VeRBosity Volume 17 No. 2

Contents

April - June 2001

Editor's notes

This edition of *VeRBosity* contains reports on nine Federal Court decisions relating to veterans' matters handed down in the period from April to June 2001.

The cases of *Meehan* and *Benjamin* deal with the correct approach to be adopted in determining whether a disease exists and can be diagnosed in a particular case. *Thompson, Symons* and *Williams* consider which Statement of Principles is to be applied in circumstances where amendments are gazetted during the review process.

There is also a report on the first veterans' decision from the new Federal Magistrates Court.

This edition includes reports on selected AAT decisions handed down in the period from April to June 2001. Information is also included about Statements of Principles issued recently by the Repatriation Medical Authority and matters currently under formal investigation.

Robert Kennedy
Editor

General Information

Media Release by the Hon Bruce Scott, Minister for Veterans' Affairs
12 June 2001

VETERANS' REVIEW BOARD APPOINTMENTS ANNOUNCED

The Minister for Veterans' Affairs, Bruce Scott, today announced the appointment of nine new members to the Veterans' Review Board and the reappointment of another 18 members.

Mr Scott said together with continuing members they brought the total membership of the Board to 51.

> "The appointees have been drawn from diverse backgrounds in management, community services, medicine, law and the defence forces and will complement the range of skills and the extensive military experience presently existing in the Board," he said.

The new appointees are:

- Senior Members — Jennifer D'Arcy, NSW; and Andrea Treble, Vic.
- Members — Zita Antonios, NSW; Kerrie Laurence, NSW; Janet Hartmann, NSW; Gavin Robins, Vic; and Marella Denovan, Qld.
- Services Members — Frank Brown, NSW; and Wally Farquhar, Qld.

Those re-appointed are:

- Senior Members — John Cooke, NSW; Julie Shead, NSW; Graham Kenny, Qld; Bill Lane, Qld; Rob Park, SA; and Denyse Phillips, WA.
- Members — Peter Cappe, NSW; David Blaikie, SA; Jackie Fristacky, Vic; and Denny Meadows, Vic.
- Services Members — Collins Fagan, Vic; Charlie White, NSW; Graeme Chapman, Vic; Rob Regan, Vic; Frank Benfield, Qld; Murray Blake, Qld; Greg Mawkes, WA; and Stuart Bryce, Tas.

The Veterans' Review Board is an independent statutory body that reviews decisions of the Repatriation Commission in relation to claims for veterans' benefits.

Administrative Appeals Tribunal

Re L Counsel and Repatriation Commission

Campbell

N1999/1270
9 April 2001

Special rate - no loss of earnings

Mr Counsel applied to the Tribunal for review of a decision assessing his disability pension at 100% of the General rate. He claimed that he qualified for the Special rate.

Mr Counsel was aged 76 at the date of lodging his application for increase in pension. He had a number of war-caused disabilities including post traumatic stress disorder and ischaemic heart disease. He purchased a farm in 1980 which he worked part time until leaving his full time job in 1982 in order to work on the farm in partnership with his wife.

Disposal of farm property

Mr Counsel's health deteriorated during the period of the partnership. He indicated that part of the farm was sold in 1988 due to his hypertension and anxiety and the remainder was sold in 1993 due to ischaemic heart disease and his psychiatric disorder. He had not worked since selling the farm.

The essential issue in this case was whether Mr Counsel had suffered a loss of earnings due to his war-caused disabilities in terms of section 24(2A)(e) of the *VE Act* which provides:

> "because the veteran is so prevented from undertaking his or her last paid work, the veteran is suffering a loss of salary or wages, or of earnings on his or her own account, that he or she would not be suffering if he or she were free from that incapacity;"

Partnership tax returns for the period 1986 to 1993 indicated that the farm made a small profit in only one year. The Repatriation Commission submitted that the expression "earnings on his or her own account" in section 24(2A)(e) means **net** earnings as opposed to gross earnings (per Wilcox J in *Hill v Repatriation Commission* (2000) (16 *VeRBosity* 76)). In view of the series of losses, it was difficult for the veteran to argue that he had suffered a loss of earnings on his account as a consequence of accepted disabilities, causing him to sell his property, as the sale of the property had in fact ended a pattern of continuing annual losses.

Tribunal's conclusions

The Tribunal rejected submissions by the Commission that the veteran's farming activities in reality constituted a hobby rather than a business. It also found that it was speculative to suggest that the property was sold because of continuing annual losses. It was satisfied that the farm was sold because of the veteran's deteriorating health status arising from his war-caused disabilities.

The Tribunal agreed that the correct interpretation of earnings was net earnings, that is, gross earnings less deduction of expenses. With the exception of a small profit in one year, the veteran had always derived a loss or negative net earnings from the farm. He had not suffered a loss of earnings on his own account by virtue of his war-caused diseases causing him to cease his

farming activities. Therefore, he did not satisfy section 24(2A)(e) of the *VE Act*.

Formal decision

The Tribunal affirmed the decision that Mr Counsel was not eligible for the Special rate.

[Ed: Mr Counsel's appeal to the Federal Court was dismissed and will be reported in the next edition.]

Re R Molony and Repatriation Commission

Fayle, Lloyd & Weerasooriya

W1998/484
9 April 2001

Death from empyema gall bladder - high carotene diet and stress

Mrs Molony applied for a widow's pension in relation to the death of her late husband. He served in the RAAF during World War 2 and was attached to the RAF in the UK. He was admitted to hospital in 1995 with a ruptured gall bladder and septic cholecystitis. He underwent a cholecystectomy but did not recover following the operation and died due to empyema gall bladder.

Mrs Molony submitted that her husband's high carotene diet and stress during service contributed to cholecystitis, which caused or contributed to his death. She also submitted that his death was caused indirectly by cholecystitis which was contributed to or aggravated by war-caused functional dyspepsia.

High carrot diet

Mr Robert Piper, an aviation historian, provided a report on the question of the veteran's diet during service in the RAAF/RAF. Mr Piper was unable to find any documentary evidence concerning a high intake of carrots. Mr Piper interviewed Sir Richard Kingsland DFC, who advised that carrots were included in the RAF diet in Britain and to a lesser extent in the RAAF diet in Australia, but were never forced. Greens were also encouraged for good health and night vision and unit medical officers encouraged catering officers to ensure that carrots were included in meals. Australians serving in Britain did not enjoy the British way of preparing carrots and were never ordered to eat them.

Mr Piper also consulted Mr R Cowper, who served as a pilot with 464 Squadron RAAF in Britain, flying Mosquito night fighters. Mr Cowper advised that carrots were never force-fed to squadron members and the whole story is a "furphy". Mr Cowper believed the story to have started to cover up the new aircraft mounted radar carried by Beaufighters, which resulted in greatly improved success against enemy aircraft.

Tribunal's conclusions

The Tribunal concluded that the evidence did not support a general proposition that RAF or RAAF aviators were, during World War 2 in Britain (or Australia), required to consume a high carrot diet. There was also no indication that the veteran was suffering from vitamin toxicity at discharge from the RAAF. Further, there was no evidence that stress causes or contributes either directly or indirectly to cholecystitis.

The Tribunal also concluded that the death of the veteran was not contributed to by the accepted disability of functional dyspepsia causing or aggravating the condition of cholecystitis.

Formal decision

The Tribunal affirmed the decision that Mr Molony's death was not war-caused.

Re A Hill and Repatriation Commission

Purvis

N2000/1118
24 April 2001

Special rate - capacity to undertake remunerative work - redundancy

Mr Hill claimed that he ceased work solely due to his war-caused disabilities and that he qualified for the Special rate. The matter was remitted to the Tribunal for rehearing following an appeal to the Federal Court against an earlier decision of the Tribunal. The Court found that the Tribunal had erred in law in the application of section 24(1)(c) of the *VE Act.* (See 16 *VeRBosity* 76)

Mr Hill had a number of war-caused disabilities including cervical spondylosis, lumbar scoliosis and generalised anxiety disorder. He served in the RAAF from 1958 to 1978 and was later employed in a civilian capacity by the Department of Defence. He was retrenched from that employment in March 1989. He claimed that he accepted an offer of redundancy only because his war-caused disabilities made it increasingly difficult for him to cope with the requirements of the position.

After his retrenchment, Mr Hill moved to the North Coast of NSW. He attempted to earn a living from breeding dogs but failed to make a profit over several years. He ceased dog breeding in 1994 because of back pain caused by lifting the dogs.

Submissions

The Tribunal found that Mr Hill's last remunerative work was with the Department of Defence. His dog breeding activities did not constitute "remunerative work" in terms of s 24(1)(c). Mr Hill submitted that since being granted Intermediate rate pension in 1993, his health had deteriorated further.

The Repatriation Commission submitted that in 1989, when he accepted the redundancy offer, Mr Hill had made a choice to withdraw from the workforce. He had not been employed for seven years and had suffered no loss of income by reason of diminution of his work capacity during that time.

Tribunal's conclusions

The Tribunal was satisfied that Mr Hill ceased his employment in 1989 on account of his war-caused disabilities alone. It was not a matter of a personal election being made by him to cease his employment but a retirement solely because and on account of his accepted disabilities. The long gap between his retirement and making his application did not prevent him from continuing to undertake remunerative work. He did not withdraw from the workforce to benefit from any lifestyle choice.

