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Contents
April - June 2002

Editor's notes

This edition of *VeRBosity* contains reports on twelve Federal Court decisions relating to veterans' matters handed down in the period from April to June 2002.

The case of *Kattenberg* deals with the concept of factors in a Statement of Principles that must be "related to any relevant service" rendered by a veteran. This refers to the connections with service set out in s 196B(14) of the *VE Act.* In *Counsel*, the Full Federal Court considered the meaning of "loss of earnings" in s 24, holding that this meant gross earnings of the veteran from a partnership and not net earnings. Several other cases also raise issues relating to the Special rate.

The High Court refused special leave to appeal in *Budworth* and *Benjamin* in which the Full Federal Court held that questions of diagnosis are to be decided on the balance of probabilities standard of proof.

There are also reports on selected AAT decisions. Information is also included about Statements of Principles issued recently by the Repatriation Medical Authority and matters currently under formal investigation.

Robert Kennedy
Editor

Administrative Appeals Tribunal

Re J J Roncevich and Repatriation Commission

Muller

D2001/54
14 May 2002

Knee injury – fall from window following mess function

This matter was remitted to the AAT for rehearing when the Federal Court set aside an earlier decision that Mr Roncevich's lumbar spondylosis and internal derangement of the left knee were not defence-caused. (See 17 *VeRBosity* 88). At the commencement of the further hearing, the Repatriation Commission conceded that his lumbar spondylosis was defence-caused.

In 1986, Mr Roncevich was living in the sergeants quarters on the floor above the ground floor, on the base at Holsworthy. One night in February 1986, he was ironing his Army clothes to be ready for the following day. During the course of his ironing he felt an urge to spit. He walked across to an open window, climbed onto a trunk which was just below the window sill and bent forward to spit out the window. He overbalanced, tripped on the window sill and fell out the window onto the ground below. As a result of the fall, he injured his left knee.

Mr Roncevich claimed that the main reason for his lack of balance and the consequent fall through the window, was the fact that he was inebriated at the time. He had been drinking beer in the sergeants mess for about four hours before he returned to his room. He claimed that the knee injury was defence-caused because:

- he was on 24 hour call as a sergeant in the Army and therefore he was on duty when he fell through the window;
- he was living on the Army Base when he fell through the window and that therefore there was a direct link between his injury and his defence service;
- he had attended the sergeants mess for dinner and a few drinks with a visiting senior NCO. He was under some moral obligation to attend the mess as a gesture of hospitality towards the visitor;
- the hospitality included the conviviality of eating and drinking beer together and sharing stories, jokes and *"shop talk"*; and
- he would not have fallen through the window if he had not been drunk at the time.

Mess function

The Tribunal heard evidence from the person who was President of the Mess Committee at the time of the accident. He said that there had been very little warning of the visit by a senior NCO. On such occasions when a visitor was to have dinner at the mess, it was common to try to get a few members of the mess to have dinner with the visitor, so that the visitor was not left stranded on his own. The occasion was not a *"top dinner night".* It was not compulsory to attend. The evening started after the working day at about 4.30pm and ended about 9.00pm. It was not compulsory to drink alcohol. It was not compulsory to stay until any specific time. People could excuse themselves if they wished.

The Tribunal also heard evidence that Mr Roncevich was not obliged to live on the Base. He could have rented civilian quarters away from the Base if he had wished to do so. If he had rented premises away from the Base he could have returned to those premises at the end of his working period, which would have been after 4.30pm on the day in question. He would not have been required to return to the Base until the following day, unless some emergency arose during the night which required his presence.

Tribunal's conclusions

The Tribunal found that the only links between the Army and the member's intoxication were that it occurred on an Army Base and that he and his fellow drinkers were soldiers. The intoxication was not caused by, nor did it arise out of any task that he had to do as a soldier, nor did it arise out of his defence service, nor did it occur in the course of his defence service. Consequently, the injury to his knee was not caused by his defence service, not did it arise out or in the course of his defence service. The decision to reject the claim for internal derangement of the left knee was affirmed.

Formal decision

The Tribunal affirmed the decision that Mr Roncevich's internal derangement of the left knee was not defence-caused.

[Ed: Mr Roncevich has lodged a further appeal to the Federal Court.]

Re D B Judge and Repatriation Commission

Purcell

S2000/335
31 May 2002

Myeloma – inability to obtain appropriate clinical management

Mr Judge had applied for review of a decision of the Repatriation Commission that his multiple myeloma was not defence-caused. He died on 29 July 2001 at the age of 57 years, and his widow continued the application at the Tribunal.

Mr Judge served with the RAAF and had eligible defence service from 7 December 1972 to 11 August 1997. The Tribunal was required to apply the "reasonable satisfaction" standard of proof in accordance with section 120(4) of the *VE Act*.

The relevant Statement of Principles (No 73 of 1999) included as a factor related to service:

> "5.(c) inability to obtain appropriate clinical management for myeloma."

Paragraph 6 of the SoP provided:

> "6. Paragraph 5(c) applies only to material contribution to, or aggravation of, myeloma where the person's myeloma was suffered or contracted before or during (but not arising out of) the person's relevant service; paragraph 8(1)(e), 9(1)(e) or 70(5)(d) of the Act refers."

Medical evidence

Mr Judge developed a severe rash on his face and other parts of his body when he was serving at RAAF Base Fairbairn in 1982. The rash did not respond to treatment, and the condition was diagnosed as "urticaria with unknown triggering factors". He was referred to

Professor Penny, Immunologist, at St Vincent's Hospital in Sydney who recommended his admission to hospital for investigations and to confirm diagnosis.

The results of a bone marrow test showed "No diagnostic changes. Borderline plasmacytosis". The final opinion was that Mr Judge had a benign monoclonal paraproteinaemia not associated with his urticaria. There was no obvious precipitating agent for his chronic urticaria.

In October 1983, Professor Penny asked that Mr Judge be reviewed in six months time. Mrs Judge gave evidence, which the AAT accepted, that her late husband was not told of the 1982 diagnosis of "benign monoclonal gammopathy", nor of the existence of a paraprotein. It was not in dispute that some persons with benign monoclonal gammopathy go on to develop myeloma.

In 1985, Mr Judge suffered some major pain in his chest, which he put down to a torn cartilage. The pain persisted for 6 to 8 weeks. In January 1994 he suffered severe chest pain in the rib area. He attended an outpatients clinic.

In late July 1997, during the 3 weeks immediately prior to his resignation from the RAAF, he experienced quite severe hip pain and swelling in his feet, but did not seek medical attention. In about September 1997, one month after his discharge, he developed a right hip problem and soreness around his ribs. His condition continued to deteriorate until in June 1998, blood tests and x-rays disclosed that he had numerous spinal fractures and bony lesions, including a bony lesion in the rib. These investigations led to the diagnosis of multiple myeloma.

Dr John Norman, Senior Consultant Haematologist/Oncologist expressed the opinion that given the background and past history of benign monoclonal gammopathy, it was highly probable that multiple myeloma was active prior to his discharge from the RAAF in August 1997. He also said that had there been a heightened awareness both in the patient and in his medical carers of the possibility of progression of the disease, this severely painful problem may have been delayed for several years.

