VeRBosity Volume 16 No. 4

Contents

October - December 2000

Editor's notes

This edition of *VeRBosity* contains reports on six Federal Court decisions relating to veterans' matters handed down in the period from October to December 2000.

The cases of *Harris* and *Mason* both deal with the definition of "trauma to the lumbar spine" in the Statements of Principles. In *Cook* and *Borrett*, the Court examined whether the AAT adopted the correct approach in determining "reasonable hypothesis" cases. *Webb* relates to the enforceability of a pre-hearing agreement at the AAT. *Kershaw* deals with lifestyle assessment for the purposes of the Extreme Disablement Adjustment.

This edition includes reports on selected AAT decisions handed down in the period from October to December 2000. Information is also included about Statements of Principles issued recently by the Repatriation Medical Authority and matters currently under formal investigation.

Robert Kennedy
Editor

Training Information Program

What is TIP?

TIP is a result of a government initiative announced in the 1994/95 Budget when specified expenditure was authorised to train and resource Ex-Service Organisation (ESO) pension officers, welfare officers and advocates.

What sort of training does TIP provide?

TIP provides ESO pension officers, welfare officers, and advocates with specific training to enable them to assist veterans and their dependants in accessing repatriation benefits. Pension officer courses provide participants with information relating to repatriation benefits, as well as details of how claims and applications are determined. Welfare officer courses on the other hand provide information relating to issues of veterans' health, housing and other community services available outside of compensation. TIP also runs courses on advocacy. These are designed to assist the more experienced ESO practitioner in preparing cases for review before the Veterans' Review Board (VRB) and the Administrative Appeals Tribunal (AAT). Participants for these courses are required to demonstrate that they have had suitable experience in this area and completed prerequisite TIP courses.

How is TIP administered?

TIP has been structured so that ESO representatives participate in the planning and delivery of training courses. State Consultative Committees, comprising experienced practitioners from a wide range of ex-service organisations, have been established in every State. These Committees meet regularly to discuss relevant issues and plan training programs.

How do I access TIP?

The courses provided by TIP offer a wide range of training activities including courses for advocates, pensions officers, case officers, and welfare officers. Courses are programmed 6 months in advance. Local ESOs are notified of courses being conducted in their area. If you are interested in attending a course you should complete and submit a nomination form. The nomination must be endorsed by your local organisation.

Who runs the courses and where are they held?

Members of the State Consultative Group run TIP courses. This includes staff from DVA State Offices and experienced ESO practitioners. Courses vary from one, two or three days depending on the content and the experience of the participants. TIP courses are held throughout Australia from capital cities to regional centres. TIP is endeavouring to provide training access to all ESO volunteers with courses being conducted in rural and remote areas. The use of specially designed training packages ensures consistency of training nationally.

Certificates of Attendance?

In some States, upon completion of a course, participants are issued with a "Certificate of Attendance". In States where certificates are not provided a letter confirming attendance can be requested from the State Consultative Committee.

Further information

Further information about TIP may be obtained from DVA State Offices.

Administrative Appeals Tribunal

Re Olsen and Repatriation Commission

Lewis

N1998/1836
18 October 2000

Statements of Principles - whether accrued rights & liabilities

The Tribunal has been required to deal on a number of occasions with the situation where Statements of Principles have been amended or revoked and replaced by more favourable SoPs during the appeal process. In those circumstances, is the AAT obliged to apply the SoP as in force at the date of the Repatriation Commission's decision or can it apply the later (more favourable) SoP?

In most cases to date, the AAT has said that in light of the Full Court's decision in *Repatriation Commission v Keeley*, it is obliged to apply the SoP in force at the date of the Repatriation Commission's decision. Thus, in *Re Reading* (2000) and *Re Ryan* (2000) the AAT applied the earlier less favourable SoP, thereby refusing the claims in both cases. (See 16 *VeRBosity* 72)

In *Re Olsen*, the AAT took a different approach. The AAT applied the SoP currently in force after finding that the applicant could not succeed in terms of the earlier SoP. Mr Olsen was claiming that his right foot injury was caused by physical training during his service in the RAAF from 1975 to 1994. The AAT found that he could not satisfy the SoP in force at the date of the Commission's decision (No 38 of 1996) but that he could meet factor 5(c) in the new SoP (No 4 of 2000) which provides:

> "(c) running on average at least 20 km/week in the six months immediately before the clinical onset of plantar fasciitis;"

No accrued rights

Senior Member Lewis rejected a submission by the Repatriation Commission that the AAT was obliged to apply the SoP in force at the time of the primary decision under review. She said on this point:

> "The decision of the Full Court in *Keeley* is about the preservation of the appellant's right where a new Statement of Principles was less favourable than the one applicable at the time the primary decision was made. In the matter now before the Tribunal there is no issue about preserving the Applicant's rights as they existed at the time of the primary decision. The Respondent [Commission] appears to be asserting that the Applicant has an *obligation* to have his matter determined under the 1996 Statement of Principles.
>
> In coming to its decision, the Tribunal relies on the decision of Mathews J sitting as President of the Tribunal in *Re Zoarder and Secretary, Department of Social Security* (1998) 26 AAR 342, when she said (at 350) -
>
> > 'The "rights" which s 8(c) [of the *Acts Interpretation Act 1901*] is designed to preserve are rights, albeit conditional or inchoate ones, which would otherwise be lost upon the repeal of the legislation in question. In other

> words, the section applies where the change in the law would otherwise deprive a claimant of rights already accrued. It operates to prevent a claimant being unfairly disadvantaged by changes in the law between the making of a claim and the time of its determination: *Re Reilly and Secretary, Department of Social Security* (1987) 12 ALD 407 at 414; 7 AAR 130 at 134. Accordingly, it will normally (if not invariably) only apply to preserve rights where the change in the law is disadvantageous to the person asserting the right. It is difficult to conceive of a situation where the law has moved from a restrictive to a less restrictive regime where the applicant could be said to have an accrued right which will require preservation under s 8(c). This is precisely what has happened here. There was in my view no right of the applicants which needed protection under s 8(c).'

The Tribunal was referred by the Respondent to the decision [in] *Re Reading and Repatriation Commission* [2000] AATA 841, in which the Tribunal constituted by Deputy President Forgie and Capt. Keane disagreed with the abovementioned passage of Mathews J [in] *Re Zoarder* and decided that the Statement of Principles in place at the time of the primary decision **must** be applied. The Tribunal said -

> 'The only difference between the situation in this case and that in *Keeley* is that the outcome is more beneficial to the claimant for the person. The other factors taken into account in *Keeley* remain the same. That is to say, the scheme of the Act and the need for consistency of decision making remain the same. There has been a change in the claimants' substantive right although, on this occasion, the change has been to lower the bar to the remedy.'

The Tribunal [in] *Re Reading* was concerned that the only way to maintain consistency of decision making is to apply the decision of the Full Federal Court in *Keeley* equally "whether the change to the later SoP is beneficial to claimants or not". That position was also followed by the Tribunal [in] *Re Ryan and Repatriation Commission* [2000] AATA 849 (Deputy President Forrest, Mr Argent and Dr Fricker).

The Respondent submitted that the abovementioned decisions of the Tribunal were correct, and also urged the Tribunal to follow them for the sake of consistency.

The Tribunal is always concerned about the consistency of its decision making, and also notes the importance for the Respondent in having a consistent approach to its own decision making. However, when the Tribunal is faced with conflicting decisions, that is *Re Zoarder* on the one hand and *Re Reading* and *Re Ryan* on the other, the basis for inconsistency has been set already. With respect, I disagree with the reasoning on the issue of accrued rights provided by the learned Deputy Presidents in *Reading* and *Ryan.*

On the basis of the view already expressed in relation to the application of s 8 of the AIA by Mathews J, and in this case s 50 of the AIA, the Tribunal finds the Applicant is not obliged to rely on his so called accrued rights, because those sections of the AIA only apply

to preserve a right where the change in the Statement of Principles would be disadvantageous to him. In this case there is no right of the Applicant that needs protection. Moreover, there is no legislative basis in the Act requiring the Tribunal to apply the Statement of Principles applicable at the time of the primary decision. In coming to this decision the Tribunal has also taken into account the comments by the majority in *Keeley* to the effect that the Act is beneficial legislation and that Parliament intended, that in conducting the review preference should be given to a construction of substantive provisions least likely to cause unfairness in results.

