

## RULE H2

### Appeal against opinion on a medical issue

Rule H2 and Part I of Schedule 9 explain how a firefighter may appeal against a medical opinion given under Rule H1.

**Note:** Although injury provisions were transferred to the Firefighters' Compensation Scheme with effect from 1 April 2006, certain references to appeals relating to injury awards have been kept in the explanation of this Rule as it is possible that an appeal relating to an injury awarded under the Compensation Scheme may be made at the same time as an appeal about disablement made under the FPS.

#### **Firefighter's right to a copy of the medical opinion**

When you are informed of your fire and rescue authority's decision in a matter where they sought a medical opinion under Rule H1, Rule H2(1) gives you the right to request and be given a copy of the opinion. You must, however, exercise this right within 14 days of being notified of the authority's decision.

Provided you apply within the 14-day time limit, the fire and rescue authority must supply you with –

- a copy of the opinion (including the assessment of degree of disablement if relevant), and
- a statement setting out your right of appeal against the opinion, if dissatisfied with it, as allowed by Rule H2(2).

#### **Firefighter's right of appeal against medical opinion**

Under Rule H2(1), the statement issued by your fire and rescue authority with the copy of the medical opinion must tell you that if you wish to appeal against the opinion you must give written details of –

- your grounds of appeal
- your name and address

to your authority within 14 days of being supplied with the medical opinion.

Paragraph 1(1) of Part I of Schedule 9 gives your fire and rescue authority a discretion to extend this 14-day appeal period **provided** that they are satisfied that your failure to lodge your appeal within 14 days was for reasons other than your own default. How much more time the authority will allow you is up to them but they cannot let the time limit extend beyond 6 months after the date you were given the medical opinion.

#### **Who hears the appeal?**

The appeal is made to the Secretary of State. The Department for Communities and Local Government (referred to as "the Department" in this Commentary) is currently responsible for the management of appeals.

Paragraph 2(2) of Part 1 of Schedule 9 requires the Secretary of State to refer an appeal to a Board of Medical Referees. The Department has contracted with Health Management Limited (HML) to provide such Boards from 1 December 2009, initially for a period of 3 years.

In accordance with paragraph 2A of Part I of Schedule 9, a Board will consist of at least 3 members who are all medical practitioners.

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**Rule H2 and Part I of Schedule 9 (continued)**

**Who hears the appeal? (continued)**

The members of the Board would be as follows:

- Chairman: a consultant in Occupational Medicine (with at least Membership of the Faculty of Occupational Medicine, MFOM);
- Second member: a consultant or senior specialist in Occupational Medicine (with at least Associate Membership of the Faculty of Occupational Medicine, AFOM) ; and
- Third member: a consultant in the clinical speciality relevant to the firefighter’s medical condition(s) on which the appeal is based.

In some cases, for example where the appeal relates to more than one medical condition, a specialist for each condition will be appointed to the Board.

Paragraph 2A(4) of Part I of Schedule 9 gives the Chairman a second or casting vote if a decision cannot be reached because of equal voting among members of the Board.

The Board will be, and has to remain, impartial at all times and will determine the appeal on the evidence provided by each party.

The main venues for the appeal are London, Manchester and Glasgow. The use of any other would have to be justified by the individual medical circumstances of the appellant and with the agreement of the fire and rescue authority.

**How to appeal**

If an appeal is lodged, it is important that you should recognise that you are accepting responsibility for active participation in the process; you would be required to provide supporting evidence and should be prepared to attend the hearing to present your case for consideration. You should also be aware that if a Board reports that they are of the opinion that an appeal is “frivolous, vexatious or manifestly ill-founded” the fire and rescue authority may require the appellant to pay part of the cost of the appeal.

The FPS requires that the grounds for an appeal are stated by the appellant at the outset. The allowable reasons for appeal include any question referred to an Independent Qualified Medical Practitioner (“IQMP”) by the fire and rescue authority – see Rule H1.

