RULE H1
Determination by fire and rescue authority

Rule H1 explains the power of a fire and rescue authority to determine awards and the medical issues which may need to be considered by their selected medical practitioner.

Determination of awards

Rule H1(1) states that it is for your fire and rescue authority to decide, in the first place, whether you or your dependants are entitled to any, and if so what, awards under the FPS.

Requirement for medical opinion

Some awards under the FPS are disability related. Rule H1(2) sets out the questions that should be addressed for determining aspects of eligibility for, and possibly the amount of, that type of award. The fire and rescue authority will need professional help when considering these questions. Consequently Rule H1(2) requires the fire and rescue authority, before arriving at their determination under Rule H1(1), to obtain the written opinion of an independent qualified medical practitioner selected by them. Having selected an independent qualified medical practitioner and obtained his/her opinion, that opinion is binding on the fire and rescue authority. This means that the fire and rescue authority cannot seek alternative opinions if they are not content with the one provided. This does **not** mean that the independent qualified medical practitioner decides the award. The power to determine the award rests with the fire and rescue authority under Rule H1(1). To decide the award they will take non-medical issues not covered by the opinion into account, too.

"Independent qualified medical practitioner" is defined in Schedule 1 Part I as a medical practitioner holding a diploma in occupational medicine or an equivalent or higher qualification issued by a competent authority in an EEA State, or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

For the purposes of this definition "a competent authority" has the meaning given by the General Specialist Medical Practice (Education, Training and Qualifications) Order 2003.

A medical practitioner who does not satisfy these qualification requirements cannot give the written opinion required for the determination of an award under the FPS.

To demonstrate independence, Rule H1(2A) requires the medical practitioner to certify, in the written opinion, that he/she –

- has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the opinion has been requested, and
- is not acting, nor has acted at any time, as the representative of the employee, the fire and rescue authority or any other party in relation to the same case.

This would mean, for example, that if the fire and rescue authority's medical officer has been advising on your case up to the point of retirement, he/she cannot supply the opinion required under Rule H1(2), even if he/she holds the required level of occupational health qualifications.

Rule H1 (continued)

Medical questions

If the fire and rescue authority are considering your entitlement to an ill-health award they must refer the following questions to the independent qualified medical practitioner –

- whether you are disabled
- whether any disablement is likely to be permanent
- whether you are capable of performing the duties of a regular firefighter
- whether you would be able to undertake regular employment.

The meaning of “disablement” and “permanent disablement” is given in the explanation of Rule A10. The definition of "regular firefighter" is given in Schedule 1 Part 1 and discussed in "Points To Note" in Rule A10. "Regular employment" is defined in Rule B3(7) as meaning employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of his capacity for employment arises.

Sometimes, it may be necessary for a fire and rescue authority to seek a medical opinion on other issues relating to an award. For example, they may need to consider whether a firefighter’s disability is due to misconduct or whether he/she has brought about, or substantially contributed to the disablement by his/her own default. Under Rule H1(2)(f) they may raise with the medical practitioner

- any other issue wholly or partly of a medical nature.

Medical opinion

Your fire and rescue authority will arrange for medical/occupational health records and other relevant material to be passed to their selected independent qualified medical practitioner. He/she may call for additional medical reports to help form an opinion. It is for the independent qualified medical practitioner to decide whether he/she can provide an opinion on the basis of the documentation, or if he she needs to examine you. (If, because of your refusal or “wilful or negligent failure” to be medically examined by the independent qualified medical practitioner, the fire and rescue authority cannot obtain the opinion required by Rule H1(2), Rule H1(3) gives them discretion to make a decision based on such other medical evidence as they think fit, or without medical evidence.)

The opinion must be given to the fire and rescue authority in the form of a certificate. Model certificates for this purpose are given on the Department's website at www.communities.gov.uk/firepensions.

Archived pages

Before 1 April 2006, Rule H1 explained the questions relating to injury for purposes of deciding an injury award. With effect from 1 April 2006 injury provisions transferred to the Firefighters' Compensation Scheme. In case reference has to be made to the injury questions and decisions as they featured in Rule H1, the previous material relating to injury awards follows these pages as "archived" material.