Therefore, as the Applicant meets the provisions of Instrument No 4 of 2000, the Tribunal is reasonably satisfied that his condition of plantar fasciitis and calcaneal spur right foot is a defence caused condition."

Formal decision

The Tribunal set aside the decision under review and substituted its decision that Mr Olsen's plantar fasciitis with calcaneal spur right foot is defence-caused.

[Ed: In the case of *Re Brown* (19 December 2000), Senior Member Lewis also applied a later, more favourable SoP. The Repatriation Commission has lodged appeals to the Federal Court against both decisions.

On 28 November 2000, the Repatriation Commission was refused Special leave to appeal to the High Court in the *Keeley* case.]

Re Marshall and Repatriation Commission

Ettinger & Thorpe

N1998/1161
1 November 2000

Spermatogenic disorder - whether a disease - herbicide & pesticide exposure in Vietnam

Mr Marshall applied to the Tribunal for review of a decision that "recurrent miscarriages with different spouses" were not war-caused. He served in Vietnam in 1969-70 and was involved with the maintenance of a power station at Nui Dat. He told the Tribunal that he drank the local water and was exposed to chemicals and defoliants which were in constant use during his operational service, but he was never sprayed directly.

Following his return from Vietnam, Mr Marshall had relationships with three different women who each became pregnant, but none was able to carry a child to full term. He claimed that the inability of his partners to have children was the result of his exposure to chemicals in Vietnam.

Is spermatogenic disorder a disease?

The Tribunal accepted that the correct diagnosis of Mr Marshall's condition was "spermatogenic disorder". The Tribunal had to determine whether this condition was a "disease" as defined in the *VE Act*.

Section 5D of the *VE Act* provides:

"In this Act, unless the contrary intention appears:

…

disease means:

(a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or

(b) the recurrence of such an ailment, disorder, defect or morbid condition;

but does not include:

(c) the aggravation of such an ailment, disorder, defect or morbid condition; or

(d) a temporary departure from:

(i) the normal physiological state; or

(ii) the accepted ranges of physiological or biochemical measures;

that results from normal physiological stress (for example, the effect of exercise on blood pressure) or the temporary effect of extraneous agents (for example, alcohol on blood cholesterol levels)."

The Tribunal found that Mr Marshall's condition met the definition in section 5D of the *VE Act* in that he was suffering a physical ailment or disorder, namely spermatogenic disorder which had, on the balance of probabilities, caused recurrent miscarriages in the three partners with whom he had had long term relationships after his operational service. There was no indication that his spermatogenic disorder was a temporary departure from his normal physiological state.

Reasonable hypothesis

Medical reports before the Tribunal supported Mr Marshall's claim that the inability of his partners to have children was the result of his service in Vietnam. Dr Jacobs, urologist postulated that if mutations of the sperm had occurred, it was most likely that this was during his operational service. Dr McCullagh, physician researcher, and Dr Whitton, reproductive biologist, also supported a link with exposure to chemicals in Vietnam.

The Tribunal accepted that the material raised a reasonable hypothesis that the veteran's condition was related to his service in Vietnam. It decided that his spermatogenic disorder was war-caused in terms of section 9 of the *VE Act*.

Formal decision

The Tribunal set aside the decision under review and substituted its decision that Mr Marshall's spermatogenic disorder was war-caused.

Re Hill and Repatriation Commission

Forgie

D1998/19
20 November 2000

Post traumatic stress disorder - aircraft accident in South China Sea

Mr Hill applied for review of a decision that his post traumatic stress disorder was not war-caused. He served in the RAN from 1965 to 1978. He had operational service in *HMAS Melbourne* in Vietnamese waters from 25 April 1966 to 6 May 1966 and from 30 May 1966 to 9 June 1966. He also had eligible defence service from 7 December 1972 to 19 March 1978.

Mr Hill sought to rely on several incidents during his naval service as having caused his PTSD. The first was when he received an electric shock on board *HMAS Melbourne* on 16 March 1966. The second was on 28 April 1966 when a Sea Venom aircraft landing on *HMAS Melbourne* crashed into the South China Sea. He claimed that he saw a pilot trying to escape through the canopy of the aircraft as it sank. A third incident was in New Guinea shortly before independence when some PNG sailors rioted.

Loss of Sea Venom aircraft

The Sea Venom was a two seater aircraft accommodating a pilot and a radar operator/navigator sitting to the right of, and slightly behind, the pilot. The aircraft was fitted with ejection seats and an ejection canopy.

Mr Straczek from the Department of Defence, Naval History Directorate, reported as follows on the Sea Venom incident:

> "A listing of naval aviation incidents compiled by a former naval aviator states that the aircraft made a good approach and engaged the number two arrester wire on landing. However, the port knuckle parted and the pilot applied full power in an attempt to overshoot the flight deck, but the aircraft crashed over the side. Both aircrew ejected at sea level. The pilot, Lieutenant (P) J R Da Costa RAN, was rescued by helicopter. The observer, Lieutenant (O) E G Kennell RAN, disappeared and his body was not recovered."

PTSD not war-caused

The Tribunal decided that as the electric shock and PNG incident occurred outside periods of eligible service, they were not relevant to Mr Hill's application. The only incident that occurred during operational service was the loss of the Sea Venom aircraft.

The Tribunal noted that a psychiatrist had made a diagnosis of PTSD. The report stated that the electrocution was "probably the precipitating factor" and the condition had been compounded by other experiences, especially those in the riot in New Guinea.

A hypothesis was put forward that seeing the pilot unsuccessfully struggling to escape from the cockpit of the crashed Sea Venom either led to his suffering from PTSD or to the clinical worsening of PTSD that he had already suffered as a result of the electric shock.

The Tribunal said that a traumatic event in terms of the SoP must be both an event of a certain sort and leading to a person's having the specified response. The Tribunal concluded although the material pointed to Mr Hill meeting some of the criteria required for a finding of PTSD, it did not point to all of them. There was no material pointing to his PTSD arising out of, or being attributable to the Sea Venom incident or events in his eligible war service. There was also no material pointing to clinical worsening of the condition as a result of the Sea Venom incident.

The Tribunal concluded:

> "If I am incorrect in my conclusion, I am satisfied that the truth of a fact inconsistent with the hypothesis has been proved beyond reasonable doubt. That relates to the man who Mr Hill said was trapped in the cockpit. Having regard to the material in the publication, *Sea Fury, Firefly and Sea Venom*, by Stewart Wilson, as well as the extract from *HMAS Melbourne 25 Years* by Ross Gillett, I find beyond reasonable doubt that the Sea Venom was a two seater aircraft. On the same basis, I also find that the model of aircraft that crashed had both ejection seats and an ejection canopy. I also find that both the pilot and observer ejected from the aircraft. As there were only two people in the aircraft and as they had ejected, there could not have been any person trapped under the canopy. Even if only one person had ejected, one could not be trapped under the canopy as it must have ejected when the other person ejected. Mr Hill could not have seen a person trying to get out of the aircraft as it sank. It follows that I am satisfied that the truth of a fact inconsistent with the hypothesis has

been proved beyond reasonable doubt."

Formal decision

The Tribunal affirmed the decision that Mr Hill's post traumatic stress disorder was not war-caused.