To ensure the appellant provides all the information necessary for a valid appeal notice as required by Paragraph 1 of Part I of Schedule 9, and to ensure that the Board is aware of all the points the appellant may wish to raise, the Department has designed model forms which can be found on the firepensions website at:

<http://www.communities.gov.uk/fire/working/firefighterpensions/pensionsforms/>

**Rule H2 and Part I of Schedule 9 (continued)**

**How to appeal (continued)**

Your authority may provide “in-house” versions of the forms; these should contain all the key pieces of information contained in the model forms. Failure to use the appropriate forms may result in delays in processing the case.

There are three forms which you would be required to complete –

- Form 1: Notice of Appeal to Board of Medical Referees
- Form 2: Information for Board of Medical Referees
- Form 3: Firefighter’s Consent to Application for and Release of Personal Medical Information

These forms should be completed as follows:

**Form 1: Notice of Appeal to Board of Medical Referees**

It is on this form that you would set out the reason/grounds for your appeal and would list the supporting documents that you are submitting with the form. You should be specific about the reason/grounds rather than merely stating that you disagree with the opinion of the IQMP. If necessary, this form can be reformatted to enable more information to be supplied or you could give additional information on a separate sheet of paper and attach it to the form. If you fail to give your reason/grounds, no arrangements for a hearing will be made until these are provided, together with supporting papers.

The form asks you to give the names of any specialists that have treated you for your medical condition; this is to avoid them being appointed to the Board for the appeal hearing. As explained above in “Who hears the appeal” the Board must be, and remain, impartial.

HML will decide the venue for the appeal hearing (normally London, Manchester or Glasgow) but the form gives you the opportunity to request them to take certain considerations into account when making their decision.

When you have completed the form you should return it to your fire and rescue authority.

**Form 2: Information for Board of Medical Referees**

This form requires you to give your contact details, information about your career in the fire and rescue service and any other, current, employment.

(It is important that you should keep your fire and rescue authority and HML notified of any subsequent change of address. This is because, under paragraph 9 of Part I of Schedule 9, any notice, information or document you are entitled to receive as part of the appeal process will be deemed to have been received by you if it was posted to your last known address.)

## RULE H2

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<b>Rule H2 and Part I of Schedule 9 (continued)</b>
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#### How to appeal (continued)

#### Form 2 (continued)

The form also gives you the opportunity to state any dates on which you would not be able to attend a hearing which may be arranged between 2 and 12 months after the date you submit your appeal. For example, if you submit an appeal on 15 April you should show the dates on which you would be unable to attend a hearing during the period commencing with the following 15 June up to 14 April in the next year. You should also give any dates on which your representative(s) would be unable to attend. Once the papers have been passed to the Department, it is important that you keep them informed if you or your representative(s) become unavailable on any future dates. Only in exceptional circumstances would you be permitted to cancel an arranged hearing date – see “Arrangements for the hearing” below.

When you have completed the form you should return it to your fire and rescue authority. Your authority will add on to the form any dates on which they would be unable to send a representative to the hearing.

#### Form 3: Firefighter’s Consent to Application for and Release of Personal Medical Information

This form should be completed to indicate –

- where your medical records are held,
- whether or not you give consent to the disclosure of medical information and,
- if you do give consent, whether or not you wish to see the medical information before it is sent to the Department for forwarding to HML.

The release of medical records will enable the Board to consider the appeal thoroughly. You have a right under the Medical Reports Act 1988 and the Data Protection Act 1998 to see medical information before it gets sent for the consideration of the Board. The relevant terms relating to disclosure are given on page 2 of the form.

The medical information would include your up-to-date occupational health records, and those held by your General Practitioner (“GP”) – see “Procedures for obtaining medical records” below. It will be your responsibility to provide sufficient medical information to support your case. A similar responsibility lies with the authority to support their case.

If you do not give consent, this would be reported to the Chairman of the Board of Medical Referees and you would be advised by the fire and rescue authority that such action may seriously and adversely affect the full consideration of your appeal.

When you have completed the form you should return it to your fire and rescue authority.

**Appeal against opinion on a medical issue**

**Rule H2 and Part I of Schedule 9 (continued)**

**Action of fire and rescue authority following receipt of appeal notice**

The fire and rescue authority will check that you have completed all relevant parts of Forms 1 to 3. To Form 2 they will add details of dates when a representative of the authority would be unable to attend an appeal.

If, on Form 3, you have given consent to the application for, and release of, personal medical information the authority will follow “Procedures for obtaining medical records” as set out below.