Submissions

Mrs Judge submitted that:

- her late husband suffered from multiple myeloma during his defence service;
- he did not receive appropriate clinical management for his condition of multiple myeloma during his defence service;
- he suffered a material contribution to, or aggravation of, his multiple myeloma as a result of the inappropriate clinical management of the condition during his defence service; and
- thus factor 5(c) of the SoP was satisfied.

Mrs Judge contended that her late husband did not receive appropriate clinical management of his condition. She maintained that the failure to at least monitor his condition amounted to inappropriate clinical management.

The Commission submitted that the multiple myeloma was only diagnosed after his eligible defence service had concluded. As such, it was not possible that the condition was contributed to, or aggravated by, inappropriate clinical management during eligible defence service. Clinical management of the condition only commenced after eligible defence service.

Tribunal's conclusion

The AAT said it was clear from the medical records that there was no

ongoing monitoring of the condition after October 1983, despite Professor Penny's recommendation, and an appointment being made in April 1984 at St Vincent's Immunology Clinic. This consultation did not take place.

The AAT was reasonably satisfied that the clinical onset of the multiple myeloma occurred in either 1994, or June/July 1997, during eligible defence service. Professor Penny had requested in 1983 that Mr Judge be reviewed on a regular basis in the light of the protein abnormality. These reviews did not take place. The diagnosis was not made and the appropriate clinical management of his multiple myeloma was not undertaken. He was therefore unable to obtain "appropriate clinical management" for multiple myeloma, in terms of factor 5(c).

Formal decision

The Tribunal set aside the decision under review and substituted its decision that Mr Judge's multiple myeloma was defence-caused.

Re T N Jones and Repatriation Commission

Sassella

N2001/1389
18 June 2002

Entitlement – decision made in ignorance of relevant Statement of Principles – pension cancelled because matter not before Commission when decision made

Mr Jones rendered operational service in the RAN from 17 November to 5 December 1969 and from 16 March to 11 October 1971. He also rendered eligible defence service from 7 December 1972 to 6 April 1978.

On 13 January 1997, Mr Jones lodged a claim in respect of skin rashes due to exposure to chemicals while serving in the RAN. He said that he became aware of the condition in 1977/78. His general practitioner had diagnosed chronic contact dermatitis.

On 12 May 1997, a delegate of the Repatriation Commission accepted idiopathic thrombocytopaenic purpura (ITP) as defence-caused. This was without reference to a Statement of Principles gazetted on 26 February 1997 which concerned ITP.

On 12 August 1999, a delegate of the Commission decided to revoke the decision recognising ITP as defence-caused. This was affirmed on review by the VRB.

At issue before the AAT was whether the Commission had the power under s 31(6)(a) of the *VE Act* to revoke the decision that Mr Jones's ITP was a defence-caused disease. The power under s 31(6)(a) may be exercised where there is:

> "any matter that affects the payment of a pension ... being a matter that was **not before the Commission** ... when the decision to grant the pension ... or a decision to vary the rate of the pension ... was made".

Submissions

The Commission submitted that the making of the decision to grant a pension in respect of ITP was a decision made by the delegate in the absence of a matter affecting the grant of a pension. That matter was, first, the existence and gazettal of the SoP on ITP. Section 120B of the *VE Act* requires, in assessing whether a veteran qualifies for a disability pension on the basis of his or her defence service, that a decision-maker must decide whether a claim should be granted under s 120(4) only by reference to any Statement of Principles relevant to

the disease or injury in contention. That mandatory requirement was overlooked in this case, apparently because the computer system utilised by delegates had not been updated to include a reference to the newly gazetted SoP.

Secondly, the delegate had considered whether the veteran's contact with chemicals when working on a ship during defence service could have contributed to his ITP. The SoP made it clear that ITP is idiopathic and that the only possible service-related factor would have been an "inability to obtain appropriate clinical management" of the condition. Thus, a matter affecting the question of payment of a disability pension that was not before the Commission was definitive information that there is no medically recognised connection between exposure to chemicals and contraction of ITP.

Tribunal's conclusions

The Tribunal said that the issue was whether the absence of knowledge of either or both of these two matters amounted relevantly to a matter that was "not before the Commission" when the decision to grant the pension was made. On the basis of the decision of the Federal Court in *Repatriation Commission v Richardson* (2001) (17 *VeRBosity* 114), the Tribunal found that this absence of knowledge did amount to a matter that was not before the Commission at the relevant time.

The Tribunal concluded that the information in this case, notably the existence of the SoP, was not known to the Commission's delegate, although its existence was known about elsewhere within the Department. Therefore, the decision to revoke that determination was open to the Commission.

The Tribunal would resume its hearing once the parties had obtained further evidence as to the correct diagnosis of Mr Jones's condition and its connection with his service.

Formal decision

The Tribunal affirmed the decision to cancel Mr Jones's entitlement in respect of idiopathic thrombocytopaenic purpura, with effect from 15 October 1996.

[Ed: An alternative conclusion perhaps open to the Tribunal was that the delegate's decision to grant the claim was void because it was *ultra vires* and so the Commission was under a duty to redetermine the claim under section 19 and not section 31 of the *VE Act*.]

Re M L Pepper and Repatriation Commission

Bullock & Campbell

N2000/1651
19 June 2002

Hypertension – inability to obtain appropriate clinical management

Mr Pepper applied for review of a decision that his hypertension was not war-caused. At issue was whether he suffered a worsening of his hypertension on service because of an inability to obtain "appropriate clinical management" for that condition.

Mr Pepper served in the Australian Army from 18 March 1942 until 5 October 1944. This constituted eligible war service in terms of the *VE Act* and the Tribunal was required to apply the "reasonable satisfaction" standard of proof.

The relevant Statement of Principles (No 32 of 2001) included as a factor related to service:

> "5.(z) inability to obtain appropriate clinical management for hypertension."

Factor 5(z) applied only to a material contribution to, or aggravation of hypertension where the person's hypertension was suffered or contracted before or during, but not arising out of, the person's relevant service.

Medical evidence

Mr Pepper has had a history of symptoms of hypertension since 1938. He was rejected for military service in 1940. In 1942, he was enlisted in the Army as medically fit "Class 1". He was downgraded to Class B (fit for restricted duties only) in 1943 and was discharged in 1944 as medically unfit for military service due to giddiness and headaches.

Professor O'Rourke noted that Mr Pepper's blood pressure on enlistment was 158/98 and that he had his highest reading as 200/130 immediately after exercise but at rest the diastolic pressure was 100mm. He was of the opinion that it was quite possible for a soldier to be at the highest level of fitness with such a level of blood pressure.

Professor O'Rourke noted that Mr Pepper was investigated for hypertension and renal disease during service. After service, his blood pressure was elevated but controlled by medication. Professor O'Rourke concluded that he received appropriate treatment for his hypertension in accordance with the clinical standards of the day. There was no specific treatment for hypertension in the 1940's. Also, his hypertension did not clinically worsen over the course of his service.