Re Stewart and Repatriation Commission

Lewis

N1995/125
22 November 2000

Jurisdiction - epilepsy - whether accepted condition reviewable by Tribunal

Mr Stewart died in 1997 before the hearing of his application was completed and his widow continued the application as his legal personal representative. He had applied to the Tribunal for review of a decision of the Repatriation Commission which determined that post-meningitic epilepsy was war-caused and granted disability pension at 10 percent of the General rate. The decision also determined that essential thrombocytosis and osteoarthritis right knee were not war-caused.

Submissions

At the Tribunal hearing, the question arose as to whether the Tribunal could amend the diagnosis of the condition accepted as "post-meningitic epilepsy".

Dr Joffe, neurologist, who originally diagnosed post-meningitic epilepsy, reviewed his opinion in light of findings made during an autopsy of the late veteran's brain tissue. The autopsy findings, in particular the absence of any evidence of post-meningitic scarring in the brain, prompted Dr Joffe to conclude that the veteran's late-onset epilepsy was attributable to cerebrovascular disease and not to meningitis.

The Commission submitted that as a result of the autopsy findings, the diagnosis of "post-meningitic epilepsy" was incorrect, that the veteran had not suffered from meningitis and did not suffer from a war-caused disease of post-meningitic epilepsy. In this regard the Commission relied on the decision of the Federal Court in *Fitzmaurice v Repatriation Commission* (1989) 19 ALD 297 as authority for the Tribunal having power to review the whole, or any part of, the decision under review.

It was submitted for Mrs Stewart that the application for review by the VRB did not raise for re-consideration the delegate's favourable finding that post-meningitic epilepsy was war-caused. Davies J stated in *Fitzmaurice* at 301:

> "Once a favourable determination as to entitlement has been made under s 19(2) that determination continues to apply unless a review is undertaken by the Commission under s 31(4) or (6)."

It was noted that Wilcox J in *Fitzmaurice* used the phrase "everything decided by the Board in substitution for the original decision". It was submitted that this indicated that it was only part of the original decision reviewed and decided by the VRB which was now the subject of review by the Tribunal.

Whilst the Tribunal had all the powers of the Commission, as exercised by the delegate, it was submitted the delegate had a limited power under s 31 to review a favourable decision. It was clear from *Fletcher v Commissioner of Taxation* (1988) 19 FCR 442 at 453 that the Tribunal had only the original decision-maker's powers and nothing more. It was submitted that the delegate had very limited power to review a favourable decision.

It was submitted that the late veteran did not seek review under s 135 of that part of the decision in relation to post-meningitic epilepsy, and consequently it was neither affirmed nor set aside by the VRB. Thus it was not part of the decision under review as defined in s 175(1) of the Act.

Tribunal's jurisdiction

The Tribunal concluded that it did have jurisdiction to review the decision that accepted post-meningitic epilepsy as war-caused. The Tribunal said on this point:

> "The Tribunal considers that *Fletcher* is authority for the proposition that the Tribunal has all the powers of the Commission, as exercised by the delegate in making the primary decision. The Tribunal determines that the decision under review, under the head of this application, is the *whole* of the decision of the delegate of the Repatriation Commission dated 22 October 1993, including that part that determined that the veteran's post-meningitic epilepsy was war-caused.
>
> Section 135 of the Act provides for a person who has made a claim for pension to seek review by the VRB if 'dissatisfied with any decision of the Commission in respect of the claim or application' and indeed, the Tribunal notes that by application dated 1 December 1993, the veteran did so. In his application he described the decision he sought to be reviewed, viz. 'I wish to have the above determination reviewed by the Veterans' Review Board', that being 'Determination dated 22 October 1993'. That letter makes it clear that the *whole* of the decision by the Delegate was the subject of the application for review by the VRB.
>
> On the authority of the Federal Court in *Stafford v Repatriation Commission* (1995) 36 ALD 578, the Tribunal considers that the *whole* of the decision of the delegate was to be reviewed by the VRB.
>
> …
>
> The Tribunal finds that it has jurisdiction to review that part of the primary decision that accepted post-meningitic epilepsy as war-caused. This is consistent with the decisions of the Federal Court in *Fitzmaurice* and *Fletcher*.
>
> Moreover, in circumstances such as those in this case, being facts that were not before the Commission when the decision to grant pension in respect of post-meningitic epilepsy was made, the Commission also had power to review pursuant to s 31(6) of the Act, that it did not choose to exercise."

Formal decision

The Tribunal decided to vary the diagnosis to read "epilepsy" and determined that this disease was war-caused. The Tribunal assessed pension at 20 percent of the General rate and affirmed decisions that essential thrombocytosis and osteoarthritis right knee were not war-caused.

Re Hampton and Repatriation Commission

Gibbs & Re

V1999/869
19 December 2000

Dental caries - absence of flouride & poor oral hygiene

Mr Hampton lodged an application to the Tribunal for review of a decision that his dental caries was not war-caused. He served in the RAAF during World War 2 and had operational service outside Australia.

When Mr Hampton enlisted, he had six teeth missing. A further tooth on which dental work had been performed prior to enlistment was extracted during service.

Submissions

Mr Hampton's counsel submitted that the tooth extraction during operational service constituted an "occurrence" in terms of s 9(1)(a) of the *VE Act* and that the Statement of Principles for dental caries was therefore not applicable.

The Repatriation Commission submitted that the purpose of section 9 of the *VE Act* is to set out the various heads of liability under which an injury/disease may be linked to a veteran's operational or eligible service. These sections establish a causal threshold in terms of liability, but are not conclusive of liability. They do not displace the legislative provisions in respect of reasonable hypothesis, or the Statements of Principles. The existence of the system of SoPs requires both satisfaction of a specified factor or factors and the existence of a causal relationship (section 9) for there to be reasonable satisfaction or a reasonable hypothesis of a link to the veteran's eligible or operational service.

The Tribunal agreed with the Commission's submission that the veteran was required to satisfy the factors in the SoPs.

Dental caries

Mr Hampton sought to rely on the following factors in SoP No 366 of 1995 relating to dental caries:

> "(b) consuming only fluoride-free drinking-water in the absence of fluoride supplementation for a continuous period of at least two years within the five years immediately before the clinical onset of dental caries; or
>
> …
>
> (d) inability to maintain oral hygiene whilst consuming a diet containing fermentable dietary carbohydrates for a continuous period of at least 90 days within the one year immediately before the clinical onset of dental caries;"

Tribunal's findings

In relation to **factor 1(b)** of the SoP, the Tribunal found that the consumption of fluoride-free drinking water by Mr Hampton was not related to any service rendered by him, but rather it was a situation that applied to everyone, civilian and servicemen alike. The Tribunal noted that fluoride supplementation did not commence in Australia until sometime in the 1960s.

In relation to **factor 1(d)** of the SoP, the Tribunal said that the evidence did not support an assertion that the veteran was unable to maintain oral hygiene whilst consuming a diet containing fermentable dietary carbohydrates for a continuous period of at least 90 days, within the one year immediately before the clinical onset of dental caries. Apart from the question of diet, there was evidence in this case that clinical onset of the veteran's dental caries occurred well before his enlistment in 1942.

Formal decision

The Tribunal affirmed the decision that Mr Hampton's dental caries was not war-caused.

Federal Court of Australia

Mason v Repatriation Commission

Weinberg J

FCA 1409
10 October 2000

Lumbar spondylosis - Statement of Principles - acute symptoms and signs of pain

Mr Mason appealed to the Federal Court against a decision of the Tribunal that his lumbar spondylosis was not war-caused. He served in the RAAF during World War 2 and contended that his back condition was related to his operational service. He gave evidence at the Tribunal of having jarred his back in jumping from the wings of aircraft to the ground while refuelling the aircraft. He experienced some pain at the time but could not recall how long it lasted.