The Tribunal said:

> "The Tribunal is satisfied that the Applicant accepted the offer of redundancy in 1989 only because his war-caused disabilities made it increasingly difficult for him to cope with the requirements of his position. This was the reason why the Applicant accepted the redundancy package. … The Tribunal is not satisfied that the Applicant would have retired from this type of work by the date of his application, absent his war-caused disabilities and notwithstanding that he had not by then reached 65 years of age."

The Tribunal was also satisfied that he had suffered a loss of income by reason of the diminution of his capacity to undertake remunerative work.

Formal decision

The Tribunal set aside the decision under review and determined that the veteran was eligible for Special rate pension.

Re K Revill and Repatriation Commission

Sassella

A2000/47
9 May 2001

Vietnam service - not allotted for duty

Mr Revill applied to the Tribunal for review of a decision that his back condition diagnosed as lumbar spondylosis was not war-caused. He served in the RAAF from 1956 to 1976. He rendered operational service in 1963 at Ubon in Thailand and had eligible defence service from 1972 to 1976. At issue was whether he had also rendered operational service in Vietnam.

Mr Revill claimed that while posted to the Air Movement Control Office in Sydney from 1967 to 1971, he made approximately 40 to 45 return trips to Vietnam. He claimed that he injured his back in a fall from the back of a vehicle during the unloading of an aircraft at Vung Tau in Vietnam in 1971.

Submissions

Mr Revill submitted that the Tribunal should find that he rendered operational service by virtue of having gone to Vietnam. He had been awarded the Vietnam Logistics and Support Medal and the Australian Active Service Medal with Vietnam clasp. He conceded that there was no evidence that he was allotted for duty in Vietnam and indicated that his personal log of service had been lost.

The Repatriation Commission submitted that previous findings by the Commission and the VRB that Mr Revill had rendered operational service in Vietnam were erroneous and that there was no evidence that he or his unit were allotted for duty in Vietnam. Further, the awarding of medals was based on different criteria and had no bearing on whether an individual veteran had been allotted for duty in terms of section 5B of the *VE Act.*

A reference in the *VE Act* to a person who has been "allotted for duty" is defined by section 5B to refer to duties that were carried out in specified operational areas described in Schedule 2 of the Act and to allotment by "written instrument issued by the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act" (section 5B(2)(a)).

Tribunal's conclusions

The Tribunal said that before considering whether the veteran's lumbar spondylosis was war-caused, it was first required to determine whether he had rendered operational service in Vietnam. It was not contended that his back condition was related to the other periods of eligible service. The Tribunal was required to consider whether he was a member of the Defence Force who rendered continuous full-time service in an operational area and who was allotted for duty in that area or was a member of a unit of the Defence Force that was allotted for duty in that area in terms of section 6C(1) of the *VE Act.*

The Tribunal found that Mr Revill was a credible witness and accepted that he was in Vietnam during the relevant period. However, there was no evidence that he or his unit were allotted for duty in Vietnam. The Tribunal accepted that section 119(1)(h) should not be used to remedy the lack of evidence of allotment. The Tribunal said:

"Section 5B(2), read in conjunction with section 6C, is clear in its meaning that allotment is established by way of a 'written instrument issued by the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act.' The applicant was unable to produce such a written instrument. The award of the relevant medals did not assist the tribunal in this regard, since the criteria for the award of those medals differ from the requirements for the award of the relevant entitlement."

Formal decision

The Tribunal affirmed the decision under review.

Re P Lamers and Veterans' Review Board (Respondent); Repatriation Commission (Party Joined)

Handley

V2000/992
8 June 2001

Dismissal of VRB application - failure to respond to notice

This case concerned an application for review lodged with the Veterans' Review Board by the late Mr John Flentjar. The application was lodged in 1995 and was dismissed by the Victorian Registrar of the VRB on 18 July 2000. Mr Flentjar had died in 1998 and the executor of his estate applied to the Tribunal for review of the dismissal decision.

Before the Tribunal, the sole issue was whether the correct procedural steps had been followed before the application was dismissed. Section 155AA of the *VE Act* provides, as relevant:

"**155AA.** (4) If, at the end of the standard review period:

(a) this section applies to an application for review; and

(b) the Principal Member considers that the applicant should be ready to proceed at a hearing;

the Principal Member must give a written notice to the applicant requesting the applicant to provide to the Principal Member, within 28 days after receiving the notice;

(c) a written statement indicating that the applicant is ready to proceed at a hearing; or

(d) a written statement explaining why the applicant is not ready to proceed at a hearing.

(5) If the applicant does not provide a written statement under paragraph (4)(c) or (d) within the 28 days, the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal."

Dismissal of application

On 5 June 2000, the Victorian Registrar, Mr Hoelzinger wrote to the legal personal representative in accordance with section 155AA(4) of the *VE Act* requesting, within 28 days, a written statement that the applicant was ready to proceed at a hearing or reasons why the applicant was not so ready. There was no written response to that notice within 28 days. On 18 July 2000, the Registrar dismissed the application under section 155AA(5).

Tribunal's conclusions

The Tribunal said:

"The provisions of section 155AA are mandatory to the extent that the Principal Member *must* give a written notice to an applicant requesting a written statement as to readiness to proceed. The Principal Member then

> *must* dismiss the application if the written statement is not provided. However if the application has not been concluded within two years of its lodgement, the appellant has the opportunity to provide a written statement concerning a readiness to proceed or to provide a written statement explaining why the application is not ready to proceed."

The Tribunal was satisfied that the notice of 5 June 2001 was forwarded to the legal personal representative and was properly addressed. There was no written response to that notice. It followed that the Registrar was obliged as a matter of law, to dismiss the application under section 155AA(5) of the *VE Act*.

Formal decision

The Tribunal affirmed the decision dismissing the application.

Re I Richardson and Repatriation Commission

Lewis, Thorpe & Horton

N1997/1527 & N1999/1658
22 June 2001

Review of entitlement by Repatriation Commission - section 31(6) - whether ultra vires

Mr Richardson lodged several applications to the Tribunal in respect of his disabilities and the assessment of his pension. He had rendered operational service in Vietnam as a member of the crew of *AV 1356 Clive Steele* in February-March 1968.

The Repatriation Commission had initially determined that his depressive disorder and post traumatic stress disorder were war-caused. The Commission then purported to revoke his entitlement in relation to those two conditions, relying on its powers under section 31(6) of the *VE Act.* The VRB set aside that decision and determined that the veteran's depressive disorder, post traumatic stress disorder and psychoactive substance abuse were war-caused.

Review of entitlement not within Commission's power

At the hearing of the veteran's applications, the Commission requested the Tribunal to review the VRB's decision which determined that the veteran's depressive disorder, post traumatic stress disorder and psychoactive substance abuse were war-caused.

The Tribunal noted that the VRB appeared to have assumed that the Commission had the power to review the veteran's entitlements. The Tribunal said:

> "On a careful reading of s31(6), the Tribunal is of the view that the Commission has power to cancel the *rate* of pension payable in a case where, having regard to a matter that was not before the Commission when the primary decision was made to grant the pension, it is satisfied that the pension should be cancelled. It merely enables the Commission to determine, for example, that no pension shall be paid in respect of that condition. It does not give the Commission power to revoke its decision that a particular condition is war-caused.
>
> …
>
> In the circumstances the Tribunal finds that the VRB was wrong in proceeding to review the merits of the application without ensuring that the decision it was reviewing was one that the [Commission] had power to make. The decision of the [Commission] should have been set aside by the VRB on the basis that the [Commission] had no power to make the decision, thereby leaving in place that part of the decision of the

[Commission] dated 27 November 1996 that the conditions of depressive disorder and post traumatic stress disorder are war-caused conditions, and leaving in place the decision of the [Commission] dated 1 September 1997 that psychoactive substance abuse was war-caused.

The Tribunal now sets aside the decision of the VRB dated 21 July 1999 and the decision of the [Commission] dated 5 February 1999 on the basis that the [Commission]'s decision is *ultra vires.*"

Formal decision

The Tribunal set aside the VRB's decision and determined that the Commission's decision under s 31(6) was *ultra vires*.

[Ed: The decision of the Federal Court in *Davis v Repatriation Commission* (1997) (13 *VeRBosity* 53) concerning the extent of the Repatriation Commission's powers under section 31(6) was not referred to by the Tribunal. The Commission has lodged an appeal to the Federal Court.]

Federal Court of Australia

Repatriation Commission v Thompson

Drummond, Whitlam & Emmett JJ

FCA 341
2 April 2001

Accrued rights - whether Statement of Principles should have been applied by Tribunal

The Repatriation Commission lodged an appeal to the Full Court against the decision of Madgwick J, which allowed Mr Thompson's appeal and remitted the matter to the Tribunal for rehearing.