Submissions

It was submitted for Mr Pepper that the Army medical authorities had inappropriately clinically managed his pre-existing hypertension when he was accepted as medically fit "Class 1" in March 1942. It was contended that his activities during military service such as active training caused the worsening of his symptoms and this was the view of the doctors who treated Mr Pepper during service. It was further contended that if the circumstances of Mr Pepper's military service caused him to require ongoing medical treatment for hypertension that did not require medical treatment prior to military service, then this was an aggravation of the condition within the meaning of subsection 9(1)(e) of the Act.

The Repatriation Commission submitted that in order for a person's hypertension to be aggravated by service, it must have been **made** worse and not simply that it had become worse. It was contended that the worsening must be of a marked and definite duration and more than a temporary phenomenon. Aggravation may occur as a result of service if the injury or disease should have been diagnosed and was not or the injury or disease was not treated with the skill and expertise that would have been expected to have been given to a civilian at the time. None of these circumstances applied to Mr Pepper during his Army service. There were no hypertensive medications available in 1940's and the condition was managed with attention to lifestyle.

Tribunal's conclusions

The Tribunal noted Professor O'Rourke's opinion that Mr Pepper had received appropriate treatment in accordance with the contemporary medical standards of the 1940's. His circumstances were that he had a demonstrated ability to obtain appropriate clinical management, on contemporaneous medical standards, from medical practitioners who diagnosed his condition, and undertook appropriate investigation and management of his condition through the classification system. Ultimately, following ongoing review, a determination

was made that he did not have a continuing ability to serve in the Army and he was discharged.

The Tribunal concluded that although there appeared to be a **temporary** worsening of Mr Pepper's symptoms during service, this did not constitute aggravation of his hypertension. Therefore, he was not unable to obtain appropriate clinical management of his hypertension.

Formal decision

The Tribunal affirmed the decision that Mr Pepper's hypertension was not war-caused.

Re G Ogden and Repatriation Commission

Dwyer, Maynard & Argent

V2000/1062
26 June 2002

Generalised anxiety disorder accepted as war-caused – whether reviewable by AAT – powers of VRB

Mr Ogden served in the Australian Army from 13 July 1966 to 12 July 1968. He had operational service with the 32 Small Ship Squadron, as a crew member of *John Monash*, in Vietnam from 3 December 1967 to 31 January 1968 and from 17 February 1968 to 31 March 1968.

Mr Ogden applied to the AAT for review of the refusal to accept psychoactive substance abuse, hypertension and obesity as war-caused diseases. The condition described in his claim as "stress and anxiety" was diagnosed as generalised anxiety disorder and was accepted by the VRB as war-caused.

Prior to the AAT hearing, the Repatriation Commission indicated that it intended to challenge the acceptance of generalised anxiety disorder by the VRB. The Repatriation Commission relied on the Federal Court decision of *Fitzmaurice v Repatriation Commission* (1989) 19 ALD 297. The Commission submitted that *Fitzmaurice* is authority for the view that once Mr Ogden lodged his application for review of the rejection of certain conditions, the Commission was entitled to challenge any other aspects of the decision of the VRB including the acceptance of generalised anxiety disorder.

Powers of VRB

The Tribunal noted that in regard to the claims to have conditions accepted as war-caused, the VRB **affirmed** the decision of the Commission, in so far as it had rejected claims to have psychoactive substance abuse or dependence involving alcohol, hypertension, and obesity accepted as war-caused. But the VRB went on to say that it **varied** the diagnosis of the claimed condition "stress and anxiety" to "generalised anxiety disorder". It further stated that it **set aside** the decision rejecting claims to have generalised anxiety disorder and dyspepsia accepted as war-caused, and, **in substitution, decided** that those conditions were war-caused as defined in s 9 of the *VE Act*. The VRB decided that Mr Ogden was entitled to pension for incapacity arising from those conditions from and including 24 May 1998.

The Tribunal said:

> "We have some doubt as to whether the form of decision used by the VRB was appropriate. Section 139 of the Act states that the VRB may make a decision which affirms, varies or sets aside the decision under review, but those ways of finalising a matter

seem to be alternative ways of deciding a review."

The Tribunal suggested that the practice of the VRB as to the form of its decisions may require re-examination.

Scope of the review

The Tribunal said that the question was whether the decision of the VRB should be seen as a number of different decisions, each of which was within power, or as one decision which, although not so expressed, in fact varied the decision under review to provide all the things which the VRB decided. If one decision was made, *Fitzmaurice* established that any aspect of it may be reviewed as part of the proceeding before the Tribunal. If separate decisions were made, then it may be that the review was confined to the decisions as to which Mr Ogden sought review.

In *Fitzmaurice,* the Full Court held that once Mr Fitzmaurice challenged the rate of pension to which the VRB had found he was entitled, it was open to the Commission to reopen the question of entitlement.

The Tribunal accepted that the reasoning of the majority in *Fitzmaurice* was applicable and that **all** the decisions made by the VRB on 21 July 2000 were to be characterised as aspects of one decision. Accordingly, the Commission was entitled to challenge the acceptance of generalised anxiety disorder in these proceedings.

Substantive issues

The Tribunal considered first whether Mr Ogden had experienced a "stressful event" not more than two years before the clinical onset of generalised anxiety disorder. He claimed that his ship was fired on by a pirate ship in the Malacca Straits and that he saw an elderly civilian being shot in Vietnam. He also claimed that a metallic object was thrown into a bar in Vung Tau while he was present. He was frightened by these experiences.

Having considered the material, the Tribunal concluded that while there were some inconsistencies in the accounts provided, it was not satisfied beyond reasonable doubt that his generalised anxiety disorder was not war-caused. The Tribunal affirmed the VRB's decision that his generalised anxiety disorder was war-caused.

In relation to psychoactive substance abuse, the Tribunal found that his current drinking pattern would not fit the description of "alcohol abuse or dependence" as defined in the relevant Statement of Principles. Further, there was no suggestion in the material that his previous alcohol abuse was causally related to service. His hypertension claim was dependent upon acceptance of alcohol abuse or dependence as being war-caused.

The Tribunal concluded that the hypotheses in this case concerning psychoactive substance abuse and hypertension were not reasonable in terms of the applicable Statements of Principles. Accordingly, the decisions were affirmed.

Formal decision

The Tribunal affirmed the decision under review.

Federal Court of Australia

Kattenberg v Repatriation Commission

Emmett J

FCA 412
11 April 2002

Entitlement – lumbar disc prolapse – smoking – depressive disorder – disciplinary charges

Mr Kattenberg appealed to the Federal Court against a decision of the Tribunal that his spondylosis, intervertebral disc prolapse and depressive disorder were not war-caused.

Mr Kattenberg served in the Royal Australian Navy from 1964 to 1973. His service included three brief periods of operational service in 1965. The basis of his claim was that in early August 1965 when serving on *HMAS Yarra*, he slipped while carrying a box of provisions on a steel ladder. He landed on the box and had pain in his lower back. However, he was able to resume normal duties in spite of the pain which continued for several weeks. He did not seek medical treatment.