Trauma to lumbar spine

The Tribunal was required to apply Statement of Principles No 165 of 1996, in relation to lumbar spondylosis. One factor in Clause 5 that would support a reasonable hypothesis connecting lumbar spondylosis with operational service was:

> "(g) suffering a trauma to the lumbar spine before the clinical onset of lumbar spondylosis;"

The term "trauma to the lumbar spine" is defined in clause 7 of the SoP:

> " **'trauma to the lumbar spine'** means an injury to the lumbar spine caused by the force of an extraneous physical or mechanical agent that causes the development, within 24 hours of the injury being sustained, of acute symptoms and signs of pain, tenderness, and altered mobility or range of movement of that part of the spine, and where such acute symptoms and signs last for a period of at least one week immediately after the injury occurs, unless medical intervention has occurred. Where medical intervention for the injury has occurred (for example splinting, corticosteroid injection, surgery), and there is evidence relating to the extent of injury and treatment, such evidence may be considered;"

Submissions

Mr Mason's counsel submitted that the Tribunal had made several errors of law in applying ss 120 and 120A of the *VE Act* and in the application and interpretation of the SoP.

Counsel submitted that the Tribunal was required, as a first step, to determine whether the material raised a reasonable hypothesis in terms of s 120(3). In determining that question, it was permitted to assume that the "trauma" had taken place during Mr Mason's service. It was submitted that the approach taken by the Tribunal was contrary to that outlined by the Full Court in *Repatriation Commission v Deledio* (1998). (See 14 *VeRBosity* 45)

It was submitted further that the Tribunal erred in failing to consider, at the initial stage, whether a reasonable hypothesis was raised by the material, without challenging that hypothesis by having regard to matters contrary to that hypothesis. That is, it applied s 120(1) before deciding whether there was a reasonable hypothesis, and had engaged in "fact finding" before it was appropriate to do so.

The Commission's counsel disagreed that the AAT was permitted to assume that the trauma to the lumbar spine had taken place during war service in order to find that the evidence pointed to or raised an hypothesis. Counsel referred to the decision of Kenny J in *Connors v Repatriation Commission* (2000) (16 *VeRBosity* 47). Her Honour made the point that it is now essential that the material before the decision-maker must point to one of the factors prescribed by the SoP, and that an hypothesis must be supported by evidence pointing to each individual element in the SoP for the hypothesis to be reasonable.

Weinberg J held that although the Tribunal did not strictly follow the process outlined in *Deledio*, it had nonetheless made the requisite determination as to whether a reasonable hypothesis was raised or pointed to by the material. Its decision was not legally flawed on this ground.

Secondly, Mr Mason submitted that the Tribunal had failed to interpret the language of the SoP correctly. On the basis of his evidence, the Tribunal was permitted to infer that the factors identified in the SoP were made out. It was submitted that s 119 enabled the Tribunal to infer that he had suffered from acute pain or that the length of the period of pain might have met the requirement in the SoP.

Weinberg J held that the Tribunal's finding of fact on this point was not reviewable by the Court and it was not the function of s 119 to rectify gaps in the evidence in a particular case.

Finally, Mr Mason submitted that the Tribunal had incorrectly imposed an onus of proof on him when deciding whether an hypothesis was raised. Weinberg J also rejected this ground of appeal.

Formal decision

The Court dismissed Mr Mason's appeal.

Webb v Repatriation Commission

Emmett J

FCA 1635
8 November 2000

Jurisdiction - discussions between parties prior to AAT hearing - whether binding agreement

Mr Webb claimed that in discussions between his counsel and officers of the Repatriation Commission prior to his AAT hearing, it was agreed that his pension would be increased to 100% of the General rate from May 1994 and to the Special rate from a later date. Subsequently, the parties were unable to agree on written terms of settlement.

On 3 July 2000, the AAT decided that it had no jurisdiction to enforce any agreement in this case, as the terms of the agreement were not in writing. (See 16 *VeRBosity* 65)

Submissions

Mr Webb lodged an application to the Federal Court seeking a declaration to enforce the alleged agreement as to the rate of pension. The Commission sought to have the application struck out on the basis that the Court had no jurisdiction to determine the application.

Mr Webb contended that the discussions prior to the AAT hearing constituted a binding contract of compromise in relation to the dispute that was then before the AAT. Alternatively, he contended that the Commission was estopped from denying that there was a binding contract.

Mr Webb relied on s 39B(1A)(c) of the *Judiciary Act 1903* which provides:

> "(1A) The original jurisdiction of the Federal Court of Australia also includes jurisdiction in any matter:
> …

(c) arising under any laws made by the Parliament, other than a matter in respect of which a criminal prosecution is instituted or any other criminal matter."

He contended that the dispute was a matter arising under a law of the Parliament, namely the *VE Act.*

No jurisdiction

Emmett J noted that this was not a normal "appeal" as of right from a decision of the AAT. The question was therefore whether the dispute was a "matter" arising under the *VE Act.*

Emmett J said that a "matter" within s 76(ii) of the Constitution and within s 39B(1A)(c) is a justiciable controversy or dispute, or the subject matter for determination in a legal proceeding - see *Scott v Handley* (1997) 79 FCR 236 at 239.

Emmett J said that the "matter" in this case was whether or not a contract was made and whether or not the conduct of the Commission's officers gave rise to an estoppel. Mr Webb's claim was based on the general law as to enforceability of executory contracts of compromise. This did not constitute a matter arising under a law made by the Parliament. It followed that the Federal Court did not have jurisdiction.

Formal decision

The Court dismissed Mr Webb's application.

Harris v Repatriation Commission

Whitlam, Sackville & Mansfield JJ

FCA 1687
24 November 2000

Lumbar spondylosis - definition of trauma - error of law - failure to remit proceedings

Mr Harris appealed to the Full Court against the decision of Finn J, dismissing his earlier appeal against a decision of the Tribunal that his lumbar spondylosis was not war-caused. (See 16 *VeRBosity* 75). He served in Vietnam and claimed that his spinal condition was due to a fall when his back pack shifted while out on patrol.

Finn J held that although the Tribunal had made two errors of law, it was futile to remit the matter for rehearing. First, in accordance with the Full Court's decision in *Repatriation Commission v Keeley* (2000) (16 *VeRBosity* 40), the Tribunal should have applied the SoP as in force at the date of the Commission's decision. His Honour said that the difference between the wording of the two SoPs was of "no practical consequence". Thus, the decision of the AAT would have been no different had the correct SoP been applied.

Secondly, the Tribunal failed to follow the steps for applying s 120(1) and (3) of the *VE Act* as outlined by the Full Court in *Repatriation Commission v Deledio* (1998) (14 *VeRBosity* 45). Finn J said that if the Tribunal had followed the correct process, it would have inevitably concluded that the only hypothesis available was not consistent with the SoP. His Honour had therefore dismissed the appeal.

Statement of Principles

On appeal to the Full Court, Mr Harris's counsel sought to withdraw a concession

he made before Finn J. Counsel had agreed that the Tribunal should have applied the SoP as in force at the date of the Commission's decision. He argued that, on a more careful reading, the Full Court's decision in *Keeley* did not require that the revoked SoP No 105 of 1995 be applied in this case. He contended that it was open to the AAT to apply the later SoP, if its terms were more favourable to the appellant.

The Full Court refused to allow Mr Harris's counsel to raise this new argument. The Court noted that it is only in exceptional circumstances that a party is permitted to raise issues that were not argued at first instance.

The Full Court observed:

> "No explanation was provided by the appellant's counsel for the failure to raise the point of law before the primary Judge or to draw his Honour's attention to SoP No 27 of 1999. Clearly, the appellant's counsel was aware at that time of the Full Court's decision in *Repatriation Commission v Keeley.* All that seems to have happened is that a different view has now been taken of the reasoning of the Full Court and of the true *ratio* of the case. Presumably (although we do not know), SoP No 27 of 1999 was overlooked in the proceedings at first instance."

Definition of trauma

Mr Harris's counsel also submitted that Finn J had misconstrued the definition of "trauma to the lumbar spine" in SoP No 105 of 1995. He argued that the words "acute symptoms and signs of" did not qualify the expression "altered mobility or range of the joint". It followed that the material before the AAT was sufficient to raise a hypothesis consistent with the requirements of SoP No 105 of 1995.