The issue in this case was whether the AAT had made an error of law in making a decision on the basis of a Statement of Principles concerning irritable bowel syndrome. The SoP was determined after lodgment of his application for review but before the decision by the AAT. Madgwick J held that the applicant had an accrued right in those circumstances to have his case reviewed by the AAT without reference to the SoP. (See 16 *VeRBosity* 78)

Full Court's conclusions

Emmett J (with whom Drummond J agreed) dismissed the appeal by following the Full Court's decision in *Repatriation Commission v Keeley* (2000) (16 *VeRBosity* 40). In that case, it was held that in circumstances where the SoP in force at the time of lodging the application for review was revoked and replaced by a less favourable SoP, the applicant had an accrued right to have the application reviewed in terms of the earlier SoP. Similarly, in the present case, Mr Thompson had an accrued right to have his application reviewed on the basis of the legal provisions in force at the time of the original decision - that is, without reference to the SoP.

Emmett J said:

> "… the Commission did not contend that this Court should not follow the holding in *Keeley's* case that there is a vested right to have the original decision reviewed on the basis of the state of affairs at the time of the original decision. It would follow that the veteran had an accrued right to have the decision of the Board reviewed by the Tribunal on the basis that no Statement of Principles had been determined. Once that assumption is made, the reasoning in *Keeley's* case governs the outcome of the present case. Without expressing any view one way or the other about the correctness of *Keeley's* case, it is therefore appropriate to apply the reasoning in *Keeley's* case to the present case."

Drummond J referred to the hypothetical situation of a later more favourable SoP and said:

> "I think for the reasons given by Emmett J that changes made with respect to a Statement of Principles after the Commission's determination which are more favourable to the pension claimant than the earlier Statement are accommodated within s 31 the *Veterans' Entitlements Act*, rather than within a legislative intent identified in *Keeley* that review of a Commission determination should be in accordance with the most beneficial Statement of Principles in force at any time, if the majority in *Keeley* intended their comments at [46] to go that far. But I do not think there is justification for declining to

> apply the critical holding in that case that an accrued right to have a Commission decision on a pension claim reviewed in accordance with the law, including any Statement of Principles, in force when the application for review was made, then arises."

Whitlam J (dissenting) was of the view that the outcome of this appeal was governed by the Full Court's decision in *Ogston v Repatriation Commission*, that a claim for a pension made on or after 1 June 1994 is to be determined by reference to any Statement of Principles in force at the time of the decision. (See 15 *VeRBosity* 36). His Honour would have allowed the appeal.

Formal decision

The Full Court (Whitlam J dissenting) dismissed the Repatriation Commission's appeal.

Repatriation Commission v Spargo

Whitlam J

FCA 380
4 April 2001

Allotted for duty - never actually served in operational area

The Repatriation Commission appealed to the Federal Court against a decision of the Tribunal that Mr Spargo had rendered operational service within the meaning of section 6C of the *VE Act*. (See 16 VeRBosity 32)

The background to this matter was that Mr Spargo was serving on *HMAS Sydney* when she departed Australia for Korea on 31 August 1951. *HMAS Sydney* was allotted for duty in the operational area of Korea from 31 August 1951 to 22 February 1952. He was seriously injured en route and on arrival at Kure in Japan, he was transferred to *HMS Glory* for return to Australia. He arrived back in Australia on 17 October 1951.

Section 6C of the *VE Act* provides, as relevant:

> "(1) Subject to this section, a member of the Defence Force who has rendered continuous full-time service in an operational area as:
>
> (a) a member who was allotted for duty in that area; or
>
> (b) a member of a unit of the Defence Force that was allotted for duty in that area;
>
> is taken to have been rendering operational service in the operational area while the member was so rendering continuous full-time service.
>
> (2) …
>
> (3) For the purposes of subsection (1), a member of the Defence Force is, subject to subsection (4), taken to have rendered continuous full-time service in an operational area during the period commencing on:
>
> (a) if the member was in Australia on the day (relevant day) from which the member, or the unit of the member, was allotted for duty in that area—on the day on which the member left the last port of call in Australia for that service; or
>
> (b) if the member was outside Australia on the relevant day—on that day;
>
> and ending at the end of:
>
> (c) if the member, or the unit of the member, ceased to be allotted for duty—the day from which the member, or the unit, ceased to be allotted for duty; or

(d) if the member, or the unit of the member, was assigned for duty from the operational area to another area outside Australia (not being an operational area)—the day from which the member, or the unit, was assigned to that other area, or the day on which the member, or the unit, arrived at that other area, whichever is the later; or

(e) in any other case—the day on which the member arrived at the first port of call in Australia on returning from operational service.

(4) If, while rendering continuous full-time service in an operational area, a member of the Defence Force has:

(a) returned to Australia in accordance with the Rest and Recuperation arrangements of the naval, military or air forces; or

(b) returned to Australia on emergency or other leave granted on compassionate grounds; or

(c) returned to Australia on duty; or

(d) returned to Australia for the purpose of receiving medical or surgical treatment as directed by the medical authorities of the Defence Force;

only so much of the period of service of the member within Australia after his or her return and while the member:

(e) continued to be allotted for duty in an operational area; or

(f) continued to be a member of a unit of the Defence Force allotted for duty in an operational area;

as does not exceed 14 days is taken, for the purposes of subsection (1), to be a period when the member was rendering continuous full-time service in the operational area."

Submissions

The Commission submitted that the Tribunal's construction of subs 6C(3) was erroneous. That subsection serves only to identify the dates on which a period of continuous full-time service in an operational area begins and ends. The time spent on the journey to and from that service is thus deemed to be part of the service. The Tribunal mistakenly treated s 6C(3) as a deeming provision which overrides the fundamental requirement set out in the opening words of s 6C(1), that is, that the member of the Defence Force be a person "who has rendered continuous full-time service in an operational area".

Mr Spargo's counsel submitted that s 6C(3) is intended to extend the eligibility provided in s 6C(1) by deeming persons allotted to serve in an operational area to have been in that area when in fact they were not there. He says that subs (3) describes a factual situation necessarily outside what is described in subs (1), and deems or "takes" that situation to be equivalent with the situation described in subs (1). Subsection (3) is not subject to satisfaction of subs (1). The two subsections provide separate and complementary eligibility.

Court's decision

Whitlam J noted that in its decision, the Tribunal referred to the decision of the Full Court in *Repatriation Commission v Hawkins* (1993). The *VE Act* had been extensively amended since that decision. In the present case, there was no doubt that Mr Spargo was allotted for duty in Korea but unlike the situation in *Hawkins*, he never actually served in the operational area in question.

Whitlam J held that the Tribunal had erred in deciding that Mr Spargo had

rendered operational service in terms of s 6C. He said:

> "In my opinion, the Tribunal did err in its construction of s 6C of the Act. The submissions on behalf of [Mr Spargo] merely highlight the flaws implicit in the Tribunal's approach. I accept the submissions made by counsel for the Commission. Subsection 6C(1) is expressed to be '[s]ubject to this section', and the clause introduced by the conjunction 'while' in that subsection identifies a period of what is taken to be operational service. That clause and that period are what is modified by subs (3). Furthermore, subs (3) is itself expressed to be 'subject to subsection (4)' and that subsection begins by referring to a member 'while rendering continuous full-time service in an operational area'. Contrary to the submission of [Mr Spargo], subs (3) never deems a physical presence by any person in an operational area. In this case the Board was correct in holding that the respondent never passed the test provided by subs (1) of being a member of 'who has rendered continuous full-time service in an operational area' ".

Formal decision

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

[Ed: Mr Spargo has lodged an appeal to the Full Federal Court.]

Graham v Repatriation Commission

Whitlam J

FCA 422
12 April 2001

Service pension - qualifying service - meaning of allotted for duty - transitional provision

Mr Graham lodged a further appeal to the Federal Court against a decision of the Tribunal that he was not eligible for a service pension as he had not rendered qualifying service as defined in s 7A(1) of the *VE Act.* An earlier decision of the Tribunal was set aside by Sackville J on 5 February 1999. (See 15 *VeRBosity* 14). The Tribunal reheard the matter and again decided that Mr Graham had not rendered qualifying service.

The issue raised on appeal concerned the effect of s 93(1) of the *Veterans' Affairs Legislation Amendment Act 1990*. Subs 93(1) of the *VALA Act* provides:

> "**93(1)** If:
>
> (a) a person has made a claim under the *Veterans' Entitlements Act 1986* or an application under the *Defence Service Homes Act 1918*; and
>
> (b) the claim or application was granted on or before 8 November 1990 on the basis that the person was allotted for duty in an operational area or was a member of a unit of the Defence Force that was allotted for duty in an operational area;
>
> **subsection 5B(2) of the *Veterans' Entitlements Act 1986* applies in relation to the person as if the amendments made by section 19 of the *Veterans' Entitlements (Rewrite) Transition Act 1991* (as it relates to subsection 5B(2)) had not been made**." [emphasis added]

Effect of transitional provision

Mr Graham submitted at the Tribunal that he did not have to satisfy the definition of "allotted for duty" in s 5B(2) of the *VE Act* because he had the benefit of s 93(1) of the *VALA Act.* An application made by him under the *Defence Service Homes Act 1918* was granted before 8 November 1990 on the basis that he was "allotted for duty in an operational area".

The Tribunal rejected this, saying:

> "In the matter now before the Tribunal s 93(1) has no role beyond that of protecting the Applicant's war service homes loan. It does not defeat the scheme of eligibility for service pension that rests on the Applicant having rendered qualifying service."