Spondylosis

Mr Kattenberg claimed that his lumbar spondylosis and cervical spondylosis were due in part to the fall on *HMAS Yarra.* The term "trauma to the lumbar spine" is defined in the relevant SoP (No 27 of 1999) as meaning:

> "a discrete injury to the lumbar spine that causes the development, within 24 hours of the injury being sustained, of acute symptoms and signs of pain and tenderness, and either altered mobility or range of movement of the lumbar spine. These acute symptoms and signs must last for a period of at least seven days following their onset …"

The Tribunal was of the opinion that the material did not raise a reasonable hypothesis connecting his spondylosis with the circumstances of his operational service. The Tribunal made this decision on the basis that he did not experience "acute symptoms and signs of pain and tenderness" for at least 7 days as he was able to resume normal duties after the fall.

Mr Kattenberg submitted that there was material before the Tribunal that supported the hypothesis that he developed acute symptoms and signs within 24 hours which lasted for 7 days. He contended that, in reaching its conclusion as to whether there was material that gave rise to a hypothesis consistent with SoP 27 of 1999, the Tribunal erred by having regard to material inconsistent with that hypothesis.

Emmett J rejected this ground of appeal. He said that in order to determine whether or not a hypothesis is reasonable, it is necessary for the Tribunal to look at **all** the material, not just some of it. It is not entitled to find facts or reject matters at this stage. The Commission must consider the whole of the material before it - see *Bull v Repatriation Commission* (2001) 17 *VeRBosity* 118.

Intervertebral disc prolapse

Mr Kattenberg claimed that his intervertebral disc prolapse was war-caused due to his smoking habit. His case was that his cigarette smoking increased as a result of operational service and that his intervertebral disc

prolapse was related to his smoking history.

The relevant SoP (No 130 of 1996) includes as a factor related to service smoking at least 30 pack years of cigarettes before the clinical onset of intervertebral disc prolapse.

Mr Kattenberg contended that although he smoked before operational service, his smoking increased as a result of that service. He contended that as a consequence of operational service, his consumption of cigarettes increased and that, but for that increase, he would not have smoked 30 pack years of cigarettes before the clinical onset of intervertebral disc prolapse.

The Tribunal was of the opinion that the material did not raise a reasonable hypothesis connecting the intervertebral disc prolapse with the circumstances of his operational service because only about 20 cigarettes a day during the period from June 1965 to May 1973 could be taken into account. That totalled 58,300 cigarettes, which was well short of the 219,000 cigarettes that would make up 30 pack years of cigarette smoking.

Mr Kattenberg submitted that the Tribunal erred by only having regard to the cigarettes smoked as a result of operational service and not asking whether his **total** cigarette consumption was contributed to by his service.

Emmett J agreed that the Tribunal did not approach the construction of the SoP in the correct manner. The Tribunal construed the SoP as requiring that the smoking of at least 30 pack years of cigarettes be **wholly** attributable to the service. The Tribunal did not examine the possibility that the smoking of the requisite number of cigarettes was contributed to in a material degree by the service or that it would not have occurred but for the rendering of the service. Accordingly, it fell into error in its application of SoP 130 of 1996.

Emmett J said:

> "An SoP is brought into existence in order to comply with s 196B. The terms of SoP 130 of 1996 purport to comply with the requirements of s 196B(2) by referring to the requirement that *"factors must be related to any relevant service"*. That is the language used in s 196B(2)(e). It is appropriate to construe that language, when used in SoP 130 of 1996, as having the same meaning as is given to the same language in s 196B. That entails reading into the language of the SoP the language of s 196B(14).
>
> Thus, smoking at least thirty pack years of cigarettes will be related to relevant service rendered by a veteran …, if the smoking of that quantity of cigarettes:
>
> - arose out of, or was attributable to, that service;
> - was contributed to in a material degree by, or was aggravated by, that service; or
> - would not have occurred but for the rendering of that service by the person.
>
> Accordingly, the requirement of SoP 130 of 1996 that the relevant factor be related to the veteran's service will be satisfied if there is shown to be a causal or contributory relationship between the specified number of pack years and service, or if the factor would not have occurred but for the rendering of that service."

Depressive disorder

Mr Kattenberg contended that his depressive disorder was aggravated by war service after he was disciplined for apparently avoiding duties because of

back pain following his fall on the stairs on *HMAS Yarra*.

In the relevant SoP (No 65 of 1996), factor 5(e) provides:

> "experiencing a severe psychosocial stressor or stressors within the two years immediately before the clinical worsening of depressive disorder;"

The term "severe psychosocial stressor" is defined as meaning:

> "an identifiable occurrence that evokes feelings of substantial anxiety in an individual or which is perceived as stressful …"

Mr Kattenberg submitted that the Tribunal had misread his submissions as relying on factor 5(c), which was concerned not with clinical **worsening** but with clinical **onset**.

Emmett J agreed that the Tribunal had failed to consider whether he had experienced a "severe psychosocial stressor" as defined. The Tribunal failed to give consideration to the possibility that the charges laid against him while on *HMAS Yarra* and on *HMAS Sydney* constituted such a stressor. The Tribunal clearly misunderstood his contention on aggravation in concluding that his hypothesis did not reflect the requirements of factor 5(c), as it apparently reached that conclusion because the depressive disorder had its clinical **onset** when he was aged fifteen.

The Tribunal erred in law in failing to deal with the veteran's submission that his depressive disorder was aggravated by his war service.

Court's conclusions

The Court concluded that the matter should be remitted to the Tribunal for reconsideration of the following hypotheses:

- intervertebral disc prolapse is connected with Mr Kattenberg's relevant service because the smoking by him of 30 pack years of cigarettes before 8 December 1988 was contributed to in a material degree by, or was aggravated by, that service, or would not have occurred but for the rendering of that service;
- depressive disorder is connected with his operational service because the disciplinary charges laid against him during the course of that service constituted the experiencing of a severe psychosocial stressor within two years of the clinical worsening of that depressive disorder.

Formal decision

The Court set aside the Tribunal's decision and remitted the matter to the Tribunal for rehearing.

Guy v Repatriation Commission

Cooper J

FCA 525
30 April 2002

Operational service – failure to consider – error of law

Mr Guy appealed to the Federal Court against a decision of the AAT that his gastro-oesophageal reflux disease and alcohol dependence or alcohol abuse were not war-caused.

Submissions

Mr Guy submitted that the AAT had erred in its consideration of his application. In particular, he contended that the AAT had failed to consider aspects of his service as operational service for the purposes of the *VE Act* and had erred in its consideration of the relevant Statements of Principles.

Mr Guy contended that his alcohol abuse was due to "experiencing a stressful event" while serving in the RAN in Japanese and Korean waters in 1954-55. One was an incident in which it was thought (wrongly) that there was an enemy aircraft approaching. There were other events involving him working as a stoker in cramped or claustrophobic conditions.

The expression "stressful event" is defined in SoP No 5 of 1994 as follows:

> " 'stressful event' means an incident in which there were external stimuli (such as combat) that would result in psychological stress, and where there were subjective symptoms of increased stress."

The AAT found that he had not experienced a "stressful event" as defined in the SoP. It found that events on board ship may have caused fright or fear but not to the extent required to produce a psychiatric illness.

Cooper J said that the weight to be given to medical opinion evidence was a matter for the AAT. The question of whether the incidents relied upon by the applicant were "stressful events" as defined, was a question of fact to be determined by the AAT. The reasons for decision of the AAT disclosed no errors of law in relation to the application of the SoPs.