Rule H1 (continued)

Useful reference source

- FSC 11/1997: new legislative and procedural changes introduced with appointment of Regional Boards of Medical Referees
- FSC 8/1998: how degree of disablement should be assessed for retained firefighters
- FSC 11/1999: firefighter's written consent for release of all relevant medical records
- 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 for such a determination*
- FSC 14/2002: revised model medical certificates following judgement in case of Jordan v Cambridgeshire Fire and Rescue Service (see Annexe 7) *adjusted following amendments to FPS on 13.9.2004*
- FSC 3/2003: pending amendments to FPSO 1992 which require the Rule H1 medical adviser to be independent and qualified. *The appropriate amendment to the FPS was made on 13.9.2004*
- Carlier v Surrey County Council, 23.9.04: Rule A10(3) does allow for apportionment between loss of earnings attributed to a qualifying injury and those attributed to a non-qualifying injury
- FSC 30/2004: amendments relating to medical opinion
- FSC 30/2004 explanatory letter issued by Department 6.9.2004: clarification of transitional arrangements following change in definition of "regular firefighter"
- FSC 9/2005: notification of revised guidance on medical appeals, new forms and certificates
- FSC 9/2005 explanatory letter issued by Department 13.4.2005: reminder that medical opinion must be given by an independent qualified medical practitioner
- FSC 16/2005: Disability Discrimination Act – decisions about recruitment and retention must be based on the assessment of the individual against medical and occupational evidence
- FPSC 4/2005: change in definition of independent qualified medical practitioner
- FPSC 11/2006: amendment to guidance contained in FSC 30/2004 relating to the consequences of the amendment to the definition of "regular firefighter"

Points To Note

1. The need for an independent qualified medical practitioner to provide the medical opinion as required by Rule H1(2) and the direction that such an opinion would be binding on the fire and rescue authority was introduced into the FPS on 13 September 2004. Before this date the medical practitioner did not have to be independent (e.g. it could be the authority's medical officer), did not have to hold occupational health qualifications, and the opinion was not binding on the fire and rescue authority; the authority could seek an opinion from more than one medical practitioner and could disregard the contents of an opinion.

Rule H1 (continued)

Points To Note continued

2. It is helpful if independent qualified medical practitioners are asked by the fire and rescue authority to consider (if possible) all of the firefighter's background medical records (e.g. from his or her family doctor and any specialist), and also to consider all the questions on the appropriate certificate of disablement in each case (see the model certificates at Annexe 7) even where they do not appear to be relevant to an individual's circumstances. In this way there will be no room for doubt about the practitioner's opinion on each question if there is an appeal. Independent qualified medical practitioners may wish to add a supplementary statement to the certificate, about factors affecting a particular question, which can prove useful if there is an appeal (see the guidance notes accompanying the model certificates on the Department's website).

3. The fire and rescue authority should also provide the independent qualified medical practitioner with details of the firefighter's role and duties. Having regard to the definition of "regular firefighter" the independent qualified medical practitioner will be asked to give an opinion on the firefighter's ability to perform duties appropriate to his/her role other than firefighting.

4. The independent qualified medical practitioner will base his/her opinion on medical and occupational health records, records held by your family doctor and hospitals, and may seek medical reports from specialists to help form an opinion. He/she will also decide whether an opinion can be based on records and reports, or whether he/she will need to ask you to attend for a medical examination.

5. If you are receiving an ill-health pension and your fire and rescue authority need to consider under Rule K1

   - whether your disability has ceased (with a view to your possible re-instatement as a firefighter), or
   - whether you are capable of undertaking regular employment (with a view to cancelling a higher tier ill-health pension)

   they must consider a medical opinion provided by an independent qualified medical practitioner in accordance with the requirements of Rule H1.

6. Rule H1 does not apply only to medical decisions. It sets out the power of a fire and rescue authority to determine entitlement to any award under the FPS (subject to appeal). This includes an award made in respect of a pension credit member (i.e. a former spouse or civil partner entitled to a pension as a result of a pension sharing order made by a court on divorce, dissolution of civil partnership or annulment).

7. Since 1 October 2004, the employment provisions of the Disability Discrimination Act have included firefighters – see the guidance produced jointly by the Disability Rights Commission and the Chief Fire Officers Association (see FSC 16/2005).