On appeal, Whitlam J rejected Mr Graham's submission that, by virtue of s 93(1), the former s 5B(2) may apply to claims or applications that were not granted on or before 8 November 1990.

Whitlam J concluded:

> "There is no good reason why Parliament would favour persons some of whose claims had been granted by the cut-off date over those who had claims pending at that date and for whom s 93(2) of the *VALA Act* made beneficial provision. Contrary to the emotive tone of the applicant's submissions, this interpretation does not 'disentitle' a person to any benefit under the Act or the *DSH Act*. On the contrary, it preserves the advantage of the old definition for all the persons covered by s 93 of the *VALA Act*. In my opinion, the Tribunal did not err in its construction of this transitional provision."

Formal decision

The Court dismissed Mr Graham's appeal.

Repatriation Commission v Tiernan

Gray J

FCA 519
4 May 2001

Gold card - entitlement to treatment - whether qualifying service - repatriating prisoners of war

The Repatriation Commission appealed to the Federal Court against a decision of the Tribunal that Mr Tiernan had rendered qualifying service under section 7A of the *VE Act* and was entitled to a Gold Card for treatment purposes.

Section 7A provides, as relevant, as follows:

> "**7A.** (1) For the purposes of Part III and sections 85 and 118V, a person has rendered qualifying service:
>
> (a) if the person has, as a member of the Defence Force:
>
> (i) rendered service, during a period of hostilities specified in paragraph (a) or (b) of the definition of period of hostilities in subsection 5B(1), at sea, in the field or in the air in naval, military or aerial operations against the enemy in an area, or on an aircraft or ship of war, at a time when the person incurred danger from hostile forces of the enemy in that area or on that aircraft or ship;"

Service history

Mr Tiernan served within Australia from 14 August 1942 until 7 August 1945. From 8 August to 29 November 1945, he served in the 1st Prisoner of War Contact and Enquiry Unit. He departed Australia from Brisbane on 16 August 1945 and arrived at Morotai on the following day

and at Manila on 18 August 1945. From there he travelled to Okinawa, where he was attached to the 7th US Army Division for about two weeks. He then went to Korea, where his task was to make contact with Australian prisoners of war held by the Japanese in camps in Korea, for the purpose of repatriating those prisoners.

While in Okinawa, Mr Tiernan experienced two incidents in which, the tribunal found, he incurred danger from hostile forces of the enemy. Both occurred in the camp in which Mr Tiernan was quartered. The first was when a Japanese soldier ran through the camp, throwing hand grenades into the tents. The one thrown into the tent in which Mr Tiernan was billeted did not explode. Grenades exploded in other nearby tents, killing and maiming the occupants. The second incident involved a burst of automatic gunfire while Mr Tiernan was washing in a basin at the side of the tent. Bullets passed over his head and made a line of holes in the tent behind him. He was advised by an American officer that a Japanese soldier was responsible for the gunfire.

The Tribunal found that by reason of the two incidents in the camp, Mr Tiernan was in an area at a time when he incurred danger from hostile forces of the enemy in that area. He was also engaged in military operations against the enemy in that his activities were "reasonably incidental" to military operations.

Error of law

Gray J held that in finding that Mr Tiernan's activities in locating and assisting in the repatriation of Australian prisoners of war were "reasonably incidental" to military operations, the Tribunal had applied the wrong test. In the earlier case of *Willcocks v Repatriation Commission* (1992) 111 ALR 639, Cooper J had rejected the approach of determining whether a veteran's activities were "reasonably incidental" to military operations. The Tribunal's approach in this case therefore disclosed an error of law.

Gray J held that the Tribunal had made a further error of law in that it had failed to address a submission by the Commission which referred to the test laid down in *Willcocks v Repatriation Commission*.

Formal decision

The Court allowed the Repatriation Commission's appeal and remitted the matter to the Tribunal for rehearing.

Symons v Repatriation Commission

Lindgren J

FCA 534
9 May 2001

Cervical spondylosis - which Statement of Principles to apply

Mr Symons appealed to the Federal Court against a decision of the Tribunal, affirming decisions that his cervical spondylosis and post traumatic stress disorder were not war-caused or defence-caused.

Mr Symons served in the Royal Australian Navy from 1969 to 1991. This included a period of operational service in Vietnam from 21 October to 12 November 1970 on *HMAS Sydney*, and eligible defence service from 7 December 1972 to 13 March 1991.

Cervical spondylosis

Mr Symons contended that his cervical spondylosis resulted from several falls during his defence service which resulted in trauma to his cervical spine.

At the time of the Repatriation Commission's decision on 11 June 1996, the applicable SoP was SoP 102 of 1995 as amended by SoP 331 of 1995 and SoP 355 of 1995. After that decision and before Mr Symons lodged his application with the VRB on 11 April 1997, the amended SoP 102 was revoked and replaced by SoP 162 of 1996.

In the circumstances of Mr Symons' case, SoP 162 was more favourable to his claim than the amended SoP 102. This was because of changes in the definition of "*trauma to the cervical spine*". While the definition in SoP 102 required "acute symptoms and signs" to "last for a period of at least ten days immediately after the injury occurr[ed], unless medical intervention ha[d] occurred", the definition in SoP 162 laid down a lesser period of "at least one week". SoP 162 was still in force when the VRB made its decision and at the time Mr Symons lodged his application with the Tribunal.

By the time the Tribunal made its decision, SoP 162 was revoked and replaced by SoP 32 of 1999. The Tribunal applied the amended SoP 102 which was in force at the date of the Commission's decision. It did so on the basis that:

> "Applying the Full Court decision in *Keeley*, it is the Statements of Principles in place at the time of the primary decision that must be applied in the event of the Applicant seeking to rely on his accrued rights."

Mr Symons submitted that the Tribunal had erred by failing to apply the more favourable SoP 162 of 1996.

No error of law

Lindgren J rejected the view that it was open to the Tribunal to apply the revoked SoP 162 of 1996. In doing so, he referred to the decisions of the Federal Court in *Repatriation Commission v Keeley* (2000) (16 *VeRBosity* 40) and *Gorton v Repatriation Commission* (2001) (17 *VeRBosity* 17) and said:

> "In my opinion, the Tribunal was correct not to apply the unamended Instrument No 162 of 1996. Neither *Keeley* nor *Gorton* required it to do so. *Gorton* did not so require because it was not the Statement of Principles in force when the Tribunal decided Mr Symons' application for review. *Keeley* did not so require because it was not operative either at the time of the lodgement by Mr Symons of his application for the pension on or about 5 September 1995 or at the time of the Commission's decision on that application on 11 June 1996, with the result that there is no scope for saying that Mr Symons had an 'accrued right' under the Act to have his claim determined in accordance with that Instrument."

Lindgren J concluded also that Mr Symons was not entitled to have the decision reviewed by reference to SoP 162 on the basis that it was the SoP in effect at the time of the VRB's decision. That was so because it was the decision of the Commission that was under review and not the decision of the VRB affirming the Commission's decision.

Lindgren J also considered a submission that the Tribunal should review the Commission's decision by reference to SoP 162 as it was the most favourable of any of the SoPs in effect at any time between the date of the Commission's decision and the date of the Tribunal's decision. Lindgren J rejected this submission saying:

> "As will be clear from what I have said above, in my view *Gorton* does not so require."

He also rejected the submission on the basis that Mr Symons had not identified any respect in which SoP 162 would

have been more beneficial to him **in its effect** than the amended SoP 102. In order to be successful, it was not enough for Mr Symons to point to the variation in the definitions of "trauma to the cervical spine". He must be able to point to a **practical difference** in the application of the two definitions to the facts of his case.

Depressive disorder

Mr Symons contended that he suffered from post traumatic stress disorder as a result of his operational service. The Tribunal found that he did not satisfy the definition of "post traumatic stress disorder" in the Statement of Principles. It went on to consider an alternative diagnosis of "depressive disorder" and concluded that the SoP for that condition was also not satisfied.

Mr Symons submitted that the Tribunal had failed to afford him natural justice (procedural fairness) because it considered and dealt with the hypothesis that he had a "depressive disorder" when it had not raised that possibility so as to afford him an opportunity to make submissions and to lead further evidence in relation to that diagnosis.

Lindgren J examined the medical evidence that was before the Tribunal and concluded that the alternative diagnosis of "depressive disorder" was clearly at issue in the proceedings. His Honour rejected the submission that Mr Symons was not afforded natural justice.

Formal decision

The Court dismissed Mr Symons' appeal.

[Ed: Mr Symons has lodged an appeal to the Full Federal Court.]

Meehan v Repatriation Commission

Wilcox J

FCA 597
25 May 2001

Generalised anxiety disorder - existence of particular disease - standard of proof applicable

Mr Meehan appealed to the Federal Court against a decision of the Tribunal that he was not suffering from war-caused post traumatic stress disorder or alternatively, generalised anxiety disorder or personality disorder.

Service background

Mr Meehan served in the RAN from 1968 to 1980. He was a member of the crew of *HMAS Sydney* when that ship made two trips to Vietnam. On each trip the ship spent a day in port at Vung Tau. These visits occurred on 15 February 1969 and 19 May 1969, when Mr Meehan was 17 years of age.