Operational service

In relation to the extent of Mr Guy's operational service, he submitted that the AAT had erred by failing to include a voyage in *HMAS Shoalhaven* from Kure to Hong Kong, at Hong Kong during a refit and return to Kure as part of his operational service. He claimed that during the refit, he was nearly electrocuted.

Cooper J held that the AAT's failure to consider the return voyage to Hong Kong as part of the applicant's operational service involved an error of law. He said that the period in question was clearly material to the issues before the AAT, as were the incidents which the applicant pointed to as occurring during that period and which he contended amounted to stressful events for the purposes of SoP No 5 of 1994. The AAT's error of not regarding the service as operational service could have affected the outcome of the case. This was a sufficient reason to set aside the decision of the AAT.

Formal decision

The Court set aside the Tribunal's decision and remitted the matter to the Tribunal for rehearing.

Hobbs v Repatriation Commission

Gyles J

FCA 560
3 May 2002

***Compensation lump sum – deductions from pension – VE Act,* s 74(3)**

Mr Hobbs appealed to the Federal Court against the deduction of an amount from his lump sum compensation payment on the basis that he was receiving a pension for the same disability. (See s 74(3), *VE Act.*)

In 1994, Mr Hobbs applied under Part IV of the *VE Act* for disability pension in respect of lumbar invertebral disc prolapse with nerve root compression. He was later granted pension at the Special rate. In 2001, he made a claim for compensation for his spinal condition under the *Safety, Rehabilitation and Compensation Act 1988.* The claim was successful upon review by the AAT and he was awarded a lump sum under the *SRC Act*. The Repatriation Commission notified the MCRS that an amount representing pension payments should

be deducted from the lump sum SRC payment.

Section 74(3) is intended to prevent double compensation being paid for the same disability. It provides that a pension payable under the *VE Act* is reducible to the extent that the person has received payment by way of compensation or damages from some other source in respect of the incapacity for which pension is payable.

At issue was whether compensation for "incapacity" as defined in s 74(3) of the *VE Act* in relation to a person receiving a Special rate pension includes a lump sum payment under Div 4 of Pt II of the *SRC Act*.

Submissions

Mr Hobbs submitted that "incapacity" in s 74 will have a different application depending on the rate of pension being paid to the person in question. He submitted that a Special rate pension compensates for loss of **earning capacity**, whereas a General rate pension compensates for **impairment** without regard to earning capacity. As a lump sum received pursuant to Div 4 of Pt II of the SRC Act is compensation for impairment, not for loss of earning capacity, it is not compensation for incapacity for the purposes of s 74.

Court's conclusion

The Court rejected Mr Hobbs's submission. Gyles J said that a lump sum payment pursuant to Div 4 of Pt II of the *SRC Act* plainly answers the description of compensation for "incapacity" in s 74(3).

Gyles J also rejected the purported distinction between Special rate and General rate pension. He said that although eligibility for the Special rate depends upon incapacity to earn, there is nothing to indicate that the amount of the Special rate does not include a component for general impairment. The General rate is increased to the Special rate because of the consequences of a permanent incapacity to earn. Also, one of the criteria for Special rate is a 70% degree of incapacity which is assessed in terms of GARP.

Formal decision

The Court dismissed Mr Hobbs's appeal.

Freeman v Repatriation Commission

North J

FCA 576
9 May 2002

Entitlement – diagnosis of PTSD in accordance with SoP criteria

Mr Freeman appealed to the Federal Court against a decision of the Tribunal which set aside the decision of the VRB that post traumatic stress disorder and psychoactive substance abuse were war-caused and substituted its decision that those disabilities were not war-caused.

Mr Freeman contended that his conditions were caused by his service in Vietnam and arising from an incident on 6 November 1971 when he was carrying out the duties of Gun Direction Officer Blind in *HMAS Derwent* in Vung Tau harbour. He claimed that he detected an unidentified aircraft on the ships radar and was in a situation where he had to decide whether to give orders to fire on the aircraft.

Diagnosis of PTSD

The AAT found that the event that Mr Freeman based his claim on did not involve "actual or threatened death or serious injury, or a threat to the physical integrity of self or others" in terms of Statement of Principles for PTSD (No 15 of 1994). The AAT also found that he did not react with "intense fear, helplessness

or horror". Consequently, his case did not fall within the SoP. The AAT concluded that, as a result, he did not suffer PTSD for the purposes of the application of the *VE Act*.

Mr Freeman's counsel submitted that the AAT erred in law by giving the SoP relating to PTSD a role to play in determining, not only the causation question, but also the question whether Mr Freeman suffered from PTSD. He contended that in order to establish a diagnosis of PTSD, the AAT had to consider whether Mr Freeman suffered a disease of that generic type, and not whether he suffered PTSD as defined in the SoP.

North J said that even if the AAT erred in the way alleged, the error was immaterial because the AAT had separately found that the hypothesis said to connect the disease with Mr Freeman's war service was not reasonable. That finding meant that Mr Freeman could not succeed with his claim.

Objective approach

North J rejected a submission that the AAT had erred in taking an objective approach to the criteria in the SoP relating to exposure to a traumatic event. This was of no consequence as the AAT had found that his subjective response did not satisfy the SoP.

Medical evidence

There were several reports before the AAT which concluded that Mr Freeman was suffering from PTSD. North J said that the AAT's failure to accept such evidence was immaterial as it was prepared to assume the diagnosis in examining whether a reasonable hypothesis was raised in terms of the SoP.

North J noted that Mr Freeman chose to make his claim on the basis that he was suffering from PTSD. There was medical evidence that he suffered a psychiatric condition and it may be that the condition entitled him to a pension under the *VE Act*. But if that was so, he would need to rely on some other category of entitlement.

Psychoactive substance abuse

North J concluded that the AAT's finding about the hypothesis said to link Mr Freeman's psychoactive substance abuse with operational service was reasonably open to it and there was no error of law in its approach.

Formal decision

The Court dismissed Mr Freeman's appeal.

[Ed: This case was heard before the Full Court handed down its decision in *Benjamin v Repatriation Commission.* (See 17 *VeRBosity* 119). In *Benjamin,* the Full Court held that if the Tribunal (and hence the VRB) finds that a veteran is suffering from a disease but not the particular disease claimed, it must determine:

1. **what kind of disease the veteran is suffering from; and**
2. **whether that disease is war-caused.]**

Hendy v Repatriation Commission

Madgwick J

FCA 602
10 May 2002

Special rate – whether employment prevented by war-caused disabilities alone

Mr Hendy appealed to the Federal Court against the Tribunal's decision that he was not eligible for Special rate pension. He had the following war-caused disabilities:

- post traumatic stress disorder with alcohol dependence
- bilateral sensorineural hearing loss.

After leaving the Navy in 1970, Mr Hendy drove a truck for a number of years. He then worked as a hotel employee including as an assistant manager and cellarman. He then worked for nine and a half years at an RSL club as a cellarman. After that, he spent eight years delivering liquor before ceasing work and selling his truck in 1995. He said that the main reason for this was his psychological state, although he also had trouble with his left knee. From November 1995 to July 1996, he worked one or two days per week as a truck driver delivering gardening/landscaping supplies, sand and gravel, fertilisers, cement and sleepers in a tipper truck.