8. BUPA Wellness agreed to identify points in the course of processing appeals under Rule H2 that might have implications for medical advisers and fire and rescue authorities when giving opinions or making decisions under Rule H1. The first of these points were published in FSC 21/2004 and appear on the "H1- Key Learning" pages which follow.

Rule H1 (continued)

Points To Note continued

9. With effect from 13 September 2004, the definition of independent qualified medical practitioner in Schedule 1 Part I was amended by the Firefighters' Pension Scheme (Amendment) (England) Order 2005, following replacement of the Specialist Medical Qualifications Order 1995 by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003. The definition is very similar to that previously contained in Schedule 1 Part I and so it is unlikely that the change had any effect on fire and rescue authorities' selection of medical practitioners for this purpose.

10. References to the determination of questions relating to injury were removed from Rule H1 with effect from 1 April 2006 when injury provisions were transferred to the Firefighters' Compensation Scheme – see "archived" material on following pages.

RULE H1
Determination by fire and rescue authority

Key Learnings

Key Learning 1: Whether an appeal was manifestly ill-founded

1. The Appellant was considered to have cervical and lumbar spondylosis, hypertension and osteo-arthritis of the hips.
2. The Board acknowledges that service injuries significantly contributed to his lumbar spondylosis. A previous appeal (1998) had already established that the cervical spondylosis was not a Qualifying Injury and furthermore there was no evidence that his hypertension or subsequent osteo-arthritis of the hips was due to any Qualifying Injury.
3. The fact that his degenerative disorders were quite widespread and have continued for years after leaving the Fire Brigade suggested that his degenerative disorders were largely constitutional in nature. His service record of injuries was not out of the ordinary.
4. The fact that his overall condition had deteriorated with age was not surprising but the effect of his Qualifying Injury had actually been diluted by the additional medical problems he had experienced hence the Degree of Disablement had not increased and was in fact lower than it was when he left the Brigade in 1994.
5. In his H2 Notice of Appeal the Appellant put forward two complaints. Firstly that the Degree of Disablement was too low and secondly his wish to know who the Brigade Medical Adviser discussed his case with prior to giving a report of his review of Disablement. This latter question cannot be grounds for an appeal but should have been addressed by the Fire Authority prior to the Hearing. The Fire and Rescue Service were not represented at the Appeal Hearing nor does there appear to have been any discussions immediately prior to the Hearing. Furthermore the Appellant clearly had a false expectation that the Appeal Board would reconsider the question of his neck condition and indeed any other medical condition in relation to a Qualifying Injury which was clearly outside the remit of the Appeal. The Appellant was under the misconception that a letter sent to him by the Personnel Department of the Fire Authority which referred to a recent Crown Court judgement affecting the current approach adopted by Boards of Medical Referees in determining the percentage Degree of Disablement computation, meant that much wider issues would be considered by the Board. This was a false interpretation of that Judgement and if he had had a further meeting with the Fire Authority prior to the Appeal it is possible that he may have withdrawn his appeal if the situation had been clarified.
6. The Appellant did not provide any new medical evidence or any specific new submission and the Board did seriously consider whether the appeal was manifestly ill-founded. However the Board felt that this was based on the Appellant's lack of medical knowledge and training and a lack of opportunity to fully discuss the issues with the Fire Authority and are reluctant to recommend application of this censure.
7. The questions that are normally to be addressed are:
    - Was the appeal brought before the Board obviously unsustainable or not properly arguable?
    - The question must be looked at in the light of the information known to the appellant at the time that he instituted and pursued his appeal.
    - Has the firefighter a sensible and proper reason based on the relevant facts or circumstances known to him to doubt the accuracy of the medical practitioner's opinion?
    - The approach of the Board to this question must not be with the benefits of hindsight and having regard to the examination of the appellant by the third Board member.