His evidence was that on each of the visits to Vung Tau, the ship was blacked out for some 24 hours and he was the upper deck sentry with responsibility to watch for divers or debris which could disguise mines. He said he was armed with an SLR rifle. Also, he acted as bowman in the landing craft ferrying soldiers and equipment to and from the ship. He told the Tribunal that he was afraid during the time in port. Scare charges were dropped near the ship with no set pattern or timing and they were very loud and startling particularly when off duty in the mess which was under the water-line. He accepted that no shots were fired and he did not see any killed or injured. He said that some large canvas-type bags were carried on to the ship and, not having seen them before, assumed that they were body bags. He recalled seeing two rockets fired towards

the hills which he said were some 1000 metres from the ship.

Medical evidence

The Tribunal heard evidence from three psychiatrists. Dr Altman believed that Mr Meehan suffered from severe chronic post traumatic stress disorder with major depression or in the alternative, generalised anxiety disorder with major depression. Dr Dinnen considered that he suffered from generalised anxiety disorder and psychoactive substance dependence, the latter condition being in remission. He thought that both conditions were present before Mr Meehan's naval service but were aggravated by that service. Dr Walden rejected post traumatic stress disorder and generalised anxiety disorder as diagnoses in this case. The Tribunal concluded that his claimed psychiatric condition was not war-caused.

Submissions

Mr Meehan's counsel submitted that the Tribunal applied the incorrect standard of proof in determining whether or not the veteran suffered from generalised anxiety disorder, or an aggravation of that condition, as a result of his naval service. The Tribunal determined both of these matters by reference to the balance of probabilities, not the "reverse criminal standard" referred to in s 120(1) of the *VE Act*.

Counsel submitted that the Tribunal failed to follow the four step procedure laid down by the Full Court in *Repatriation Commission v Deledio* (1998) (14 *VeRBosity* 45).

Counsel for the Repatriation Commission submitted that the Tribunal's determination was in accordance with the Full Court's decision in *Repatriation Commission v Cooke* (1998) (14 *VeRBosity* 100). In that case, the Full Court held that the issue of whether a disease exists is to be decided to the "reasonable satisfaction" of the Commission.

Court's conclusions

Wilcox J accepted a submission by Mr Meehan's counsel that *Repatriation Commission v Cooke* stands only for the proposition that:

> " … the question whether a veteran suffers, or did suffer, **a** disease or injury, as distinct from a **particular** ailment, disorder, defect or morbid condition, is to be determined by the Tribunal 'to its reasonable satisfaction', pursuant to s 120(4) of the Act. … I do not think *Cooke* requires (or permits) determination, upon that standard of proof, of the question whether a veteran suffers, or did suffer, a particular ailment, disorder, defect or morbid condition."

Wilcox J found *Cooke* and *Deledio* to be consistent, with one qualification. He said:

> " … it seems to me the reading of *Cooke* I favour is supported by *Deledio*, although with the need to make one modification of what was said in the summary set out in that case, quoted at para 15 above. It will be recalled the first step stipulated in that summary is that the Tribunal 'consider all the material which is before it and determine whether that material points to a hypothesis connecting the injury, disease or death [that is, the claimed injury, disease or death] with the circumstances of the particular service rendered by the person'. The Court added: 'No question of fact finding arises at this stage'. However, if *Cooke* is correct, the Tribunal at this stage must consider whether it is reasonably satisfied, pursuant to s 120(4), that there is **a** disease (or injury or death, as the case may be), as claimed; although, in my view, it

> ought not determine the nature of the disease at that time."

Wilcox J held that the Tribunal had made two errors of law. First, it failed to follow the procedural steps required by ss 120 and 120A, as explained in *Deledio*. Secondly, and because of that failure, the Tribunal disposed of Mr Meehan's claim by reference to a finding, made on the balance of probabilities, that his case did not fit the requirements of the relevant Statement of Principles in relation to aggravation of generalised anxiety disorder. Mr Meehan was deprived of the opportunity of having his claim assessed by reference to the (more favourable) reverse criminal standard of proof specified in s 120(1).

Wilcox J set out the steps that the Tribunal should have followed in this case:

> "What the Tribunal should have done, first, was to consider whether the material before it pointed to a hypothesis or hypotheses connecting Mr Meehan's psychological symptoms (whatever their clinical label) with his operational service. This should have included consideration of the question whether the material suggested those symptoms were aggravated by his operational service. If the answer to that was in the affirmative, the Tribunal ought to have identified (as it did) all the Statements of Principles that were possibly relevant to the hypothesis or hypotheses. The Tribunal should then have examined the consistency between the hypothesis, or hypotheses, and the various Statements of Principle, making no findings of fact at that stage. Finally, the Tribunal should have asked itself the s 120(1) question: whether it was satisfied, beyond reasonable doubt, that there is no sufficient ground for determining that any disease by which Mr Meehan was incapacitated was a war-caused disease. In resolving that question, the Tribunal was entitled (and required) to make findings in relation to the facts of the case and to relate those findings to any relevant Statement of Principles: see s 120A(3) of the Act. At that point, it was material to determine whether, as a matter of fact as distinct from hypothesis, Mr Meehan's case fell within the terms of the Statement of Principles pertaining to generalised anxiety disorder."

Formal decision

The Court allowed Mr Meehan's appeal and remitted the matter to the Tribunal for rehearing.

[Ed: The Repatriation Commission has lodged an appeal to the Full Federal Court.]

Williams v Repatriation Commission

Wilcox J

FCA 601
25 May 2001

Death of veteran from coronary atherosclerosis - which Statement of Principles to apply

Mrs Williams appealed to the Federal Court against a decision of the Tribunal that the death of her late husband from coronary atherosclerosis was not war-caused. The late veteran rendered operational service in the RAAF during World War 2.

Mrs Williams claimed that late her husband's death in 1999 resulted from war-caused smoking. Her evidence was that he was a heavy smoker until the mid 1970's when he was advised to cease smoking. He continued smoking on social

occasions at a reduced level until shortly before his death.

At the Tribunal, both parties agreed that Statement of Principles No 80 of 1998 concerning ischaemic heart disease was applicable in this case. On appeal to the Court, Mrs Williams submitted that the Tribunal had erred in law in its interpretation of SoP 80 of 1998. She also submitted that she was entitled to rely upon the later more favourable SoP 38 of 1999 which was in force at the time of the Tribunal's hearing.

Statements of Principles

SoP 80 of 1998 included as factors related to service:

> "**5.** (e) smoking at least five cigarettes per day or the equivalent thereof, in other tobacco products, for a period of at least one year immediately before the clinical onset of ischaemic heart disease; or
>
> (f) where smoking has ceased prior to the clinical onset of ischaemic heart disease,
>
> (i) smoking one or more but less than five pack years of cigarettes or the equivalent thereof, in other tobacco products, and clinical onset of ischaemic heart disease has occurred within five years of cessation; or
>
> (ii) smoking five or more but less than 20 pack years of cigarettes or the equivalent thereof, in other tobacco products, and clinical onset of ischaemic heart disease has occurred within 15 years of cessation; or
>
> (iii) smoking at least 20 pack years of cigarettes or the equivalent thereof, in other tobacco products, and clinical onset of ischaemic heart disease has occurred within 20 years of cessation;"

Interpretation of SoP 80 of 1998

The Tribunal decided that factor 5(e) of SoP 80 of 1998 was not satisfied in this case as there was no evidence that the late veteran smoked at least five cigarettes per day for one year immediately before the clinical onset of ischaemic heart disease. In applying factor 5(f)(iii), it regarded 1975/76 as the date of cessation of smoking, despite evidence that the late veteran had continued smoking at a minimal level after he was advised to stop smoking.

Wilcox J held that the Tribunal made two errors of law in its application of SoP 80 of 1998. First, it was not satisfied "beyond reasonable doubt" in terms of s 120(1) of the *VE Act* that the late veteran's cigarette consumption over the whole of his smoking life (being at least one year) did not **average** at least 5 cigarettes per day. Secondly, the Tribunal failed to follow the steps laid down by the Full Court in *Repatriation Commission v Deledio* (1998) (14 *VeRBosity* 45). It appeared to find that the late veteran ceased to smoke in 1975/76 in terms of "reasonable satisfaction" and not beyond reasonable doubt which was the correct standard of proof.

Application of SoP 38 of 1999

Mrs Williams submitted that she was entitled to rely on a later, more favourable Statement of Principles.

SoP 38 of 1999, in force at the time of the Tribunal's hearing, included a new factor:

> "**5.** (f) where smoking has not ceased prior to the clinical onset of ischaemic heart disease,
>
> (i) …
>
> (ii) smoking at least one pack year of cigarettes or the equivalent thereof, in other tobacco products,

> before the clinical onset of ischaemic heart disease;"

Wilcox J observed that this new factor contains no limitation as to the period of smoking, other than it must be before the clinical onset of ischaemic heart disease. It is enough that smoking amounted to "one pack year", during the **whole** of the veteran's smoking history.