The Full Court rejected this submission, saying:

> "In our view, the construction adopted by the primary Judge accords with the ordinary meaning of the words in the definition. It was not necessary for the drafter of the definition to repeat the preposition 'of' before 'tenderness' and 'altered mobility' in order to arrive at the meaning conveyed by the ordinary rules of grammar to which his Honour gave effect. No doubt some might have inserted a so-called 'Oxford' comma after the word 'tenderness', but its absence is immaterial. The primary Judge's construction is supported by the reference in the same sentence to 'such acute symptoms and signs' lasting for a period of a week after the injury. The natural reading of that reference is that the acute symptoms and signs of pain, tenderness and altered mobility must have lasted for at least a week.
>
> The expression 'acute symptoms and signs of' can readily be applied to the concept of 'altered mobility or range of movement'. The dictionary definitions show that the expression requires that there be an indication of, or phenomenon evidencing altered mobility or range of movement. Bearing in mind that the SoP was concerned with 'medical-scientific evidence' (s 196B(2)), the primary Judge's conclusion is reinforced by medical definitions. *Butterworths Medical Dictionary* (2nd ed, 1978), for example, contains the following definitions:
>
> '***Symptom*** *The consciousness of a disturbance in a bodily function; the subjective feeling that there is something wrong in the working of the body and of which the patient complains, e.g. shortness of breath, pain, fatigue, palpitation, etc. The*

symptom may or may not be accompanied by observable signs.

Sign *Objective evidence of disease or deformity.*

Objective symptom *A symptom accompanied by signs from which the existence of the symptom can be deduced.*

Subjective symptom *One appreciated by the patient only; all symptoms are, strictly speaking, subjective.*

Objective sign *A sign that is appreciable to the examiner's senses.*

Subjective sign *A symptom appreciable only by the patient.'*

Once regard is had to these uncontroversial medical usages, it is apparent that the definition in SoP No 105 of 1995 required objective evidence of altered mobility or range of movement, such alteration lasting for a period of at least a week. Ordinarily, of course, the objective evidence would be accompanied by symptoms appreciated by the patient. This supports what his Honour described as the 'balance' between the two clauses, the first of which required the 'development' of what, for practical purposes, are objective symptoms 'within 24 hours', and the second of which required that they 'last for a period of at least one week immediately after the injury occurs'. In our opinion, the requirement that symptoms, once developed, endure for a minimum period (in the absence of medical intervention) was intended to extend to 'altered mobility or range of movement'. It is unlikely that the provision relating to medical intervention was intended to apply only to cases of altered mobility or range of movement where intervention occurred within 24 hours. That, however, would be the consequence of the appellant's construction of the definition."

Formal decision

The Court dismissed Mr Harris's appeal.

Cook v Repatriation Commission

Weinberg J

FCA 1756
7 December 2000

Osteoarthrosis - definition of trauma - failure to apply correct SoP - whether error of law

Mr Cook lodged an appeal to the Federal Court against a decision of the Tribunal that his osteoarthrosis of both knees was not war-caused. He first started having trouble with his knees in about 1991.

Mr Cook served in Vietnam in 1971 with 1 Field Squadron Royal Australian Engineers. He told the Tribunal that during his service in Vietnam he was a sapper, carpenter and joiner. He worked as a field engineer in a team which operated in conjunction with the infantry to defuse and destroy booby traps, land mines and unexploded bombs. He was also responsible for maintenance of machinery. He said that he spent about 50% of his time in Vietnam on patrol with infantry units. While on patrol he was required to carry a pack which contained a change of clothing, food, ammunition, rifle, water and demolitions. The pack was so heavy that it would cause him to buckle at the knees. The patrols would last anywhere between seven and ten days. When he was not on patrol his time was divided between general infantry duties and service with armoured personnel carrier units or tank units.

The veteran said that while on patrol he had often been deployed by helicopter.

He had been required, when so deployed, to leap a distance of several feet to the ground while wearing his pack. This had caused jarring to his knees. He could also recall having jarred his knees when he leapt to the ground from armoured personnel carriers or tanks. After his discharge from the Army, he returned to work as a carpenter.

In reaching its decision, the Tribunal applied Statement of Principles No 41 of 1998 concerning osteoarthrosis. The Tribunal found that although there was evidence that the veteran had suffered jarring to his knees and associated pain in Vietnam, there was no evidence that the pain fell within the definition of "trauma to a joint" in the SoP. In particular, there was no evidence of:

- tenderness;
- altered mobility;
- altered range of movement of the knees; or
- pain and swelling the symptoms of which lasted for a period of at least 7 days.

Accordingly, the hypothesis did not fit within the template in the SoP. In those circumstances, the Tribunal concluded that the hypothesis was not reasonable.

Appeal grounds

Mr Cook raised three grounds of appeal to the Federal Court:

1. the Tribunal applied the wrong SoP when considering the claim;
2. the Tribunal failed to apply s 120 and other provisions in accordance with the approach outlined by the Full Court in *Repatriation Commission v Deledio* (1998); and
3. the Tribunal failed to provide adequate and sufficient reasons for its decision.

Court's conclusions

It was common ground between the parties that in the light of the subsequent Full Court decision in *Repatriation Commission v Keeley* (2000), the Tribunal should have applied the SoP as in force at the date of the Repatriation Commission's decision (No 352 of 1995).

Weinberg J agreed that the Tribunal had applied the wrong SoP when considering the claim. The Tribunal should have applied the SoP that was in force at the time the Commission made its decision in September 1996.

Weinberg J held that although the failure to apply the correct SoP constituted an error of law, it would be futile in the circumstances to remit the matter to the Tribunal as the claim would have failed even if the correct SoP had been applied. With regard to the meaning of "trauma to a joint" in the SoP, Weinberg J followed the interpretation of Finn J in *Harris v Repatriation Commission* (2000) which was upheld on appeal by the Full Court.

Mr Cook submitted also that the Tribunal had failed to apply the provisions of the *VE Act* correctly when determining whether the hypothesis raised was reasonable. He submitted that in determining whether the hypothesis contained the factors which the RMA had determined to be the minimum which must exist, and be related to the person's service, the Tribunal had been required to approach the matter cognisant of the beneficial or remedial nature of the *VE Act*. It had been required to make due allowance for any difficulties that might lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to the effect of the passage of time, or the absence of or a deficiency in relevant official records - see s 119(1)(h).

The Repatriation Commission submitted that to the extent that the veteran sought to rely on s 119(1) of the *VE Act* to allow

an inference to be drawn that he did suffer a "trauma to the relevant joint" within the definition of that term in the SoP, the subsection did not enable such an inference to be drawn. The Commission submitted that it is not the function of s 119(1) to fill gaps in the evidence. That subsection may not be used to invent evidence which may serve to establish the necessary connection between an injury and war service.

Weinberg J accepted the Commission's submission that the second and third grounds of appeal did not disclose any errors of law on the part of the Tribunal.

Formal decision

The Court dismissed Mr Cook's appeal.

Kershaw v Repatriation Commission

Heerey J

FCA 1802
12 December 2000

Extreme Disablement Adjustment - lifestyle rating - subcriteria in GARP

Mr Kershaw appealed to the Federal Court against a decision of the Tribunal that he did not qualify for the Extreme Disablement Adjustment.

The Tribunal had refused his application on the basis that he did not achieve a lifestyle rating of at least 6 points in terms of the approved *Guide to the Assessment of Rates of Veterans' Pensions*.

Lifestyle assessment

The Guide provides for two elements of assessment of degree of incapacity - medical impairment and lifestyle effects. The latter is dealt with in Chapter 22 of the Guide, which provides that a lifestyle effect is a disadvantage, resulting from an accepted condition, that limits or prevents the fulfilment of a role that is normal for a veteran of the same age without the accepted condition (p 263).

