L.R. 461;

Stavrinou v. Republic (1986) 3 C.L.R. 1195.

Recourse.

Recourse against the refusal of the respondent to grant applicant a disability allowance.

A. Georghiou, for the applicant.

St. Theodoulou, for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The present recourse is directed against the refusal of the respondent Minister of Finance to grant a disability allowance to the applicant.

The facts of the case are briefly the following:

The applicant was injured in Kyrenia on 27 July, 1974, while serving in the National Guard as a reservist during the Turkish invasion.

He had applied for the first time to the Grants Committee for the grant to him of disability allowance on 26 August 1975.

The Grants Committee having examined his application and a relevant report by the Medical Board decided to dismiss same, because the percentage of his disability was not over 15%. The said decision was communicated to the applicant on 3 November 1975.

The applicant, applied again and submitted a new report from his doctor, as a result of which he was re-examined by the Medical Board. On the basis of the new medical report, the Grants Committee informed him, on 30 January 1976, that his case could not be carried any further since the percentage of his disability continued to be 3%.

On 11 January 1986 the applicant reverted again to the same matter and sought a re-examination submitting a new report from his doctor.

As a result he was referred once again to the Medical Board which re-examined him and decided that the percentage of his disability was 10%.

The Grants Committee informed the applicant by letter dated 5 March 1986 that since the percentage of his disability did not ex-

ceed 15%, his claim for the grant to him of a disability allowance could not be accepted, pursuant to the relevant legislative provisions.

The relevant legislation now in force is the Dependants of Persons Killed or Incapacitated (Allowances) Law, 1978 (Law 69/78) and the National Guard (Allowances to Dependants of Persons Killed and to Incapacitated Persons) Regulations, 1978 (No. 281, Third Supplement to the Official Gazette, Part I, of 22 December 1978).

The definition, in section 2 of Law 69/78, of the term"partly disabled" (" μερικώς ανάπηρος"), in its material part, reads as follows:

" μερικώς ανάπηρος" σημαίνει πάντα Έλληνα Κύπριον όστις κατέστη, προσωρινώς ή μονίμως, ανίκανος εις βαθμόν κυμαινόμενον μεταξύ των δεκαέξ και των ενενήκοντα εννέα τοις εκατόν, αμφοτέρων περιλαμβανομένων, πρός άσκησιν πάσης εργασίας, ..."

(" Partly disabled" means every Greek Cypriot who became, temporarily or permanently, disabled at a percentage ranging between sixteen and ninetynine per cent, both inclusive, for the carrying out of any work, ...").

The same definition is to be found in section 2 of Regulations 281/78, above.

It is not in dispute in the present case that the applicant had suffered injuries, whilst serving as a reservist, which left him with a degree of incapacity, especially to his left hand.

What is in dispute is the percentage of his incapacity which as was assessed by the Medical Board was permanent and of percentage of 10%.

Counsel for applicant had submitted that the Grants Committee

in defining the incapacity of the applicant at a percentage of 10% was labouring under a misconception of fact, had not evaluated correctly the facts of the case, and had acted in excess or abuse of powers in that:

(a) The medical report of Dr. G. Savvides was not evaluated correctly or was not taken into account.

(b) The fact that the applicant has a permanent incapacity with the result that he is unable to carry out the work he was performing prior to his injuries, was not taken into account.

(c) The personal, financial and family circumstances of the applicant were not taken into account, contrary to the provisions of regulation 11(1) of Regulations 281/78.

Further, it has been submitted that as there are marked differences between the opinion of the Medical Board and the medical report of Dr. Savvides the Grants Committee ought to have given cogent reasons as to why it accepts the opinion of the Medical Board.

It is clear that under the relevant legislation and the Regulations made thereunder, a person who claims to be entitled to an allowance under such legislation must be subjected to a procedure defined by the Law, namely he has to be examined by the Medical Board, established for this purpose, for the assessment of his incapacity, which under the Law and the Regulations, must exceed 15%.

In the present case it appears that the applicant was repeatedly examined by the Medical Board but this incapacity was never found to exceed 15%, so the Grants Committee had dismissed on all three occasions his application for the grant to him of a disability allowance.

The Medical Board had before it, and it is presumed that proper weight was given in this respect, the medical report of Dr. Sav-

vides, which was submitted to it by the applicant, and actually this is so stated in the letter of 5 March 1986, communicating to the applicant the sub-judice decision.

Nothing was put before me substantiating the allegation of counsel for applicant that the Grants Committee was labouring under a misconception, when reaching the sub judice decision. Since the requirements of the Law were not being satisfied, once the percentage of his incapacity did not exceed 15% in performing, not the work previously performed by him, but of any work, as defined by section 2 of the Law, the Grants Committee had no alternative but to dismiss his application.

The personal, financial and family circumstances of the applicant ought to have been taken into account in case it was found that he was entitled, prima facie, to the grant of an allowance, so as to define the amount of such an allowance.

The assessment of the percentage of applicant's disability falls within the exclusive province of the Medical Board and it would be beyond the competence of this Court to examine the correctness, from the scientific aspect, of the report of the Medical Board (vide *Eraclidou v. The Compensation Officer,* (1968) 3 C.L.R. 44, 53,54 *Diosmis v. The Republic,* (1975) 3 C.L.R. 461, 465 and *Stavrinou v. The Republic,* (1986) 3 C.L.R. 1195, 1199, 1200).

Therefore, on the material placed before the Grants Committee, it was reasonably open to it to arrive at the sub judice decision, the reasons of which appear both in the letter of 5 March 1986, as well as in all previous correspondence and relevant documents filed for the purposes of the present preceedings.

In the result present recourse fails and is accordingly dismissed. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.