Mrs Williams' counsel referred to *Gorton v Repatriation Commission* (2001) (17 *VeRBosity* 17) in which Stone J upheld the right of a claimant to rely upon a Statement of Principles that was issued **after** the Commission's decision, and was apparently more favourable to his case than the SoP in force at the time of the primary decision. In reaching that conclusion, her Honour considered and distinguished the Full Court's decision in *Repatriation Commission v Keeley* (2000) (16 *VeRBosity* 40).

Wilcox J observed that there was a conflict between the view taken by Stone J in *Gorton* and some of the comments of Drummond and Emmett JJ in the more recent case of *Repatriation Commission v Thompson* (2001).

Wilcox J referred with approval to the decision of the Tribunal in *Re Costello and the Secretary, Department of Transport* (1979) 2 ALD 934. That case involved a decision refusing to grant the applicant a commercial pilot's licence. One issue was whether it was appropriate to apply the Air Navigation Order that was in force when the decision was made or its successor, which was in force at the time of the Tribunal's hearing. The Tribunal decided that where the nature of the decision under review does not involve consideration of accrued rights or liabilities but rather involves an investigation whether the applicant has an entitlement to the grant of a right or privilege, then unless the amending law otherwise provides, it should apply the law as amended as at the date of its decision.

Wilcox J followed the approach adopted in *Gorton's* case and held that Mrs Williams was entitled to rely on the later, more favourable SoP. He said:

> "It seems to me that, in this situation, the considerations noted by Stone J [in *Gorton*] achieve importance. As always, the task is to discern the apparent legislative intention. As Stone J pointed out, the *Veterans' Entitlements Act* is beneficial legislation. It is intended to err on the side of generosity, as is evidenced by the reverse criminal standard of proof embodied in s 120(1) of the Act. Moreover, again as Stone J noted, the Act provides for the continual updating of Statements of Principles. The idea is to ensure that current Statements will embody currently-accepted medical and scientific learning. In relation to legislation such as the *Veterans' Entitlements Act*, it can hardly be supposed Parliament would have intended that a benefit be denied to an applicant who could bring his or her case within a current Statement of Principles, simply because another, now discarded, Statement of Principles was in force at the time of the Commission's decision. I believe that to be so, notwithstanding that the effect of allowing reliance on the later instrument will be to increase the Commission's pension obligations.
>
> I respectfully agree with the approach taken by Stone J. Despite *dicta* in *Thompson* that may be seen as pointing in the opposite direction, I should follow *Gorton*. The consequence is that I hold it is open to the present applicant to rely upon SoP 38 of 1999, if she wishes, at the remitted hearing of the Tribunal.

> My conclusion does not represent failure to follow the Full Court's decision in *Keeley*. Consistently with that decision, I hold the applicant has a vested right to rely upon SoP 80 of 1998, if she wishes. However, consistently with *Gorton*, she also has the right to put a case based on SoP 38 of 1999. I agree that, to use the vernacular, this means the applicant 'has it both ways'. But there is nothing unusual about that. This is the position in any case where a person acquires a vested right prior to the commencement of amending legislation; the person can rely on the vested right or, in common with everyone else, elect to rely on the new legislation."

Formal decision

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

[Ed: The Repatriation Commission's appeal to the Full Federal Court was dismissed. The Full Court's decision will be reported in the next edition.]

Benjamin v Repatriation Commission

Whitlam J

FCA 522
30 May 2001

Entitlement - whether veteran contracted disease - diagnostic criteria - standard of proof applicable

Mr Benjamin appealed to the Federal Court against the rejection by the Tribunal of his claimed post traumatic stress disorder as a war-caused condition. He served in the RAN from 1957 to 1969 and rendered several periods of operational service in Vietnam on *HMAS Duchess* and *Jeparit*.

At issue before the Court was the manner in which the Tribunal had applied the Statement of Principles in respect of post traumatic stress disorder (No 15 of 1994 as amended). The Tribunal said that it was required to be reasonably satisfied that the diagnoses of PTSD and alcohol dependence were sustainable and that diagnoses were required to be assessed by reference to the SoP definition of a disease or condition. The Tribunal found that the veteran was not exposed to a "traumatic event" and had not re-experienced such an event in terms of the definition of PTSD.

Medical evidence

The Tribunal heard evidence from several psychiatrists. Dr Reinhardt was of the opinion that Mr Benjamin suffered from chronic post traumatic stress disorder and alcohol dependence. Dr Lewin was of the opinion that he did not satisfy the criteria for PTSD in DSM-IV. Dr Dinnen reported that, in his opinion, the applicant suffered from alcohol dependence only.

The Tribunal concluded that the veteran had not experienced a "traumatic event" as defined and did not satisfy the diagnostic criteria for PTSD in terms of the SoP. It found that his psychoactive substance abuse was war-caused.

Submissions

Mr Benjamin's counsel submitted that the initial task when determining a claim is to determine whether **a** disease exists. Whitlam J said that this is plainly correct: see *Repatriation Commission v Cooke* (1998) (14 *VeRBosity* 100). It was submitted that the *VE Act* does not require that a claimed disease must be a disease which meets a disease definition in a Statement of Principles and that the Tribunal erred when, having found that the applicant "suffered from some

psychiatric problems", it failed to consider whether those problems comprised a war-caused disease.

Court's conclusions

Whitlam J noted that in *Cooke*, the Full Court said that s 120(1) and (3) assume the present existence of the relevant disease. This must be a **claimed** disease. He disagreed with the approach adopted in *Budworth v Repatriation Commission* (2001) (17 *VeRBosity* 19) and *Meehan v Repatriation Commission* (2001) and said:

> "In my opinion, it should be borne in mind that a claim for a pension under Part II of the Act is required by s 14(5) to be made in respect of incapacity from 'a particular injury or disease'. That means for present purposes that it is first necessary to determine whether the veteran contracted the disease 'as claimed'. That important qualification is acknowledged in the language of s 19(7)(a) of the Act."

Whitlam J concluded that although the Tribunal had erred in regarding itself as bound to apply the definition of PTSD in the SoP, this was of no practical consequence. All of the psychiatrists who gave evidence had addressed the requirements of the SoP or DSM-IV criteria for PTSD. Exposure to a traumatic event was, on all the evidence before the Tribunal, the primary criterion for diagnosis of PTSD. Having found to its reasonable satisfaction that the veteran did not suffer from PTSD, the Tribunal was not required to apply the beyond reasonable doubt standard of proof in s 120(1).

Formal decision

The Court dismissed Mr Benjamin's appeal.

[Ed: Mr Benjamin has lodged an appeal to the Full Federal Court.]

Bull v Repatriation Commission

Gyles J

FCA 823
29 June 2001

Entitlement - death due to cerebrovascular accident - alcohol consumption

Mrs Bull's late husband died from a cerebrovascular accident. She claimed that his death was causally related to war service due to excessive consumption of alcohol.

The Tribunal accepted that the late veteran had consumed an average of 250g of alcohol per week for at least one year immediately before the clinical onset of cerebrovascular accident, as required by the relevant Statement of Principles.

The Tribunal said it was reasonable to infer that the late veteran's service in the Middle East was stressful. However, there was no evidence that he suffered from any psychiatric disorder arising from war service or that he drank excessively because of his war service. The Tribunal concluded that the hypothesis put forward was not reasonable as it was too tenuous.

Gyles J noted that the correct approach to be applied in terms of the "reasonable hypothesis" standard of proof was examined by the High Court in the cases of *Bushell* and *Byrnes*, and more recently by the Full Court in *Repatriation Commission v Deledio*. (1998) (14 Verbosity 45). Gyles J said:

> "The principal guidance to be gained from these authorities is that the opinion required of the Commission pursuant to s 120(3) of the Act is to be formed prior to consideration by the Commission of the issue which arises under s 120(1). If the Commission arrives at a negative

> opinion pursuant to s 120(3), there is no need to go any further as that settles the issue arising under s 120(1) without more. These authorities also establish that the Commission's consideration of the whole of the material pursuant to s 120(3) of the Act does not involve fact-finding in the sense of accepting or rejecting particular parts of the material before it."

Submissions

Mrs Bull's counsel submitted that the Tribunal had erred in law in that it had improperly weighed up the hypothesis against other material not supporting the hypothesis. It was submitted that the hypothesis would still be reasonable even though the claim that the alcohol habit arose from service was to be assumed and the Tribunal had wrongly assessed evidence at the s 120(3) stage.

The Repatriation Commission submitted that the Tribunal had followed the correct approach as outlined by the Full Court in the cases of *East* and *Bey.* The opinion as to whether an hypothesis is reasonable is a question of fact and that question is answered by reference to the **whole** of the material before the Tribunal.

Court's conclusions

Gyles J accepted the Commission's submission that the Tribunal had not erred in law. His Honour said:

> "There is nothing to indicate that the Tribunal did not address the task it was given pursuant to s 120(3) of the Act or that it impermissibly entered into fact-finding which is of a kind reserved to it only when considering s 120(1) at a later stage. It had a body of material before it which related to the drinking of the deceased. None of it bore directly upon the link between war service and drinking, or even his drinking during the war. He drank before the war, he drank after the war and he continued to drink for the rest of his life. Whether that material, coming as it does from various sources, gives rise to a reasonable hypothesis is, as the High Court said in *Owens*, a question of fact. As with questions of fact, minds can differ. On the material before it the Tribunal could have found that the hypothesis was reasonable, but it was open to it to find to the contrary."