They will also complete two further forms –

Form 4: Appeal Notification from Fire and Rescue Authority to Department

Form 5: Documents Form.

These forms will accompany Forms 1 to 3 when they get sent to the Department. Their purpose is as follows:

**Form 4: Appeal Notification from the Fire and Rescue Authority to Department**

This notifies the Department of the appeal and the IQMP’s opinion against which the appeal is made. It states that it accompanies 4 copies of Form 5 (“Documents Form” – see below) and 4 copies of each of the following (subject to medical consent where relevant) –

- the fire and rescue authority’s award decision letter
- the opinion of the IQMP with which the appellant is dissatisfied
- the appellant’s notice of appeal (Form 1) with attached Form 2 (“Information for Board of Medical Referees”) and Form 3 (“Consent to Application for and Release of Personal Medical Information”)
- the appellant’s complete record from his/her GP
- the appellant’s complete record from the authority’s occupational health file including accident/injury reports where relevant and, in cases where the degree of disablement is to be decided, details which produced the opinion of degree of disablement including details of salary, qualifications, training, etc.
- the appellant’s original x-ray/scan films where appropriate (mainly orthopaedic cases)
- the appellant’s complete hospital and specialist records where appropriate, e.g. in cardiac cases, details of tests are required with the final report and any additional medical reports available to the fire and rescue authority relevant to the appeal
- other relevant documents used by the authority to consider the appellant’s case (it is the fire and rescue authority’s responsibility to provide sufficient medical information to support their case)
- a list of the specialists that have treated the appellant for the condition in question.

**Appeal against opinion on a medical issue**

**Rule H2 and Part I of Schedule 9 (continued)**

**Action of fire and rescue authority following receipt of appeal notice (continued)**

**Form 4 (continued)**

All the medical documents should be collated by type (e.g. GP records, occupational health records, accident and incident reports, etc.) paginated and placed in a sealed envelope or envelopes marked with an index of the contents. The Department will not break the seals but will pass the indexed envelope(s) directly to HML. Any time taken, or costs incurred by HML to prepare medical documents for consideration by their consultants/Board members (including producing additional photocopies if less than the prescribed number have been provided) will be charged as an additional cost to the fire and rescue authority.

If you have asked to see the medical documents before they are sent to the Department they should be copied to you. (In any event, you or your representatives should be sent a copy of the medical records before the hearing even if you have indicated that you did not wish to see them before submission to the Department.) A copy of Form 5 (“Documents Form” – see below) should be sent together with a copy of the medical records and information supplied. Note that copies will be also be made available to the person who will represent the authority at the appeal hearing.

**Form 5: Documents Form**

This form is completed by the fire and rescue authority by listing all the documents submitted to the Department for forwarding on to the Chairman of the Board of Medical Referees. The list is the only means by which the Department can check that the papers are complete thus enabling referral to HML.

Before Forms 1 to 5 are submitted to the Department, it is important that the fire and rescue authority should check that –

- the nature of the disability is clearly expressed so that there is no doubt about the category of specialist required to consider the case
- the notice of appeal has been dated by the appellant; if it has not, the date it was recorded as having been received by the authority should be given
- the grounds or reasons for the appeal are clearly shown
- all the documents required are included in the package of papers submitted with the appeal notice to the Department and that photocopied documents are complete and readable.

The Department will not forward the appeal notice to HML for the purposes of arranging a hearing with the Board of Medical Referees until all the information listed above is available. Under no circumstances should papers be submitted directly to HML.

An authority should not delay submitting appeal documents while attempts to resolve matters are considered internally. The Pensions Ombudsman has made it clear that an appeal should be submitted without delay.