Under the heading "How are lifestyle effects assessed?" the Guide states (p 264)

> "The effects of impairment on lifestyle are specific to a veteran and are determined by reference to four components of that veteran's life:
>
> - personal relationships,
> - mobility,
> - recreational and community activities, and
> - employment and domestic activities.
>
> All are of equal weight.
>
> …
>
> The rating that best accommodates the veteran's circumstances is to be selected from the descriptions in Tables 22.1 to 22.5."

In relation to the veteran's mobility, the Tribunal concluded:

> "… the Tribunal cannot accept that the evidence presented justifies a higher rating than 4, and concludes that 3 is a more appropriate rating on the evidence presented.
>
> There was no suggestion that the applicant is dependent upon others or mechanical devices such as a wheelchair. His evidence in relation to the use of public transport was that he chooses not to because of his fear of falling and there was no medical evidence linking his falls to an accepted disability.
>
> The evidence in relation to his ability to drive was that he prefers not to because of safety reasons caused by a lack of feeling in his hands, a restriction with neck movements as well as his nervous condition. The

Tribunal admires his judgment in this regard.

However in the Tribunal's view he does not satisfy the indicators for a rating of 5 which requires more than a mere difficulty with his driving a motor vehicle.

Even for a rating of 4 there is no evidence that the applicant needs assistance to cope with public or private transport. The Tribunal accepts that he has difficulty in travelling from his home to his destinations and chooses to travel by taxi because he is not keen to drive. The Tribunal determines that a rating of 3 is appropriate for the applicant's restrictions resulting from his accepted disabilities. The evidence was that he can independently leave his home and reach his destination, but experiences some difficulty."

Submissions

Mr Kershaw's counsel argued on appeal that the different indicators of each rating eg "assistance is needed to cope with public or private transport" (referred to as sub-criteria) were merely illustrative and not binding.

Heerey J rejected the argument that the Tribunal had erred in law. His Honour said:

"The sub-criteria are part of the assessment system laid down by the Guide which … has legislative force.

The underlying assumption is that an individual veteran must fit in one, and only one, of the seven ratings. Obviously enough there would be many instances where a veteran satisfied one or more (but not all) of the sub-criteria within one rating and other sub-criteria in other ratings. The approach of the Tribunal in the present case was to see whether the evidence supported a finding that the applicant satisfied any of the sub-criteria of rating 5. The Tribunal's conclusion that he did not was a finding of fact which cannot be challenged in this Court.

In the circumstances of the present case the result would be the same whether the applicant was assessed in rating 3 or rating 4 for mobility. He needed at least a rating 5 to obtain the lifestyle effects average of 6. So it is not necessary to decide whether the correct approach is

(i) to make an assessment in a lower rating unless a veteran satisfies all the sub-criteria of a higher rating; or

(ii) to make an assessment in a higher rating if the veteran satisfies at least one of the sub-criteria in the higher rating; or

(iii) to make an assessment as to which is the more appropriate rating in the light of all the evidence as long as the veteran satisfies at least one sub-criterion in the rating selected.

In the present case the Tribunal paid regard to the sub-criteria as it was required to do. No legal error has been shown."

Formal decision

The Court dismissed Mr Kershaw's appeal.

Borrett v Repatriation Commission

Tamberlin J

FCA 1829
15 December 2000

Death - alcohol consumption - whether AAT made factual findings as to causation

Mrs Borrett appealed to the Federal Court against a decision of the Tribunal

that her late husband's death was not war-caused. The late veteran died at the age of 56 years from cancer of the rectum. He rendered operational service in the RAAF during WW2 and was selected for pilot training in Canada. He was unable to complete the course due to illness and later served in the Pacific theatre.

The hypothesis put forward by Mrs Borrett was that stress suffered by her late husband during war service caused him to develop a drinking habit and that his alcohol intake was sufficient to cause or contribute to his rectal cancer. The Tribunal had rejected this hypothesis and concluded in the following terms:

> "In this matter there is no evidence as to the Deceased's drinking patterns whilst on service and there was clear and unequivocal evidence from his wife that he only began to drink alcohol six months after discharge from the RAAF when he found employment as a salesman.
>
> It has been suggested that the disappointment in failing his flying course so affected the Deceased that he suffered a personality change and became anxious and lost self confidence and so self medicated with alcohol. To us this hypothesis is based upon no more than suspicion and conjecture and has no basis in fact. The hypothesis that the Applicant's post service drinking was causally related to his service is unsupported by any facts and hence cannot be classified as reasonable.
>
> Even if the hypothesis referred to above was raised, we are satisfied beyond reasonable doubt, based on the Applicant's own evidence, that the Deceased only began to drink to any extent after he found employment as a salesman and that he continued to drink both as a means of relaxation and as an aid to maintaining goodwill with customers. This continued when he had his own business. At no time was his partaking of alcohol a habit, for example he did not drink at home, but his drinking was a social lubricant and not in any way connected with his service. Thus we are satisfied beyond reasonable doubt that there is no sufficient ground for determining that the death of the Deceased was attributable to his war service."

Submissions

Mrs Borrett's counsel submitted that the Tribunal had made two errors of law. First, the AAT had failed to address the claim in accordance with the four-step process in applying s 120(1) and (3) as outlined by the Full Court in *Repatriation Commission v Deledio*. (See 14 *VeRBosity* 45).

[**Ed:** The first step is to determine whether the material points to a hypothesis connecting the injury, disease or death with the circumstances of service. The second step is to ascertain whether there is a SoP in force in respect of the relevant injury. The third step is to consider whether the hypothesis raised is reasonable. The fourth step is whether the decision-maker is satisfied beyond reasonable doubt that the injury, disease or death is not war-caused.]

Mrs Borrett's counsel submitted that the AAT did not determine whether the material before it pointed to some fact or facts which gave rise to the hypothesis, but engaged in a fact finding exercise and asked whether the facts supported a reasonable hypothesis. The AAT reached conclusions as to the facts in determining that the hypothesis of a causal relationship between post service drinking and the service was "unsupported by any facts". It was submitted that, in accordance with *Deledio,* the AAT should not have engaged in a fact finding exercise, in the

sense of weighing conflicting material, until the final stage when it became necessary to determine whether it was satisfied beyond reasonable doubt that the death was not war-caused.

The second submission was that the AAT erred in law in finding that the raised hypothesis was disproved beyond reasonable doubt because there was no evidence capable of supporting this finding. The Tribunal's finding in this respect was erroneous and was infected by its improper approach to the assessment of whether the hypothesis had been raised. The material cited by the AAT as disproving the hypothesis was not capable of disproving it to the required standard.

Court's conclusions

Tamberlin J agreed that the Tribunal had made errors of law both in the manner in which it assessed the existence of a reasonable hypothesis and in determining whether the hypothesis was disproved beyond reasonable doubt.

Tamberlin J accepted that the Tribunal had erroneously combined steps 3 and 4 of the process outlined in *Deledio*. It wrongly asserted that there was no evidence of the veteran's drinking patterns whilst on service. It also rejected the hypothesis not on the facts raised by the material but on the facts as found by the Tribunal. In doing so, it had erroneously engaged in a fact-finding exercise and did not evaluate the hypothesis raised on the material before it.

Tamberlin J also found that the Tribunal had failed to determine properly whether it was satisfied beyond reasonable doubt that the death was not attributable to war service. The Tribunal did not properly consider the conflicting evidence when it came to making a determination on that question beyond reasonable doubt.

Formal decision

The Court allowed Mrs Borrett's appeal and remitted the matter to the Tribunal for rehearing.