Formal decision

The Court dismissed Mrs Bull's appeal.

[Ed: Mrs Bull has lodged an appeal to the Full Federal Court.]

Federal Magistrates Court of Australia

Hardcastle v Repatriation Commission

McInnes FM

FMCA 42
29 June 2001

Entitlement - hypertension - ingestion of salt supplements

Mr Hardcastle appealed against a decision of the Tribunal that his hypertension and trigeminal neuralgia were not war-caused. He served in the Army in Australia during World War 2 and this constituted eligible war service under the *VE Act.*

Mr Hardcastle gave evidence that during service he took 12 to 15 salt tablets a day after meals and also added salt to his meals. After service he continued to add salt to his meals. He was first diagnosed with hypertension in October 1953.

The issue before the Tribunal was whether his salt consumption during and after war service satisfied SoP No 65 of 1998 which provides:

> "(c) ingesting at least 15 grams (250 mmol) of salt supplements per day on average for a continuous period of at least 6 months immediately before the accurate determination of hypertension;"

The term "salt supplement" is defined as follows:

> " **'salt supplement'** means salt added to food when cooking or eating, or salt contained in salt tablets;"

The Tribunal rejected a submission that it should consider **total** salt intake as a result of processing and manufacture of foods and not only salt added in cooking or eating. It said that this was contrary to the definition of "salt supplement" in the SoP.

The Tribunal concluded that although he may have ingested 15 grams of salt supplements per day during service, he did not maintain that level in the 6 months prior to the diagnosis in 1953.

Appeal grounds

On appeal, Mr Hardcastle submitted that the Tribunal had misinterpreted s 120B of the *VE Act* and the salt supplement factor in the SoP. It was submitted that the words in the SoP could have a broader meaning than that adopted by the Tribunal and this would include salt added to food in processing or manufacture.

Court's conclusions

McInnes FM rejected Mr Hardcastle's submission as to the meaning of the salt supplement factor. He concluded that the Tribunal had made no error of law in its construction of the salt factor. He said:

> "In my view it is clear that the SoP in its definition seeks to distinguish between salt added when cooking or eating and does not wish to extend the definition to cover salt which may have been added during the processing or manufacture of products available for purchase. The meaning is quite clear and I accept that cooking may not necessarily mean cooking at home but rather the

cooking or eating which may occur away from home.

It seems to me that it is also significant to note the term which is being defined. The term refers to salt **supplement**. The concept of supplement clearly means adding to the food that is available for cooking and eating during the time when the food is cooked or eaten. The definition refers to *"when cooking or eating"* and does not suggest salt being supplemented to the food prior to the purchase or during the course of manufacture or processing."

Formal decision

The Court dismissed Mr Hardcastle's appeal.

[Ed: This is the first decision of the new Federal Magistrates Court in relation to veterans' matters. Appeals against AAT decisions under s 44 of the *AAT Act* may be transferred to the FMC from the Federal Court unless the decision involves a presidential member of the AAT or in matters under the *Migration Act*. Appeals may be made directly to the FMC under the *AD(JR) Act*. The FMC commenced operations in July 2000. See also 16 *VeRBosity* 2.]

Statements of Principles issued by the Repatriation Medical Authority

June – August 2001

Number of Instrument	Description of Instrument
27 of 2001	Revocation of Statement of Principles (Instrument No.17 of 1996 concerning otitic barotrauma and death from otitic barotrauma), and Determination of Statement of Principles under subsection 196B(2) concerning otitic barotrauma and death from otitic barotrauma
28 of 2001	Revocation of Statement of Principles (Instrument No.18 of 1996 concerning otitic barotrauma and death from otitic barotrauma), and Determination of Statement of Principles under subsection 196B(3) concerning otitic barotrauma and death from otitic barotrauma
29 of 2001	Revocation of Statement of Principles (Instrument No.13 of 2001 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
30 of 2001	Revocation of Statement of Principles (Instrument No.14 of 2001 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
31 of 2001	Revocation of Statement of Principles (Instrument No.25 of 1999 concerning hypertension and death from hypertension), and Determination of Statement of Principles under subsection 196B(2) concerning hypertension and death from hypertension
32 of 2001	Revocation of Statement of Principles (Instrument No.26 of 1999 concerning hypertension and death from hypertension), and Determination of Statement of Principles under subsection 196B(3) concerning hypertension and death from hypertension
33 of 2001	Revocation of Statement of Principles (Instrument No.320 of 1995 concerning chondromalacia patellae and death from chondromalacia patellae), and Determination of Statement of Principles under subsection 196B(2) concerning chondromalacia patellae and death from chondromalacia patellae
34 of 2001	Revocation of Statement of Principles (Instrument No.321 of 1995 concerning chondromalacia patellae and death from chondromalacia patellae), and Determination of Statement of Principles under subsection 196B(3) concerning chondromalacia patellae and death from chondromalacia patellae

35 of 2001	Revocation of Statement of Principles (Instrument No.29 of 1996 and Instrument No.149 of 1996 concerning malignant neoplasm of the lung and death from malignant neoplasm of the lung), and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the lung and death from malignant neoplasm of the lung
36 of 2001	Revocation of Statement of Principles (Instrument No.30 of 1996 and Instrument No.150 of 1996 concerning malignant neoplasm of the lung and death from malignant neoplasm of the lung), and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the lung and death from malignant neoplasm of the lung
37 of 2001	Revocation of Statement of Principles (Instrument No.146 of 1996 concerning acquired cataract and death from acquired cataract), and Determination of Statement of Principles under subsection 196B(2) concerning acquired cataract and death from acquired cataract
38 of 2001	Revocation of Statement of Principles (Instrument No.147 of 1996 concerning acquired cataract and death from acquired cataract), and Determination of Statement of Principles under subsection 196B(3) concerning acquired cataract and death from acquired cataract
39 of 2001	Revocation of Statements of Principles (Instrument No.97 of 1995 and Instrument No.189 of 1996 concerning malignant melanoma of the skin and death from malignant melanoma of the skin), and Determination of Statement of Principles under subsection 196B(2) concerning malignant melanoma of the skin and death from malignant melanoma of the skin
40 of 2001	Revocation of Statements of Principles (Instrument No.98 of 1995 and Instrument No.190 of 1996 concerning malignant melanoma of the skin and death from malignant melanoma of the skin), and Determination of Statement of Principles under subsection 196B(3) concerning malignant melanoma of the skin and death from malignant melanoma of the skin
41 of 2001	Revocation of Statement of Principles (Instrument No.105 of 1996 concerning malignant neoplasm of the lip epithelium and death from malignant neoplasm of the lip epithelium), and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the lip epithelium and death from malignant neoplasm of the lip epithelium
42 of 2001	Revocation of Statement of Principles (Instrument No.106 of 1996 concerning malignant neoplasm of the lip epithelium and death from malignant neoplasm of the lip epithelium), and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the lip epithelium and death from malignant neoplasm of the lip epithelium

43 of 2001	Revocation of Statement of Principles (Instrument No.45 of 1998 concerning non melanotic malignant neoplasm of the skin and death from non melanotic malignant neoplasm of the skin), and Determination of Statement of Principles under subsection 196B(2) concerning non melanotic malignant neoplasm of the skin and death from non melanotic malignant neoplasm of the skin
44 of 2001	Revocation of Statement of Principles (Instrument No.46 of 1998 concerning non melanotic malignant neoplasm of the skin and death from non melanotic malignant neoplasm of the skin), and Determination of Statement of Principles under subsection 196B(3) concerning non melanotic malignant neoplasm of the skin and death from non melanotic malignant neoplasm of the skin
45 of 2001	Revocation of Statement of Principles (Instrument No.60 of 1998 concerning pterygium and death from pterygium), and Determination of Statement of Principles under subsection 196B(2) concerning pterygium and death from pterygium
46 of 2001	Revocation of Statement of Principles (Instrument No.61 of 1998 concerning pterygium and death from pterygium), and Determination of Statement of Principles under subsection 196B(3) concerning pterygium and death from pterygium
47 of 2001	Revocation of Statement of Principles (Instrument No.33 of 1996 concerning chronic solar skin damage and death from chronic solar skin damage), and Determination of Statement of Principles under subsection 196B(2) concerning solar keratosis and death from solar keratosis
48 of 2001	Revocation of Statement of Principles (Instrument No.34 of 1996 concerning chronic solar skin damage and death from chronic solar skin damage), and Determination of Statement of Principles under subsection 196B(3) concerning solar keratosis and death from solar keratosis
49 of 2001	Amendment under subsection 196B(2) of Statement of Principles, Instrument No.41 of 2001, concerning malignant neoplasm of the lip epithelium and death from malignant neoplasm of the lip epithelium
50 of 2001	Amendment under subsection 196B(3) of Statement of Principles, Instrument No.42 of 2001, concerning malignant neoplasm of the lip epithelium and death from malignant neoplasm of the lip epithelium
51 of 2001	Amendment under subsection 196B(2) of Statement of Principles, Instrument No.43 of 2001, concerning non melanotic malignant neoplasm of the skin and death from non melanotic malignant neoplasm of the skin