**Rule H2 and Part I of Schedule 9 (continued)**

**Procedures for obtaining medical records**

At the time the appeal is lodged your authority will ask you to provide your written consent for the release of all your background medical records – see the explanation of Form 3 given above. If you give your consent, the fire and rescue authority is asked by the Department to use the following procedures for obtaining medical records:

- (a) The fire and rescue authority should ask their occupational health unit to obtain or request the relevant medical records and arrange for these to be forwarded to the Department as explained above in “Action of fire and rescue authority following receipt of appeal notice”. The request for records from an outside source (e.g. your GP, hospital or medical specialist) should be made in writing by the authority’s occupational health unit, enclosing your written consent. The letter(s) should ask that copies of the records will be forwarded to the occupational health unit for submission to the Department and that any charges should be sent direct to the fire and rescue authority for payment.
- (b) If your GP is too slow in releasing the records, the authority’s occupational health unit should ask the GP if they can photocopy the original records, within a timescale of 5 days, and return them.
- (c) The fire and rescue authority should provide the Department with the name of a contact person within the authority to whom enquiries about obtaining further medical records can be made by HML. (Form 4 “Appeal Notification from Fire and Rescue Authority to Department” allows for this.)
- (d) If HML requests further medical records, evidence and information as held by the fire and rescue authority, the authority should send 4 copies of these additional documents to the Department. A copy should also be sent to you as the appellant. Copies should not be sent direct to HML as the target date for hearing cases is dependent upon the date of receipt of complete medical records: the Department needs to know for monitoring purposes when complete documentation is received. (In cases where additional medical records are requested directly from an outside source by the Board Chairman, the Chairman will arrange for a copy of those records to be sent to the appellant and also to the fire and rescue authority in advance of the appeal interview. However it is expected that this route will be a rare exception as the authority should try to obtain all relevant records prior to submitting the appeal to the Department.)
- (e) The fire and rescue authority’s occupational health unit should be asked by the authority to make periodic checks to ensure that outside sources act quickly to provide the medical records.
- (f) Medical records submitted to the Department should be in sealed envelopes, each envelope listing the contents. The Department will not break the seal or see the records, but will ensure that all the evidence is available for submission to the Board.

**Rule H2 and Part I of Schedule 9 (continued)****Arrangements  
for the hearing**

The Department will acknowledge receipt of the appeal notice and accompanying documents. They will note the opinion being challenged and the grounds of challenge which will be referred to the Board for an opinion. If satisfied that all the relevant information is available, the papers sent to the Department will be passed to HML. The sealed envelopes containing the medical records will be forwarded, as submitted by the fire and rescue authority, to HML.

HML will send an acknowledgement of the receipt of the appeal directly to the Department who, in turn, will notify you accordingly. (HML will advise whether further medical evidence is required.)

You will be notified in writing of the date, time and place of the appeal hearing. Paragraph 4(2) of Part I of Schedule 9 specifies that you should be given no less than 21 days' notice but, in practice, the notification will normally give at least 2 months' notice of the hearing date. It will include a map of the location, details about parking facilities and how to report on arrival. An address at which the Board can be contacted in advance of the hearing will also be given. Similar information will be sent to the fire and rescue authority.

The hearing will be held at the most convenient venue – London, Manchester or Glasgow - to your fire and rescue service. If you have a preference for another area, you would have stated this when completing Form 1 "Notice of Appeal" and would have given your reasons why. HML would consider your request but changing the hearing from the regular venue would normally happen only on proven medical grounds. If the Board is satisfied that an appellant is completely unable to travel, Schedule 9 Part I, paragraph 4(2) allows the hearing to be held at the appellant's place of residence.

Occasionally HML may be able to offer an appeal date with less than 2 months' notice because of a cancellation of another appeal. It will be for you, together with your fire and rescue authority, to decide whether to accept the earlier date. In such circumstances all parties must be given the opportunity to consider whether there is sufficient time to prepare their case, etc, and will be asked for any agreement in writing

Once the date of a hearing has been accepted, postponement will not be granted other than in the exceptional circumstances, for example –

- in the event that you are ill, in which case you will be required to submit a medical certificate, or
- because you are required to attend a Court hearing, or
- in the case of a family bereavement (a close relative).

(See "Cancellation charges" below.)

# RULE H2

## Appeal against opinion on a medical issue

<b>Rule H2 and Part I of Schedule 9 (continued)</b>
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### Arrangements for the hearing (continued)

The notification of the hearing will give the names of the Board members in order to ensure the independence of the Board. It is important that if you or the fire and rescue authority are aware that any of the nominated members have been involved previously with your case, the Board Chairman should be notified immediately.