The Tribunal found that it was not his war-caused disabilities **alone** which prevented him from continuing to undertake relevant remunerative work, in terms of s 24(1)(c) of the *VE Act.* The Tribunal concluded that "labour market factors" would operate to restrict his potential for employment as a truck driver making deliveries or as an assistant manager or cellarman in the hotel industry.

Submissions

Mr Hendy submitted that the Tribunal had erred by:

- incorrectly applying s 24(1)(c) of the *VE Act*;
- failing to apply s 24(2)(b) of the Act; and
- finding that it was not his war-caused disabilities alone which prevented him from continuing to undertake relevant remunerative work, there being no evidence capable of supporting the finding or, alternatively, such a finding was unreasonable.

Court's conclusions

Madgwick J agreed that the Tribunal had erred by failing to consider why Mr Hendy had ceased his **most recent** work when determining whether he was "prevented from continuing to undertake remunerative work that the veteran was undertaking", in terms of s 24(1)(c). In reaching its decision that "labour market factors" and restrictions on his performing heavy duties prevented him from working, the Tribunal had erroneously approached the question of what constituted the "remunerative work" that he was undertaking.

Madgwick J said:

> "It seems clear … that it is not within the intendment of the legislation that decision-makers might resort, under the rubric of labour market factors, to the mere consequences of a veteran's service-related disability for the purpose of defeating the veteran's claim. Among other things, if a service-related condition incapacitates a veteran for particular work, it will be more or less true in every case that, as time goes by, the veteran's ability to re-enter the work force will tend to be impaired on account of lack of recent experience

> of that work, absence from the workplace generally and, for older veterans, their increasing age. There would have been little point in providing for a work incapacity pension if the direct consequences of the incapacity could defeat the right to the pension."

Madgwick J also agreed that the Tribunal had erred in finding that it was not the veteran's war-caused incapacities alone which prevented him from continuing to undertake relevant remunerative work. He concluded that the Tribunal had failed to give proper consideration to the medical evidence relating to the veteran's disabilities. His evidence was that his non-accepted left knee condition had not caused any problems in performing his last job and that since his knee was operated on in 1997, he had not suffered any further impairment.

Madgwick J held that the Tribunal had not erred by failing to apply s 24(2)(b), as there was no material which necessitated giving consideration to the possible application of that paragraph.

Formal decision

The Court set aside the Tribunal's decision and remitted the matter to the Tribunal for rehearing.

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

Repatriation Commission v Burge

Drummond J

FCA 623
10 May 2002

Entitlement – standard of proof applied in considering SoP factors

The Repatriation Commission appealed against a decision of a Federal Magistrate who made orders by consent, allowing an appeal from a decision of the Tribunal and remitting the matter to the Tribunal for rehearing. (See 17 *VeRBosity* 123).

The Commission submitted that in remitting the matter, the Magistrate had erred in stating the relevant law to be applied by the Tribunal. The Magistrate said that the Tribunal is required, when considering whether a reasonable hypothesis is raised connecting an injury or disease with the circumstances of a veteran's operational service for the purposes of ss 120(3) and 120A(3) of the *VE Act*, to determine "whether the facts at least point to a reasonable hypothesis in a Statement of Principles" on the "reverse onus beyond reasonable doubt standard of proof".

Court's conclusion

Drummond J agreed that the Magistrate had erroneously stated the relevant law. He said:

> "The matter is covered in the decision of *Repatriation Commission v Deledio* (1998) 83 FCR 82 at 97 - 98. In par 3 (at 97), the Full Court deals with the task of the Tribunal …, saying:
>
> > 'If an SoP is in force, the Tribunal must then form the opinion whether the hypothesis raised is a reasonable one. It will do so if the hypothesis fits, that is to say, is

> consistent with the 'template' to be found in the SoP.' "

Drummond J said that in undertaking that task, the Tribunal must make a factual assessment of all the material before it to see if it **points to** a relevant hypothesis. But no question arises as to the Tribunal having to perform the task, at that stage, of making any findings of fact.

The question whether the material does point to a hypothesis consistent with the relevant SoP is not to be determined by applying the standard of proof in s 120(1). The question whether a reasonable hypothesis is raised by the material precedes and is also not resolved by resort to s 120(1). The question whether the factual foundation for the hypothesis is displaced beyond reasonable doubt is the ultimate fact-finding question which is only to be approached after the decision-maker concludes that the material points to a hypothesis which is consistent with the relevant SoP.

Formal decision

The Court upheld the Repatriation Commission's appeal and declared that the Federal Magistrate had erred in the statement of the legal principles to be applied. The case was remitted for rehearing by the Tribunal.

Vietnam Veterans' Association of Australia NSW Branch Inc v Specialist Medical Review Council

Moore J

FCA 733
7 June 2002

Statements of Principles – prostate cancer and smoking – review by Specialist Medical Review Council – whether sound medical-scientific evidence

The Vietnam Veterans' Association of Association (NSW) applied to the Federal Court under the *Judiciary Act 1903*. The VVAA sought to challenge two declarations made on 3 August 2001 by the Specialist Medical Review Council. The effect of the declarations was that the SMRC did not accept that there was a connection between smoking and prostate cancer which might create an entitlement to a pension under the *VE Act*.

The SMRC was established under s 196V of the *VE Act* to review the contents of Statements of Principles issued by the Repatriation Medical Authority. In March 1995, the RMA issued two SoPs in relation to prostate cancer. In May 1995, the VVAA applied for review by the SMRC of the SoP concerning operational service only. In January 1996, the SMRC published declarations rejecting the contention that the two 1995 SoPs should be amended to include smoking as a factor related to service.

In December 1996, the RMA amended the SoPs relating to prostate cancer by adding a factor relating to the consumption of animal fat. In January 1997, the VVAA applied for review of the operational service 1996 amendment on the basis that it failed to include a link between smoking and prostate cancer. In November 1999, the RMA issued two new SoPs which also did not recognise a connection between smoking and prostate cancer.

The NSW Court of Appeal subsequently held that part of the SMRC's declaration in January 1996 was void. (See 16 *VeRBosity* 17). The position following the decision of the Court of Appeal was that the 1995 review application lodged by the VVAA had not, as a matter of law, been determined. The SMRC had

intimated that it did not propose to conclude that review because the RMA had since issued the two 1999 SoPs.

Submissions

The VVAA contended that in its two declarations made on 3 August 2001, the SMRC had failed to undertake the review as required by the *VE Act*, in that:

(i) the SMRC failed to consider the two standards of satisfaction which it was required to address when evaluating the "sound medical-scientific evidence" concerning the hypothesis that smoking contributes to or causes prostate cancer;

(ii) the SMRC failed to carry out a review of all the information that was available to the RMA when it last amended the relevant Statements of Principles, namely in 1999.

Court's conclusions

In relation to the first issue, the SMRC said that it was not satisfied on the basis of the material that there was "sufficient evidence of sufficient weight" before it to support a causal link between smoking and prostate cancer.

Moore J concluded that on a fair reading of the SMRC's declaration, it had asked and answered the question whether a reasonable hypothesis concerning smoking and prostate cancer was raised by the pool of medico-scientific material before it. There was no error of law in relation to the first issue.