Statements of Principles issued by the Repatriation Medical Authority

December 2000 – February 2001

Number of Instrument	Description of Instrument
1 of 2001	Determination of Statement of Principles under subsection 196B(2) concerning aplastic anaemia and death from aplastic anaemia
2 of 2001	Determination of Statement of Principles under subsection 196B(3) concerning aplastic anaemia and death from aplastic anaemia
3 of 2001	Determination of Statement of Principles under subsection 196B(2) concerning pulmonary thromboembolism and death from pulmonary thromboembolism
4 of 2001	Determination of Statement of Principles under subsection 196B(3) concerning pulmonary thromboembolism and death from pulmonary thromboembolism
5 of 2001	Revocation of Statement of Principles (Instrument No 43 of 1998 concerning deep vein thrombosis and death from deep vein thrombosis), and Determination of Statement of Principles under subsection 196B(2) concerning deep vein thrombosis and death from deep vein thrombosis
6 of 2001	Revocation of Statement of Principles (Instrument No 44 of 1998 concerning deep vein thrombosis and death from deep vein thrombosis), and Determination of Statement of Principles under subsection 196B(3) concerning deep vein thrombosis and death from deep vein thrombosis
7 of 2001	Revocation of Statement of Principles (Instrument No 43 of 1996 concerning tinnitus and death from tinnitus), and Determination of Statement of Principles under subsection 196B(2) concerning tinnitus and death from tinnitus
8 of 2001	Revocation of Statement of Principles (Instrument No 44 of 1996 concerning tinnitus and death from tinnitus), and Determination of Statement of Principles under subsection 196B(3) concerning tinnitus and death from tinnitus
9 of 2001	Amendment of Statement of Principles, Instrument No 82 of 1999, under subsection 196B(2) concerning diabetes mellitus and death from diabetes mellitus
10 of 2001	Amendment of Statement of Principles, Instrument No 83 of 1999, under subsection 196B(3) concerning diabetes mellitus and death from diabetes mellitus

11 of 2001	Amendment of Statement of Principles, Instrument No 78 of 1999, under subsection 196B(2) concerning polycythaemia vera and death from polycythaemia vera
12 of 2001	Amendment of Statement of Principles, Instrument No 79 of 1999, under subsection 196B(3) concerning polycythaemia vera and death from polycythaemia vera
13 of 2001	Revocation of Statements of Principles (Instrument No 45 of 1996 and Instrument No 1 of 1998 concerning sensorineural hearing loss and death from sensorineural hearing loss), and Determination of Statement of Principles under subsection 196B(2) concerning sensorineural hearing loss and death from sensorineural hearing loss
14 of 2001	Revocation of Statements of Principles (Instrument No 46 of 1996 and Instrument No 2 of 1998 concerning sensorineural hearing loss and death from sensorineural hearing loss), and Determination of Statement of Principles under subsection 196B(3) concerning sensorineural hearing loss and death from sensorineural hearing loss
15 of 2001	Revocation of Statement of Principles (Instrument No 139 of 1995 concerning dengue fever and death from dengue fever), and Determination of Statement of Principles under subsection 196B(2) concerning dengue fever and death from dengue fever
16 of 2001	Revocation of Statement of Principles (Instrument No 140 of 1995 concerning dengue fever and death from dengue fever), and Determination of Statement of Principles under subsection 196B(3) concerning dengue fever and death from dengue fever

Copies of these instruments can be obtained from:

- **Repatriation Medical Authority, GPO Box 1014, Brisbane Qld 4001**
- **Repatriation Medical Authority, 4th Floor 127 Creek Street, Brisbane Qld 4000**
- **Department of Veterans' Affairs, PO Box 21, Woden ACT 2606**
- **Department of Veterans' Affairs, 13 Keltie Street, Phillip, ACT 2606**
- **RMA Website: *http://www.rma.gov.au/***

Repatriation Medical Authority

CONDITIONS UNDER INVESTIGATION AS AT 28 FEBRUARY 2001

Description of disease or injury	Factors under investigation	Date gazetted
Acquired cataract [Instrument Nos 146/96 & 147/96]	Required level of exposure to solar radiation	23-06-99
Acquired pes planus [Instrument Nos 302/95 & 303/95]	- - -	04-10-00
Acute lymphoid leukaemia [Instrument Nos 77/95 & 78/95]	- - -	16-08-00
Adenocarcinoma of the kidney [Instrument Nos 107/96 & 108/96]	- - -	10-01-01
Alzheimer's disease [Instrument Nos 378/95 & 379/95]	- - -	03-11-99
Asthma [Instrument Nos 59/96 & 60/96 as amended by Nos 75/97 & 76/97]	- - -	03-11-99
Atherosclerotic peripheral vascular disease [Instrument Nos 87/95 & 88/95]	- - -	25-10-00
Bronchiectasis [Instrument Nos 35/97 & 36/97]	- - -	17-11-99
Carotid artery disease [Instrument Nos 346/97 & 347/97]	- - -	28-02-01
Carpal tunnel syndrome [Instrument Nos 71/97 & 72/97]	- - -	03-11-99
Chondromalacia patellae [Instrument Nos 320/95 & 321/95]	- - -	21-06-00
Chronic gastritis [Instrument Nos 60/99 & 61/99]	- - -	04-10-00
Chronic lymphoid leukaemia [Instrument Nos 79/95 & 80/95]	- - -	19-07-00

Chronic pancreatitis [Instrument Nos 47/97 & 48/97]	- - -	01-03-00
Chronic solar skin damage [Instrument Nos 33/96 & 34/96]	Required level of exposure to solar radiation	23-06-99
Chronic ulcerative colitis [Instrument Nos 144/96 & 145/96 as amended by Nos 179/96 & 180/96]	Stress	04-08-99
Congenital pes planus [Instrument Nos 304/95 & 305/95]	- - -	04-10-00
Dengue fever [Instrument Nos 139/95 & 140/95]	- - -	01-03-00
Giant cell arteritis [Instrument Nos 85/96 & 86/96]	- - -	22-03-00
Gulf War syndrome	- - -	17-11-99
Hypertension [Instrument Nos 25/99 & 26/99]	Sleep apnoea	18-08-99
Hypertension [Instrument Nos 25/99 & 26/99]	- - -	10-05-00
Inflammatory periodontal disease [Instrument Nos 368/95 & 369/95]	- - -	25-10-00
Lumbar spondylosis [Instrument Nos 27/99 & 28/99]	- - -	04-10-00
Malignant melanoma of the skin [Instrument Nos 97/95 & 98/95 as amended by Nos 189/96 & 190/96]	- - -	18-08-99
Malignant neoplasm of the brain [Instrument Nos 40/99 & 41/99]	- - -	10-01-01
Malignant neoplasm of the colon [Instrument Nos 23/96 & 24/96 as amended by Nos 5/98 & 6/98]	- - -	10-01-01
Malignant neoplasm of the lip epithelium [Instrument Nos 105/96 & 106/96]	Required level of exposure to solar radiation	23-06-99

Malignant neoplasm of the lung [Instrument Nos 29/96 & 30/96 as amended by Nos 149/96 & 150/96]	Exposure to herbicides used in Vietnam, namely 2,4-D, 2,4,5-T, cacodylic acid or picloram	23-06-99
Meniere's disease [Instrument Nos 27/97 & 28/97]	- - -	10-05-00
Mesangial IGA glomerulonephritis	- - -	17-11-99
Motor neurone disease [Instrument Nos 245/95 & 246/95]	- - -	18-08-99
Multiple chemical sensitivity	- - -	21-06-00
Multiple sclerosis [Instrument Nos 170/95 & 171/95]	- - -	22-11-00
Neuropathy	- - -	03-11-99
Non-melanotic malignant neoplasm of the skin [Instrument Nos 45/98 & 46/98]	Required level of exposure to solar radiation	23-06-99
Obesity	- - -	28-02-01
Osteoarthrosis [Instrument Nos 41/98 & 42/98 as amended by Nos 19/99 & 20/99]	- - -	18-08-99
Osteoporosis [Instrument Nos 61/97 & 62/97]	- - -	25-10-00
Otitic barotrauma [Instrument Nos 17/96 & 18/96]	- - -	10-01-01
Otitis externa [Instrument Nos 292/95 & 293/95]	- - -	04-10-00
Porphyria cutanea tarda [Instrument Nos 71/94 & 72/94]	Exposure to herbicides used in Vietnam, namely 2,4-D, 2,4,5-T, cacodylic acid or picloram	23-06-99
Psoriasis [Instrument Nos 21/98 & 22/98]	- - -	22-03-00