It is important that all parties have agreed the scenario to be addressed by the Board prior to the hearing. Where there is any doubt, the Department will try to resolve this to the satisfaction of all parties before referral to HML. Both the letter acknowledging receipt of the appeal by the Department and the letter from the Board (HML) notifying the date of the hearing will include the scenario to be put to the Board. Any difficulties or disagreements about the scenario must be raised with the Department as soon as possible. The Chairman of the Board will confirm the question to be asked at the hearing but it would not be expected that any amendment would be made at that stage.

Under the terms of the contract, hearings must be completed within 17 weeks of receipt by HML of all the medical evidence and a final report must be supplied within 15 working days of the hearing. This may be extended where an extension has been granted to allow for HML to seek legal advice before the report is finalised. When such authorisation is given, the Department will notify the appellant and the fire and rescue authority accordingly.

### Cancellation charges

As explained in "Arrangements for the hearing" above, only in exceptional circumstances will appeal dates be cancelled. If a hearing is cancelled within 10 working days of the hearing date, the following cancellation charges apply:

<u>Notice received number of working days* prior to hearing</u>	<u>Fees to be paid</u>
Same day notice or up to 2 working days' notice	£6,550 (i.e. 100% of fee)
3 to 5 working days' notice	£5,240 (i.e. 80% of fee)
6 to 10 working days' notice	£3,275 (i.e. 50% of fee)
More than 10 working days' notice	No fee charged

\* A working day is defined as being Monday to Friday inclusive, excluding public holidays

Schedule 9 Part I, paragraph 8(2A) gives your fire and rescue authority the discretion to require you to pay such sum in respect of the above as they think fit, provided it does not exceed the Board's total fees and allowances. (Paragraph 8(2A) allows the discretion if you give less than 21 days' notice but HML have indicated that they would only require cancellation fees for a hearing cancelled within 10 working days of the hearing date.)

If you should fail to attend without good reason, your appeal can be decided by the Board on such information as is then available to them. Only rarely would the Board adjourn the hearing to enable them to examine you before arriving at their decision in which case the charge for giving less than one day's notice (i.e. £6,550) would apply.

**Rule H2 and Part I of Schedule 9 (continued)**

**Submission of written evidence**

Schedule 9 Part I, paragraph 5 outlines the terms for written evidence.

It is the responsibility of each party to ensure that the other has any written evidence or statements which will be relied on at the appeal hearing. The Department takes the view that in all cases copies of **all** the documentation should be made available. Failure to make all documents available has resulted in appellants considering applying for Judicial Review. The Department directed that the cases should be reheard at the cost of the fire and rescue authority. Even if a firefighter has indicated that he/she does not wish to see medical records, etc. before they are sent to the Department, the fire and rescue authority should still provide the firefighter with copies, as they form part of the evidence, in adequate time before the hearing.

You will be informed in the notification that any written evidence or statement which you intend to submit at the hearing must be provided to the Board and the fire and rescue authority no less than 7 days prior to the hearing date. A similar notification of this requirement will be sent to your authority.

Late evidence will only be accepted by the Board in very exceptional circumstances. If the Board agree to the introduction of such evidence, they may decide to adjourn the hearing to enable the other party sufficient time to consider and respond to the new material. This would result in cancellation charges (see above).

In the event of an adjournment being necessary due to the late introduction of evidence by one party, it will be for the Board to determine whether that party should pay the reasonable costs of the Board and the other party that arise because of the adjournment. (These will be similar to those applicable in the case of cancellation of the hearing – see “Cancellation charges” above.)

Evidence that had, or could have, been made available within the times laid down is unlikely to be accepted. The Department's guidance to HML is that cases should not normally be adjourned due to the submission of late evidence; if necessary the hearing may be adjourned for a short while for the papers to be considered by the other party.

On occasions there will be a need for the Board to consider additional X-rays or scans or to ask for further tests to be carried out. Where this is considered essential to the consideration of the case, the fire and rescue authority will be expected to meet the additional costs and will be invoiced accordingly.

**The hearing**

Schedule 9 Part I, paragraph 4(5) says that both you and the fire and rescue authority are allowed to bring one or more representatives to the hearing. It is hoped, however, that there should be no more than one or two representatives in order that numbers are reasonable and fairly balanced. You should give details to the Board Chairman via HML, in advance of the hearing, of who will be attending with you.