Key Learnings (continued)

Key Learning 2: Whether a firefighter with a lower leg prosthesis should be ill-health retired

1. The loading limitation of the lower leg prosthesis is considered to be of critical importance, the demands of operational firefighting being regarded as likely, on occasions, to exceed both the physiological limits of the amputation stump and the design limits of the Appellant's current prosthetic appliance.
2. Whilst recognising that the loading limit of the Appellant's current prosthetic appliance can be overcome by using an appliance designed to withstand greater loading, it was also noted that such an alternative would deprive the Appellant of the increased level of ankle joint mobility provided by the current model of prosthesis.
3. Of equal importance is the issue of the Appellant's aerobic capacity, it being recognised within the scientific literature that walking with a lower limb prosthesis requires greater energy consumption than is the case for the able-bodied. Consequently, in the instant case, the percentage of aerobic capacity available for operational firefighting would inevitably be reduced thereby compromising the Appellant's ability to perform in situations in which the maximal exertion may be required.
4. The absence of proprioceptive sensation from the lost joints, muscles and tendons of the right lower limb and the loss of motor power due to absent muscles has had a substantially adverse effect upon the Appellant's balance and stability, as demonstrated during the Third Board Member's clinical assessment. This situation is incompatible with both the personal safety of the Appellant and the general safety of other firefighters in a wide range of operational firefighting situations particularly activities working on ladders or at heights.

Key Learnings (continued)

Key Learning 3: Appeal against ill-health retirement for reasons of monocular vision

1. The Appellant has one functioning eye and is thus monocular, his other eye having been surgically enucleated following the diagnosis of a serious eye condition. He feels well in terms of his general ill-health.
2. Monocularity is likely to pose significant additional risks on the fireground compared to the firefighter's previous binocular state, both to himself and to others who might be affected by his actions or inactions in the event of a hazard arising.
3. For monocular individuals, protecting and safeguarding the remaining "good" eye is of paramount importance. Firefighting carries appreciable risks of sustaining eye injuries (ref. Owen CG, Margrain TH, Woodward EG: *Aetiology and prevalence of eye injuries within the United Kingdom fire service.* Eye 1995;9: 54-8) and, while assiduous compliance with wearing eye protectors would substantially reduce the risk of catastrophic eye injury and total blindness, this is unlikely to be an assured preventive. Personal protective equipment, while extremely helpful in hazardous situations, is seldom recommended as an effective control measure in itself.
4. The Appellant's monocularity does not meet the Group 2 driving standard (Medical Aspects of Fitness to Drive, Medical Commission on Accident Prevention, HMSO 1995) and he would therefore not be eligible to drive a large goods vehicle or passenger carrying vehicle, though the Board acknowledged that this issue does not, in itself, render the Appellant unsuitable to continue in employment as a firefighter.
5. In view of the medical evidence presented, the Board judged the Appellant to be prematurely disabled for the regular duties of a firefighter.
6. In reaching their conclusions, the Board considered the following to be relevant:
   - The Appellant's field of peripheral vision was reduced, compared to a person with two healthy eyes. There would be an increased, and significant, risk of inadvertent collision with objects on the right side of his visual field, particularly in certain environmental conditions, e.g. smoke, glare. Wearing breathing apparatus is likely to further compromise his field of vision.
   - True stereopsis is never possible with one eye, even though monocular persons do rely more on clues to aid perception of distance or depth, e.g. relative size, shadows. Binocular vision, however, enables optimum stereoscopic perception of depth and perception of objects in three dimensions, facilitating manipulation, reaching and balance.
   - Monocularity reduces perception of convexity and concavity of objects
   - Monocularity may well compromise the accurate pitching of ladders at times, even though the person may be able to demonstrate his ability to do so satisfactorily in test conditions.
   - It is accepted that adverse environmental conditions may seriously impair the sight of any firefighter at times, during the course of operational duties. However, there are likely to be many environmental situations that cause partly obscured vision, perhaps intermittently during the course of an incident, when the adequacy of a firefighter's residual visual capacity is important in a safety sense. Residual vision would afford a protective degree of perception, enabling appropriate action to be taken that might be crucial to health and safety, possibly life-saving.
7. The Board considered that the Appellant was permanently unfit for firefighting duties because of his monocularity, and surgical enucleation of the right eye.