Pterygium [Instrument Nos 60/98 & 61/98]	Required level of exposure to solar radiation	23-06-99
Sensorineural hearing loss [Instrument Nos 45/96 & 46/96 as amended by Nos 1/98 & 2/98]	- - -	25-10-00
Soft tissue sarcoma [Instrument Nos 49/98 & 50/98]	Exposure to herbicides used in Vietnam, namely 2,4-D, 2,4,5-T, cacodylic acid or picloram	23-06-99

Administrative Appeals Tribunal decisions – October to December 2000

Application

dismissal by Veterans' Review Board
- no response
  - **Harley, E** 13 Nov 2000
  - **Arnold, R B** 20 Nov 2000

Carcinoma

colon
- alcohol consumption
  - **Waterhouse, D** 24 Nov 2000

prostate
- animal fat consumption
  - **Brown, L K** 19 Dec 2000

thyroid gland
- Dapsone, alcohol & inability to obtain appropriate management
  - **Robson, T A** 27 Oct 2000

Cardiovascular disease

hypertension
- psychoactive substance abuse
  - **Williams, F G** 12 Oct 2000
- salt ingestion
  - **Bruce, R** 05 Oct 2000

hypertension, hypercholesterolemia & ischaemic heart disease
- high fat diet
  - **Potts, M** 10 Nov 2000

ischaemic heart disease
- hypertension - alcohol dependence or abuse
  - **MacDonald, K C** 16 Nov 2000
- smoking
  - **Jackson, D J** 14 Nov 2000

Death

acute pancreatitis
- alcohol consumption
  - **Wallis, P M** 01 Dec 2000

carcinoma of breast
- alcohol consumption
  - **Curran, T** 14 Nov 2000

carcinoma of gallbladder
- smoking
  - **Bond, E** 01 Nov 2000

cerebrovascular accident
- chronic bronchitis - exposure to mustard gas
  - **Whamond, T** 17 Nov 2000
- inactivity & panic attacks
  - **Schofield, M A** 28 Nov 2000

chronic lymphocytic leukaemia
- whether contribution by ischaemic heart disease
  - **Learhinan, E A** 29 Dec 2000

hepatitis
- alcohol consumption & epilepsy
  - **Miller, G T** 08 Dec 2000

ischaemic heart disease
- hypertension - alcohol dependence
  - **Benham, M** 14 Nov 2000
- hypertension - salt consumption
  - **Downing, E M** 16 Oct 2000
- smoking
  - **Williams, J M** 15 Dec 2000

ischaemic heart disease & cirrhosis of liver
- hypertension & alcohol abuse
  - **Martin, N** 21 Dec 2000

malignant carcinoid tumour of colon
- alcohol consumption
  - **Sach, V** 04 Dec 2000

prostate cancer
- animal fat consumption
  - **Grundman, V** 09 Nov 2000
  - **Thom, A M J** 05 Dec 2000

renal artery atherosclerotic disease
- smoking & hypertension
  - **Down, S** 27 Nov 2000

suicide

- depressive illness

McCarthy, J L 13 Oct 2000

Dental condition

loss of teeth

- absence of flouride & inability to maintain oral hygiene

Hampton, T A 19 Dec 2000

Dermatological disorder

pruritis ani

- inability to maintain adequate anal hygiene

Bilbow, P E 09 Nov 2000

Diabetes

diabetes mellitus

- smoking

Shooter, J C 07 Dec 2000

Disability pension

head & orthopaedic injuries

- motor vehicle accident - PTSD flashback

Baker, J A 15 Nov 2000

spermatogenic disorder

- herbicides & pesticides in Vietnam

Marshall, G J 01 Nov 2000

Entitlement

Statements of Principles

- whether accrued rights & liabilities

Olsen, G L 18 Oct 2000
Sach, V 04 Dec 2000
Brown, L K 19 Dec 2000
Hanlon, I H 20 Dec 2000

Extreme disablement adjustment

whether impairment ratings sufficient

Morris, C 06 Nov 2000

- effects of non war-caused condition

DeBrabander, R 13 Nov 2000

whether lifestyle ratings sufficient

Anderson, W E 06 Dec 2000

Gastrointestinal disorder

gastro-oesophageal reflux disease

- hiatus hernia, smoking & alcohol

Dillon, B 13 Nov 2000

irritable bowel syndrome

- no aggravation

Taylor, I 01 Nov 2000

- severe diarrhoea

Milne, T 22 Dec 2000

General rate pension

assessment of incapacity

Milne, T 22 Dec 2000

psychiatric assessment

Brand, T A 19 Dec 2000

Genitourinary

traumatic urethral stricture

- whether aggravated by medical treatment

Rodgers, B W 10 Nov 2000

Jurisdiction

post-meningitic epilepsy accepted as war-caused

- whether reviewable by AAT

Stewart, P C 22 Nov 2000

Musculoskeletal

chondromalacia patellae

- motor vehicle accident

McIntyre, J 26 Oct 2000

plantar fasciitis

- trauma

Olsen, G L 18 Oct 2000

rotator cuff syndrome with secondary osteoarthrosis

- trauma

MacDonald, K C 16 Nov 2000

Neurological disorder

alcohol-induced dementia

- alcohol dependence

Cooper, E 26 Oct 2000

epilepsy
- meningitis
Stewart, P C 22 Nov 2000

motor neurone disease
- exposure to heavy metals & chemicals
- non SoP factors
Halech, I 06 Oct 2000

Osteoarthrosis

hand, wrist & finger
- trauma
King, A W 22 Dec 2000

hip
- trauma to relevant joint
Bilbow, P E 09 Nov 2000
- truck accident
Brownlow, C E 12 Oct 2000

knees
- trauma to relevant joint
MacDonald, K C 16 Nov 2000
- trauma - jump from helicopter
Brand, T A 19 Dec 2000

knee & ankles
- trauma to a joint
Ison, D 14 Nov 2000

knees, hips & shoulders
- trauma to a joint
Cable, J F 20 Oct 2000

shoulder
- no evidence of trauma
Bester, R A 10 Oct 2000

Psychiatric disorder

depressive disorder
- severe psychosocial stressor
Symons, P 28 Nov 2000

generalised anxiety disorder
- experiencing a stressful event
O'Neil, J 31 Oct 2000

generalised anxiety disorder & alcohol abuse
- Korean service - stressful event
Dangerfield, R E 22 Dec 2000

generalised anxiety disorder & psychoactive substance abuse
- experiencing a stressful event
Shooter, J C 07 Dec 2000

post traumatic stress disorder
- accident in South China Sea
Hill, K N 20 Nov 2000
- experiencing a stressor - alleged murder on Indonesian junk
Munton, A L 16 Oct 2000
- gunshot accident while on leave
- inability to obtain appropriate clinical management
Keys, M J 14 Nov 2000
- no diagnosis
Meehan, J S 14 Nov 2000
- Vung Tau Harbour - no objective stressor
Cranage, S E 18 Dec 2000

Qualifying service

Bonegilla motor transport training depot
- Italian POWs
Alderton, E J 04 Dec 2000

Remunerative work

prevented from continuing
- no loss of salary or wages
Grimsey, W J 22 Dec 2000

whether prevented by war-caused disabilities alone
- age & knee condition
Dangerfield, R E 22 Dec 2000
- cook aged 63
Inwood, M H 22 Nov 2000
- discharge from Army aged 46
Hancock, D 14 Nov 2000
- leg amputation
Pritchard, R M 20 Dec 2000
- mine worker - compulsorily retired aged 60
Hore, R H 12 Dec 2000
- truck driver
Hendy, L A 28 Nov 2000

Respiratory disorder

Spinal disorder

Visual disorder

Words and phrases