**Rule H2 and Part I of Schedule 9 (continued)****The hearing  
(continued)**

Similarly, the fire and rescue authority must give the Chairman advance notice of their own representatives.

Legal representation should not normally be necessary at an appeal hearing which is a medical hearing inquiring into medical issues. If required by either the appellant or the authority it is essential that all parties, including HML, are informed, as they too may wish to arrange their own legal representation. The Board will expect fairness of representation for both parties. Neither party should expect a case to be adjourned because of the failure of a legal representative to attend as arranged or, if attending, not to be fully briefed. If advance notification has not been given, the Board Chairman may adjourn the appeal and the costs will fall to the party concerned.

The FPS allows a hearing to proceed if the appellant fails to attend. Consequently, while it is desirable for both parties to be represented, if one or other is absent the hearing may go ahead at the Board's discretion and the appeal may be determined on such information as is already available, as allowed by Schedule 9 Part I, paragraph 4(4).

On arrival at the appropriate location, persons attending the hearing will be shown to a waiting area until the Board members are ready to start the appeal. Refreshments are usually available while you are waiting. When the Board is ready, a member of the Board will escort those attending the hearing to the appeal interview room.

At the start of the hearing, the Board Chairman will confirm with you and with any fire and rescue authority representative(s) in attendance, the medical questions to be decided. The Chairman will also mention the medical records obtained and considered by the Board in advance of the hearing and confirm that these have been received by both parties.

The Board will then ask questions relevant to the case, e.g. details about medical conditions.

Both you and the authority will be given the opportunity to comment on issues relevant to the appeal but at this stage neither party will normally be allowed to submit new evidence (see "Submission of written evidence" above).

The authority will advise the Board of the operational requirements of the service and any other relevant circumstances about your duties. The Board will find it helpful to receive from fire and rescue authorities as much information as possible relating to the health and fitness standards expected of firefighters.

The interview will then be adjourned for you to be medically examined, normally in a separate examination room. While the examination takes place, the other attendees will be asked to wait in the reception or waiting area. Only you and the Board members will be present during the examination. The length of the examination will depend upon the type of medical condition involved.

**Appeal against opinion on a medical issue**

**Rule H2 and Part I of Schedule 9 (continued)**

**The hearing (continued)**

After the examination, the hearing will be re-convened in the interview room. The Chairman will tell you and the fire and rescue authority representative(s) if the Board members have any further questions and will inform all the parties of any additional relevant information that emerged during the examination. Both parties will then be given the opportunity to make further comments or raise questions with the Board members.

(Schedule 9 Part I, paragraph 4 allows more than one interview and medical examination if the Board think it necessary but this is very unusual).

The hearing will then be concluded and the Board Chairman will inform the attendees that the Board will discuss the case between themselves and reach a decision on the relevant medical questions (see “The decision of the Board” below). The whole hearing, including the medical examination, usually takes 2 to 3 hours.

**The decision of the Board**

The Board of Medical Referees will not inform you of their decision on the day of the hearing; in accordance with Schedule 9 Part I, paragraph 6, the Board is required to submit a detailed report of proceedings and their decision on the relevant medical issues to the Secretary of State, normally within 15 working days of the hearing (or longer in special circumstances, e.g. if more information is required from your fire and rescue authority, or if the consultant member of the Board is not available to sign, or if the case is referred for legal advice – this will require the agreement of the Department). You and the fire and rescue authority will receive a copy of the Board’s report shortly afterwards from the Department. This decision will be summarised in the form of a certificate.

Rule H2(3) states that a fire and rescue authority is bound by the decision of the Board in any issue referred to in Rule H1(2)(a) to (f).

**Effect of decision on award**

If you appeal against a decision of the fire and rescue authority concerning permanent disability, the authority would normally not retire you until the appeal was settled and an adjustment to pay or pension would not then be necessary.

Alternatively, the fire and rescue authority may withhold payment of pension and any commuted lump sum using the discretion in Rule L3(1) (see the explanation of Rule L3), and instead make payments to you “on account”. Then when your appeal is decided the payments on account would be attributed to pay, or pension and lump sum, as appropriate, and made up to the full amount due in either case.