Rule H1 extract

Requirement for medical opinion

Some awards under the FPS are disability or injury related. Rule H1(2) sets out the questions that should be addressed for determining aspects of eligibility for, and possibly the amount of, that type of award. The fire and rescue authority will need professional help when considering these questions. Consequently Rule H1(2) requires the fire and rescue authority, before arriving at their determination under Rule H1(1), to obtain the written opinion of an independent qualified medical practitioner selected by them. Having selected an independent qualified medical practitioner and obtained his/her opinion, that opinion is binding on the fire and rescue authority. This means that the fire and rescue authority cannot seek alternative opinions if they are not content with the one provided. This does **not** mean that the independent qualified medical practitioner decides the award. The power to determine the award rests with the fire and rescue authority under Rule H1(1). To decide the award they will take non-medical issues not covered by the opinion into account, too.

Medical questions

If the fire and rescue authority need to consider whether your infirmity was brought about by a qualifying injury (as explained in Rules A9 and A11) for the purposes of deciding if you are entitled to an injury award, they must also refer the following issues to their selected independent qualified medical practitioner

- whether your disablement was occasioned by a qualifying injury
- the degree of disablement.

Sometimes, it may be necessary for a fire and rescue authority to seek a medical opinion on other issues relating to an award. For example, they may need to consider whether a firefighter's disability or injury is due to misconduct or whether he/she has brought about, or substantially contributed to the disablement by his/her own default. Under Rule H1(2)(f) they may raise with the medical practitioner any other issue wholly or partly of a medical nature.

Points To Note

1. If an injury award is being considered, the fire and rescue authority will inform the independent qualified medical practitioner whether an incident occurred in the execution of duty. It will be for the independent qualified medical practitioner to give an opinion on what effect a particular injury may have had. It is important that a firefighter should always report any significant incident on duty, in case a question of disablement should arise later.

2. In the case of degree of disablement, the independent qualified medical practitioner must address all the medical issues which need to be considered. The Department's website at www.communities.gov.uk/firepensions provides model forms which cater for this. The relevant form should be completed and signed by the independent qualified medical practitioner. To arrive at the degree of disablement percentage used for assessing the injury award, non-medical issues need to be considered, too. Account must be taken of the firefighter's qualifications, skills and training so that potential earnings outside the fire and rescue service can be assessed. The form "Assessment Form – Degree of Disablement" is provided for this purpose. This, too, must be signed by the independent qualified medical practitioner.

Rule H1 Extract

Points To Note continued

3. The fire and rescue authority can decide how it wishes to administer the completion of the Assessment of Degree of Disablement Form. For example, they could request the independent qualified medical practitioner to use his/her occupational health experience to decide the firefighter's potential earnings outside the fire and rescue service and to calculate the percentage degree of disablement. In order to do this, the fire and rescue authority will have to provide the medical practitioner with full details of the firefighter's qualifications skills, training, etc. They would issue the Assessment of Degree of Disablement Form to the medical practitioner with the relevant medical certificate and the medical practitioner would return both forms completed and signed (assuming of course, that the medical practitioner is of the view that the disability has been occasioned by a qualifying injury – if not, the question of degree of disablement would not arise). Alternatively, they could issue just the relevant medical certificate to the independent qualified medical practitioner initially. On its return, if the medical practitioner has indicated that the disability was occasioned by a qualifying injury, the assessment of degree of disablement form could be completed, having regard to the medical opinion, by a suitable person within the fire and rescue authority e.g. the Human Resources Officer, or by an employment specialist. If completed in this way it must be referred back to the independent qualified medical practitioner for final signature to certify that he/she is content that the occupations selected for comparison/assessment purposes are within the medical capability of the firefighter. It is also essential that consideration is given to apportionment when the degree of disablement is calculated as under the terms of the Scheme this is a question which must be considered by the medical practitioner.

4. If you are receiving an ill-health pension and your fire and rescue authority need to consider under Rule K1 whether your disability has ceased (with a view to your possible re-instatement as a firefighter) they must consider a medical opinion provided by an independent qualified medical practitioner in accordance with the requirements of Rule H1.

5. Similarly, if you are entitled to an injury pension under Rule B4 and your fire and rescue authority review your entitlement in accordance with Rule K2, they must consider a medical opinion from an independent qualified medical practitioner in accordance with the requirements of Rule H1, following the guidance given above.

6. The firefighter has a right to request a copy of the opinion obtained under Rule H1 when the fire and rescue authority notify him/her of their determination. If a decision as to degree of disablement has been made in the case of an injury award, this forms part of the medical opinion and the firefighter should be supplied with both the medical certificate and the degree of disablement assessment form.