In relation to the second issue argued by the VVAA, Moore J said that the function of the SMRC in a review is to assess whether the step taken by the RMA (enlivening the right to seek a review under s 196Y) should have been taken having regard to the material before the RMA. Accordingly, the SMRC had not erred in refusing to take into account material arising from the 1997 review application which had not been considered by the RMA when the RMA amended the SoPs in 1996.

Moore J said that the SMRC was required, by the 1995 review application, to assess whether the material considered by the RMA justified it making the two 1995 SoPs in the terms it did. That is, it had to assess, having regard to the matters raised by the VVAA in the application, whether the material considered by the RMA at the time it made the SoPs might have warranted the making of SoPs in different (and wider) terms by including smoking as a factor. The SMRC had not done this. The revocation of the 1995 SoPs did not preclude the later exercise of the power of review. In the event that the SMRC issued directions for amendment to the SoPs, the RMA could amend the later SoPs to comply with that direction.

Formal decision

The Court held that the SMRC had the power to consider and determine the application in relation to prostate cancer made by the VVAA in 1995.

[Ed: The VVAA has lodged an appeal to the Full Federal Court and the SMRC has cross-appealed.]

Magill v Repatriation Commission

Drummond J

FCA 744
12 June 2002

Special rate – PTSD and alcohol dependence – voluntary early retirement

Mr Magill appealed to the Federal Court against the Tribunal's decision that he was not eligible for the Special rate. His

post traumatic stress disorder and psychoactive substance abuse or dependence were accepted as war-caused and he was assessed at 100% of the General rate. (See 17 *VeRBosity* 71).

After his discharge from the RAAF in 1978, Mr Magill was employed in security work with the Queensland Government. He eventually became officer-in-charge of security at the Townsville Courts complex. He had difficulty coping with the stresses of supervisory responsibilities due to alcohol dependence. He took voluntary early retirement and ceased work in November 1997.

At issue was whether he qualified in terms of s 24(1)(c) of the *VE Act*, which requires that a veteran is, by reason of incapacity from war-caused injury or disease alone, prevented from undertaking remunerative work that he was undertaking and is, by reason thereof, suffering a loss of remuneration that he would not be suffering if he were free of that incapacity.

The Tribunal found that his decision to accept voluntary early retirement precluded a finding that s 24(1)(c) was satisfied unless that decision could be attributed to his war-caused disabilities. It said that there was "no evidence" that it was the (then) undiagnosed condition of post traumatic stress disorder together with, or without, the other accepted disabilities that **alone** prevented him from continuing to undertake remunerative work.

Submissions

Mr Magill submitted that the Tribunal had erred by failing to properly construe the term "remunerative work that the veteran was undertaking" in s 24(1)(c) and that it incorrectly read that phrase as meaning, in the context of this case, security work rather than work of the more complex kind that he was doing at the time of his retirement, that is, security work with supervisory and other duties.

Mr Magill also submitted that the Tribunal had erred by failing to take account of medical evidence that it was his undiagnosed condition of PTSD and associated war-caused disabilities that alone prevented him continuing to undertake work.

Court's conclusions

Drummond J agreed that the Tribunal had failed to take account of medical evidence contained in reports prepared by two psychiatrists. Dr Likely was of the opinion that the undiagnosed condition of PTSD alone prevented the veteran from continuing to undertake remunerative work. This was largely supported by Dr Richards. The Tribunal's decision that his war-caused disabilities did not alone prevent him from continuing to undertake remunerative work involved an error of law.

Drummond J concluded that as the Tribunal wrongly considered that there was "no evidence" that Mr Magill's undiagnosed condition of PTSD and associated war-caused disabilities was the sole cause of his being unable to engage in remunerative employment either as a security officer or as a supervising security officer, the Tribunal's decision should be set aside.

Formal decision

The Court set aside the Tribunal's decision and remitted the matter to the Tribunal for rehearing.

Repatriation Commission v Cornelius

Branson J

FCA 750
14 June 2002

Carpal tunnel syndrome – date of clinical onset

The Repatriation Commission appealed to the Federal Court against a decision of the Tribunal that Mr Cornelius's carpal tunnel syndrome of both wrists was war-caused. (See 17 *VeRBosity* 104)

Mr Cornelius had operational service in Vietnam in 1968-69. During that time, he was involved in general engineering in relation to plant, vehicles and machinery and the repair of small arms. He spent approximately eight days each month working on small arms and was involved in general engineering on a daily basis.

He told the Tribunal that he noticed stiffness in each wrist after approximately five to six months in Vietnam. After his return to Australia, he experienced occasional pain in the wrists. He first sought medical treatment in 1993 when he developed numbness in both hands and also loss of power in the hands.

Repetitive activities

Mr Cornelius sought to rely on factor 5(a) of Statement of Principles (No 71 of 1997) which states:

> "(a) performing repetitive activities with the affected hand for at least two hours each day, for at least 65 days, all within a period of 120 consecutive days, and where **the repetitive activities have not ceased more than 30 days before the clinical onset** of carpal tunnel syndrome;" (emphasis added)

The Tribunal concluded that the veteran's work in Vietnam on small arms and servicing heavy equipment constituted "repetitive activities" for the purposes of the SoP factor.

Clinical onset

On the issue of clinical onset, Professor Sambrook, rheumatologist, was of the opinion that the symptoms in Vietnam were not symptoms of carpal tunnel syndrome. He conceded that it was not possible to exclude "beyond reasonable doubt" that the symptoms of wrist fatigue and stiffness at the end of the day during operational service were an early sign of carpal tunnel syndrome.

The Tribunal concluded that there was material to support the contention that the clinical onset of his carpal tunnel syndrome was some five months after his arrival in Vietnam. Given that it was contended that the symptoms persisted until he left Vietnam, and that he continued to perform repetitive activities during the entire period of his service in Vietnam, the requirement in factor 5(a) of the SoP that "the repetitive activities have not ceased more than 30 days before the clinical onset of carpal tunnel syndrome" was satisfied.

Court's conclusions

On appeal to the Court, the Repatriation Commission submitted that the Tribunal had erred in its consideration of the SoP. In particular, it had erred in forming the opinion that the hypothesis advanced by the veteran was reasonable in the sense that it was consistent with the "template" to be found in the SoP.

Branson J agreed that the Tribunal had erred in law. Her Honour said that the critical issue was whether there was material before the Tribunal which pointed to the veteran becoming aware, within the period of thirty days from the time when he ceased to undertake the repetitive activities upon which his hypothesis relies, of some feature or symptom which enabled a medical

practitioner to say that he had carpal tunnel syndrome at that time. Without such material, it could not be said that the hypothesis fitted the "template" to be found in clause 5(a) of the SoP.

Branson J observed that the fact Professor Sambrook conceded that it was not possible to exclude "beyond reasonable doubt" that the symptoms during operational service were an early sign of carpal tunnel syndrome did not assist the veteran. At the third stage identified by the Full Court in *Deledio,* the issue before the Tribunal is whether the hypothesis advanced is a reasonable one. It is only at the fourth stage, should it be reached, that the Tribunal is concerned with whether it is satisfied "beyond reasonable doubt" that the relevant incapacity did not arise from a war-caused injury.