52 of 2001	Amendment under subsection 196B(3) of Statement of Principles, Instrument No.44 of 2001, concerning non melanotic malignant neoplasm of the skin and death from non melanotic malignant neoplasm of the skin
53 of 2001	Amendment under subsection 196B(2) of Statement of Principles, Instrument No.45 of 2001, concerning pterygium and death from pterygium
54 of 2001	Amendment under subsection 196B(3) of Statement of Principles, Instrument No.46 of 2001, concerning pterygium and death from pterygium
55 of 2001	Amendment under subsection 196B(2) of Statement of Principles, Instrument No.47 of 2001, concerning solar keratosis and death from solar keratosis
56 of 2001	Amendment under subsection 196B(3) of Statement of Principles, Instrument No.48 of 2001, concerning solar keratosis and death from solar keratosis
57 of 2001	Revocation of Statement of Principles (Instrument No.47 of 1997 concerning chronic pancreatitis and death from chronic pancreatitis), and Determination of Statement of Principles under subsection 196B(2) concerning chronic pancreatitis and death from chronic pancreatitis
58 of 2001	Revocation of Statement of Principles (Instrument No.48 of 1997 concerning chronic pancreatitis and death from chronic pancreatitis), and Determination of Statement of Principles under subsection 196B(3) concerning chronic pancreatitis and death from chronic pancreatitis
59 of 2001	Revocation of Statement of Principles (Instrument No.35 of 1997 concerning bronchiectasis and death from bronchiectasis), and Determination of Statement of Principles under subsection 196B(2) concerning bronchiectasis and death from bronchiectasis
60 of 2001	Revocation of Statement of Principles (Instrument No.36 of 1997 concerning bronchiectasis and death from bronchiectasis), and Determination of Statement of Principles under subsection 196B(3) concerning bronchiectasis and death from bronchiectasis
61 of 2001	Revocation of Statement of Principles (Instrument No.302 of 1995 concerning acquired pes planus and death from acquired pes planus, and Instrument No.304 of 1995 concerning congenital pes planus and death from congenital pes planus), and Determination of Statement of Principles under subsection 196B(2) concerning pes planus and death from pes planus

62 of 2001	Revocation of Statement of Principles (Instrument No.303 of 1995 concerning acquired pes planus and death from acquired pes planus, and Instrument No.305 of 1995 concerning congenital pes planus and death from congenital pes planus), and Determination of Statement of Principles under subsection 196B(3) concerning pes planus and death from pes planus
63 of 2001	Determination of Statement of Principles under subsection 196B(2) concerning mesangial IgA glomerulonephritis and death from mesangial IgA glomerulonephritis
64 of 2001	Determination of Statement of Principles under subsection 196B(3) concerning mesangial IgA glomerulonephritis and death from mesangial IgA glomerulonephritis

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 22 AUGUST 2001

Description of disease or injury	Date gazetted
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
Allergic rhinitis [Instrument Nos 65/95 & 66/95 as amended by Nos 160/95 & 161/95]	01-08-01
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
Carotid artery disease [Instrument Nos 346/97 & 347/97]	28-02-01
Carpal tunnel syndrome [Instrument Nos 71/97 & 72/97]	03-11-99
Chronic gastritis [Instrument Nos 60/99 & 61/99]	04-10-00
Chronic lymphoid leukaemia [Instrument Nos 79/95 & 80/95]	19-07-00
Chronic sinusitis [Instrument Nos 211/95 & 212/95]	01-08-01
Giant cell arteritis [Instrument Nos 85/96 & 86/96]	22-03-00
Gulf War syndrome	17-11-99
Inflammatory periodontal disease [Instrument Nos 368/95 & 369/95]	25-10-00

Lumbar spondylosis [Instrument Nos 27/99 & 28/99]	04-10-00
Macular degeneration [Instrument Nos 29/97 & 30/97]	06-06-01
Malignant neoplasm of the anus	09-05-01
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
Meniere's disease [Instrument Nos 27/97 & 28/97]	10-05-00
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
Obesity	28-02-01
Open-angle glaucoma [Instrument Nos 13/99 & 14/99]	09-05-01
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
Otitis externa [Instrument Nos 292/95 & 293/95]	04-10-00
Psoriasis [Instrument Nos 21/98 & 22/98]	22-03-00

Administrative Appeals Tribunal decisions – April to June 2001

Application

dismissal by Veterans' Review Board
- no response
  Lamers, P 08 Jun 2001

Carcinoma

malignant neoplasm of the breast
- radiation from range finder
  Williams, J H 04 May 2001

malignant neoplasm of the colon
- alcohol consumption
  Traves, M 05 Apr 2001

prostate
- exposure to herbicides in Vietnam
  Howes, A R 25 May 2001

Cardiovascular disease

atherosclerotic peripheral vascular disease
- smoking & hypertension
  Traves, M 05 Apr 2001

hypertension
- alcohol consumption
  Traves, M 05 Apr 2001
- alcohol dependence or abuse
  Devereaux, N 20 Jun 2001
  Warhurst, R W 26 Jun 2001
  Martin, A J W 29 Jun 2001
- psychoactive substance abuse
  Henderson, J V 11 May 2001
- renal artery stenosis
  Barnard, G 12 Apr 2001

hypertension & hyperlipidaemia
- salt & high fat diet
  Warfe, P 03 Apr 2001

ischaemic heart disease
- hypertension - alcohol dependence or abuse
  Cant, A C 05 Jun 2001
- inability to undertake physical activity
  Ford, R 29 Jun 2001
- smoking cessation
  Paine, W 05 Jun 2001

ischaemic heart disease & hypertension
- smoking & alcohol consumption
  Blake, V N 29 Jun 2001

ischaemic heart disease, peripheral vascular disease & carotid artery disease
- smoking
  Taylor, G C 28 May 2001

ischaemic heart disease & varicose veins
- smoking cessation
  Rowe, G 31 May 2001

varicose veins
- wearing gum boots
  Williams, J H 04 May 2001

Cerebrovascular disease

cerebrovascular accident
- smoking
  Taylor, G C 28 May 2001

vertebrobasilar ischaemia
- alcohol consumption
  Hole, E W 14 May 2001

Death

Alzheimer's disease & cerebrovascular accident
- inability to obtain appropriate clinical management
  Campbell, R N 20 Jun 2001

carcinoma of skin appendage
- metastatic lung cancer
  Parker, A M 12 Jun 2001

cerebrovascular accident
- smoking
  Mulholland, A M 14 May 2001

cerebrovascular accident & dementia
- smoking
  Jeffs, J P 30 Jun 2001

chronic airflow limitation
- smoking
Hamono, E 03 Apr 2001

diabetes mellitus & atherosclerotic peripheral vascular disease
- smoking
Blake, L M 25 May 2001

empyema gall bladder
- carrot ingestion
Molony, R 09 Apr 2001

glioma & bronchopneumonia
- smoking
Aulsebrook, K D 02 May 2001

head injury
- psychoactive substance abuse
Plumb, J L 25 Jun 2001

ischaemic heart disease
- smoking
Green, W 06 Apr 2001
Corbett, E B 07 Jun 2001

ischaemic heart disease & hypertension
- alcohol & smoking
Pierce, F L 22 May 2001
- salt ingestion
Salter, J H 09 May 2001

liver failure
- alcohol consumption
Stevens, T M 29 May 2001

malignant neoplasm of lung
- smoking - non operational
Hamdorf, L A 06 Apr 2001

metastatic cancinoma
- helicobacter pylori infection
Fuss, D E 07 Jun 2001

non-Hodgkin's lymphoma
- exposure to ultraviolet radiation
Woolnough, B C R 29 Jun 2001
- smoking
Webb, G 22 Jun 2001

peritonitis and septicaemia
- chronic airways disease
Clapham, N 12 Apr 2001

post traumatic stress disorder
- suicide
Britten, J 27 Jun 2001

prostate cancer
- animal fat consumption
Holmes, M 22 May 2001
Mason, U 29 May 2001
Fitzsimmons, J 04 Jun 2001
- stress
Greer, M 07 May 2001

suicide
- Merauke service
Dunlop, I S 17 May 2001

Eligible service

operational service
- not allotted for duty
Revill, K 09 May 2001
- Vietnam service - HMAS Sydney
Chisholm, G A 31 May 2001

Entitlement

Statements of Principles
- whether accrued rights & liabilities
Salter, J H 09 May 2001
Merrell, A M 17 May 2001
Lavelle, T 18 May 2001
Taylor, G C 28 May 2001
Mason, U 29 May 2001
Fitzsimmons, J 04 Jun 2001
Campbell, R N 20 Jun 2001
Keevers, C S 22 Jun 2001
Woolnough, B C R 29 Jun 2001
Mason, S A 29 Jun 2001

Extreme disablement adjustment

lifestyle rating
Irby, H W 18 Jun 2001
Thomson, W P 28 Jun 2001

Gastrointestinal disorder

hiatus hernia
- inability to obtain appropriate clinical management
Mirfin, P I 15 May 2001

Remunerative work

Respiratory disorder

Rheumatoid arthritis

Spinal disorder

Words and phrases