



Department
for Work &
Pensions

Secretary of State's Response

Section 1: Personal details

Name: <Title> <Forenames> <Surname>

Address:

NI No: <NINo>

Benefit: <Benefit Type> NEW REGS

Date of decision: <Decision Date>

Date decision notified: <SODN>

Date of reconsideration:

Date appeal received: <Date Lodged>

**Decision maker's name
and address:** <Decision Maker>

**Name and address of the
decision maker's
representative (if any):**

**Address whis/her
documents for the
decision maker may be
sent or delivered:**

**Name and address of any
othis/her respondents
and their representatives
(if any):** <RepName>

Section 2: Schedule of evidence

Comment [M1]: List all evidence included in the submission

Document No.	Date of document	Date of receipt/issue	Brief description of document

Section 3: The decision

Section 4: The facts of the case

1. On {date} <Title> <Forenames> <Surname> made an appeal against the outcome decision dated {date} which stated that <he/she> did not have Limited Capability for Work. <Title> <Surname> was awarded Employment and Support Allowance at the Assessment Rate pending the outcome of that appeal from zAwardPen.

Comment [M2]: Date appeal lodged

Comment [M3]: Initial disallowance decision

2. On {date} the First-tier Tribunal allowed the appeal and determined that <Title> <Name Surname> had limited capability for work but did not have limited capability for work-related activity. Those determinations are conclusive for the purposes of the award made from zAwardPen pending the outcome of that appeal.

Comment [M4]: Tribunal decision date

3. There has been no reported change in <Title> <Surname>'s circumstances since zAwardPen

4. On {date} the Decision Maker revised the decision dated zAwardPen awarding Employment and Support Allowance. The revised decision was that <Title> <Name Surname> was entitled to Employment and Support Allowance including the work-related activity component from and including zAwardPen.

Comment [M5]: Date the Award pending appeal disposal (allowed) was made

5. On {date} <Title><Surname> appealed against the decision on the grounds that

Comment [M6]: Date SG appeal was lodged

6. The decision of <date> was reconsidered on <date> but not revised.

Section 5: The response

1. Where the appeal is successful, the First Tier Tribunal's findings of fact and determination are conclusive for the purposes of whether the claimant has Limited Capability for Work or Limited Capability for Work Related Activity in their current entitlement to ESA

Employment and Support Allowance Regulations 2008 reg. 147A (6)

2. The above does not apply where, due to a change of circumstances after entitlement to which this regulation applies began, the Secretary of State is satisfied that it is no longer appropriate to rely on such finding or determination.

Employment and Support Allowance Regulations 2008 reg. 147A (7)

3. A change of circumstances refers to the claimant is suffering a new medical condition other than that originally notified when entitlement began or that the original medical condition has significantly worsened.

4. The term "significantly worsened" is not defined in the Regulations and, I submit, should be given its everyday meaning. I submit that in this instance a claimant's condition will be deemed to have "significantly worsened" if they now satisfy the criteria for an award of Limited Capability for Work Related Activity due to the award of one or more of the prescribed descriptors in schedule 3 or by the award of exceptional circumstances as defined by Regulation 37. I would submit that based on the available evidence <Title><Surname> has correctly been awarded the Work Related Activity component for ESA purposes. For completeness a copy of the Schedule 3 descriptors is included as part of this submission.

5. I also submit that <Title><Surname> has not notified a new medical condition.

6. I therefore invite the tribunal to uphold the decision of {date} that <Title><Surname> does not have Limited Capability for Work Related Activity.

Comment [M7]: Date the Award pending appeal disposal (allowed) was made

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at:
<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

Reported decisions of the Social Security Commissioners from 1991 can be accessed on-line via the DWP's website at:
<http://www.dwp.gov.uk/commdecisions/index.asp>