**Appeal against opinion on a medical issue**

**Rule H2 and Part I of Schedule 9 (continued)**

**Effect of decision on award (continued)**

If the authority made a determination, based on a medical opinion, that your disablement was not caused by a qualifying injury, and the Board decide that it was, then you will be entitled to an injury award (previously under Rule B4 of the FPS, now under the Firefighters' Compensation Scheme) –

- from the date of your retirement, or
- from the date of your disablement

whichever is later.

Rule A10(4) states that if a person has retired before becoming disabled and the date of disability cannot be determined, it will be taken to be the date on which the claim of disability was first made known to the authority.

If your ill-health pension, deferred pension or injury pension is revised and/or terminated by the fire and rescue authority following a review under Rule K1/K1A or Rule K2 (injury awards made before 1 April 2006) or Part 9 Rule 1 of the Firefighters' Compensation Scheme (injury awards made on or after 1 April 2006) and you appeal successfully against the medical opinion upon which the authority based their decision, the revision or termination of your pension will be void and a reinstatement will be made, backdated to the date the revision/termination took effect.

**Costs of appeal**

Under Schedule 9 Part I, paragraph 7, the Board's fees and expenses will be paid initially by the fire and rescue authority although in some circumstances, e.g. late cancellation (see above) or if the Board are of the opinion that the appeal was frivolous, vexatious or manifestly ill-founded (see below) they may require you to meet all or part of the Board's total fees and allowances.

Under Schedule 9 Part I, paragraph 8(1) you would need to meet your own expenses of attending any interview in the first place. The full charge for each appeal is on a fixed basis and reviewed from time to time. The basic charge during the period from December 2009 is £6,550 but there are penalties if the Medical Board fails to meet the requirement that appeals are completed within 17 weeks of receipt of all the medical evidence and/or if they provide the report more than 15 working days after the hearing (this can be extended with the consent of the Department in exceptional circumstances.) The penalty for missing the 15-day target is a reduction of £300 in the fee, and £300 for each 5 working days thereafter. There will be no additional charge where the Board considers that it needs to take legal advice before issuing their report. This has been taken into consideration in setting the standard fee. If such reference will result in a delay in the issue of the report, HML will seek the agreement of the Department and there will be no reduction in the fee.

Should the nature of your disability require additional specialist members of the Board, there will be an additional fee for each additional member charged at actual cost. There will also be costs if additional medical tests are required or papers have to be copied. These costs would normally be met by the fire and rescue authority.

## RULE H2

### Appeal against opinion on a medical issue

<b>Rule H2 and Part I of Schedule 9 (continued)</b>
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**Costs of appeal  
(continued)**

If your appeal is successful, under Schedule 9 Part I, paragraph 8(3) the fire and rescue authority will refund to you any expenses you have reasonably incurred (unless the Board of Medical Referees otherwise directs), so it is advisable to keep a record of them with any receipts.

Note that only your personal expenses, and the fees and expenses of any qualified medical practitioner attending the interview on your behalf, can be claimed back in this situation. There would be no reimbursement of fees or costs for solicitors, union representatives or others (e.g. spouse or partner).

If the Board decides in favour of the fire and rescue authority, and reports that the Board's opinion is that the appeal was frivolous, vexatious or manifestly ill-founded, under Schedule 9 Part I, paragraph 8(2) the fire and rescue authority can require you to meet all or part of the cost.

If there is any dispute, for the purposes of apportionment of cost, as to whether the Board's decision was in favour of the fire and rescue authority or yourself, this will be decided in the first place by the Board or, failing that, by the Secretary of State.

**Useful reference  
source**

- FSC 10/1996: proposals for setting up of Medical Appeal Boards
- FSC 8/1997: notice that tenders had been invited for Medical Appeal Boards – general background information
- FSC 11/1997: full details of new legislative and procedural changes for medical appeals prior to 1 February 2003 following the introduction of Medical Appeal Boards; amendment to Firemen's Pension Scheme Order which came into force on 1 November 1997
- FSC 5/1999: changes to details given in FSC 11/1997
- FSC 11/1999: procedures for obtaining medical records required by Medical Appeal Boards prior to 1 February 2003
- FSC 17/2000: Medical Appeal Boards – extension of contract with BUPA – revised charges and time limits prior to 1 February 2003
- FSC 2/2002: reference to judgement in *Jordan v. Cambridgeshire Fire and Rescue Service* – Board of Medical Referees may take account of medical issues only, when making a determination on degree of disablement *but note that the FPS was amended on 13.9.2004 so that the Board may also consider non-medical issues*
- FSC 14/2002: revised model medical certificates following judgement in case of *Jordan v. Cambridgeshire Fire and Rescue Service*. *These certificates were adjusted following amendments to the FPS on 13.9.2004. They were subsequently withdrawn*
- FSC 3/2003: guidance regarding changes in procedures arising from implementation of certain recommendations of the Review of Ill-Health Retirement in the Public Sector (e.g. independent qualified occupational health physicians to sign medical certificates). *Appropriate amendments were made to the FPS on 13.9.2004.*

**Rule H2 and Part I of Schedule 9 (continued)**

**Useful reference source (continued)**

- FSC 4/2003: Medical Appeal arrangements and procedures for appeals submitted to Medical Appeal Boards from 1 February 2003
- ~~FSC 21/2004: the management of medical appeals; introduction of a new form to assist in processing cases; update of list of venues for appeal hearings; key learnings; Ombudsman cases. Canceled by FPSC 1/2010~~
- Pension Ombudsman case M00758: delay by Fire and Rescue Authority in submitting medical evidence constituted maladministration.
- FSC 30/2004: amendment to Firefighters' Pension Scheme 13.9.2004 which allows Board of Medical Referees to consider non-medical issues of questions (a) to (f) of Rule H1(2).
- FSC 9/2005: notification of revised guidance on medical appeals, new forms and certificates.
- FPSC 4/2008: extension of contract for provision of Boards of Medical Referees and revised schedule of charges
- FPSC 1/2010: notification of new contract for provision of Boards of Medical Referees and new forms and certificates

**Points To Note**

1. The purpose of an appeal under Rule H2 is to see whether the Board of Medical Referees agrees that the medical opinion on which the fire and rescue authority based their decision was correct at the time it was made. It is therefore important that an appeal is made as soon as possible after the decision in question.
2. The medical appeal process is bound to take time because –
  - specialists with the necessary qualifications and experience are usually busy people with competing calls on their time,
  - the necessary exchange of correspondence takes time.

However, the Board will normally arrange the hearing and provide a report of the outcome on each case to the Department within 17 weeks after they receive all the medical records. If you are worried about the time being taken, your fire and rescue authority can normally find out for you where matters stand.

3. If your medical condition changes after your retirement, it will normally be a question of reviewing your award, rather than questioning the basis on which it was awarded. However, you should bear in mind the following –
  - if you retire voluntarily on grounds other than ill-health, and you find later that you are permanently disabled, you will not become entitled to an ill-health pension – see “Points To Note” in the explanation of Rule B3.
  - if, after your retirement on some other ground, you become permanently disabled as a result of a qualifying injury, you may then become entitled to an injury award. (This award does not depend upon your having retired on the ground that you were permanently disabled at that time – see the explanation in the archived pages of Rule B4.) This is sometimes known as an “after-appearing injury”. Again, the sooner the facts can be established, the better. The longer the period that elapses, the more difficult it may become to assess the effect of an injury.

**RULE H2**  
**Appeal against opinion on a medical issue**

**Rule H2 and Part I of Schedule 9 (continued)**

**Points To Note continued**

4. Before lodging your appeal under Rule H2 you must be certain that you are using the correct form of appeal. Remember that an appeal under Rule H2 is against the content of the medical opinion rather than the decision of the fire and rescue authority. For example, if you believe you are entitled to an injury pension, look to see if there is mention of an injury in the medical opinion. If there is not, then this is not an issue which the medical practitioner has considered and so it is not possible to argue that he/she has given an opinion which is incorrect. You should use Internal Dispute Resolution Procedures and/or Rule H3 to appeal instead.
  
5. HML agreed to identify points in the course of processing appeals under Rule H2 that might have implications for medical advisers and for fire and rescue authorities when giving opinions or making decisions under Rule H1.