Branson J concluded that there was no material before the Tribunal capable of pointing to, as distinct from not excluding beyond reasonable doubt, the clinical onset of the veteran's carpal tunnel syndrome within the period of thirty days from the time when he ceased to undertake the repetitive activities upon which the hypothesis advanced by him relied. For this reason it was not open to the Tribunal to form the opinion that the hypothesis was reasonable within the meaning of s 120(3) of the *VE Act.*

Formal decision

The Court set aside the Tribunal's decision and affirmed the Commission's decision that the veteran's carpal tunnel syndrome was not war-caused.

Repatriation Commission v Hill

Black CJ, Drummond & Kenny JJ

FCAFC 192
18 June 2002

Post traumatic stress disorder – existence of disease – whether reasonable hypothesis

The Repatriation Commission appealed to the Full Court against the decision of von Doussa J concerning Mr Hill's claim in respect of post traumatic stress disorder. (See 17 *VeRBosity* 116).

Mr Hill served in the RAN from 1965 to 1978 and had operational service in *HMAS Melbourne* in Vietnamese waters on two occasions in 1966. He also had defence service from 1972 to 1978. He relied on several incidents during his service as causing or aggravating his PTSD. The first was when he received an electric shock on board *HMAS Melbourne* in March 1966. The second was in April 1966 when a Sea Venom aircraft crashed into the South China Sea. A third incident was shortly before independence in New Guinea when some PNG sailors rioted.

Von Doussa J held that the Tribunal had made several errors of law in the approach it adopted. First, it had engaged in fact finding at the third stage of the *Deledio* process. Secondly, the truth of a fact about which the Tribunal was satisfied was not a fact that disproved the hypothesis beyond reasonable doubt. Thirdly, the Tribunal had failed to consider a claim based on psychoactive substance abuse or dependence. Von Doussa J set aside the Tribunal's decision and remitted the matter to the Tribunal for rehearing.

Submissions

The Repatriation Commission submitted first that von Doussa J had erred in

holding that ss 120(3) and 120A(3) of the *VE Act* required merely a hypothesis connecting a veteran's injury or disease with his war service that fitted an applicable SoP. A hypothesis, to be reasonable, must be **raised or pointed to** by the material.

Secondly, the Commission contended that von Doussa J had erred in imposing a burden of proof on the Commission.

Thirdly, the Commission submitted that von Doussa J erred in holding that it was not open to the Tribunal to declare itself satisfied beyond reasonable doubt of a fact inconsistent with the hypothesis relied on by Mr Hill.

The Repatriation Commission conceded that the Tribunal had erred in failing to consider an alternative claim based on psychoactive substance abuse or dependence and, for this reason, part of the Tribunal's decision should be set aside.

Full Court's conclusions

The Full Court observed that the effect of s 120A(3) of the *VE Act* (where there is a SoP under s 196B(2)) is that a hypothesis is reasonable only if it is upheld by the SoP. Pursuant to s 196B(2), the SoP must set out "the factors that must as a minimum exist" and "which of those factors must be related to service". The result is that, where it applies, the SoP prescribes the essential content of what is a reasonable hypothesis, for s 120(3) purposes, capable of connecting the particular kind of injury, disease or death with the circumstances of a veteran's particular service. In order to satisfy ss 120(3) and 120A(3), a hypothesis relied on by a veteran to support a claim must be supported by material **pointing to** each element that the SoP makes essential for the hypothesis to be reasonable.

The Full Court did not accept that von Doussa J had erred in relation to the requirements of ss 120(3) and 120A(3). It agreed that in this case, the Tribunal had erred by identifying the wrong issue in considering whether the material before it fitted the template in the SoP. The essential issue before the Tribunal was, assuming Mr Hill suffered from PTSD as defined in clause 4, did the material raise or point to his "experiencing a stressor" as defined in clause 1, during his operational service?

Instead of considering whether the material pointed to his "experiencing a stressor" as defined, the Tribunal had addressed whether he was in fact suffering from PTSD as defined in clause 4. This was not in issue between the parties.

The Full Court also rejected other grounds argued by the Commission. It said that von Doussa J had not sought to impose a burden of proof on the Commission. Also, the Tribunal fell into error when it held itself satisfied beyond reasonable doubt of a fact inconsistent with the hypothesis said to connect Mr Hill's PTSD with his war service. In its findings, the Tribunal had ignored relevant considerations and relied upon irrelevant considerations.

Formal decision

The Full Court set aside the Tribunal's decision and remitted the matter to the Tribunal for rehearing.

Counsel v Repatriation Commission

Gray, Carr & Goldberg JJ

FCAFC 201
20 June 2002

Special rate – loss of earnings – farming business

Mr Counsel appealed to the Full Court against the decision of Moore J, dismissing his appeal against a decision of the Tribunal that he did not qualify for the Special rate. (See 17 *VeRBosity* 82)

Mr Counsel's war-caused conditions were myopia, bilateral sensorineural hearing loss, tinnitus, ischaemic heart disease, post traumatic stress disorder, tinea, impotence, folliculitis and chronic solar skin damage. He owned a farm in partnership with his wife from 1980 to 1993. Part of the farm was sold in 1988 due to his declining health. Partnership tax returns for the period 1986 to 1993 indicated that the farm made a small profit in only one year.

The essential issue was whether he 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;"

The Tribunal found that Mr Counsel had not suffered a loss of earnings due to his war-caused disabilities as the farm had always operated at a loss, apart from making a small profit in one year. The Tribunal said "earnings" means **net** earnings, namely gross earnings less deduction of expenses. Moore J held that the Tribunal had not erred in law.

Loss of earnings

The main issue on appeal to the Full Court was the meaning of the word "earnings" in the phrase "loss of salary or wages, or of earnings on his or her own account". Mr Counsel submitted that the Tribunal erred in law in holding that the relevant amount was the amount arrived at after deducting expenses.

The Full Court agreed that the Tribunal had erred in law in holding that Mr Counsel had not suffered a loss of earnings on his own account.

Goldberg J said that in the situation in which Mr Counsel was involved, he was receiving earnings, money or cash flow as a result of activities which he and his wife were undertaking as part of their partnership business. For example, money was received as a result of the sale of livestock. At the time the funds were received, he and his wife would have had access to those funds. In time, there would need to be a reconciliation of the accounts of the partnership.

The fact that at the end of the relevant accounting period the partnership might have shown a loss should not obscure the fact that during that year he had access to the cash flow or earnings of the partnership which had been derived from his personal exertion. When he was ultimately prevented by incapacity from continuing to undertake the work which he carried out in the course of the partnership, he thereby suffered a loss of earnings on his own account in the sense that he was no longer able to have access to, or take advantage of, the cash flow or earnings of the partnership business.

Gray J agreed with Goldberg J that s 24(2A)(e) looks to the loss of an income, revenue or cash flow stream available to a veteran. There may be

various reasons why accounts may show that a partnership business that was receiving income during a period made a loss in that period. During the period, each of the partners was entitled to income according to the terms of the partnership agreement.

In the case of a partner such as Mr Counsel, whose physical and mental labour produced or contributed to the generation of that income, it was appropriate to regard that income as "earnings on his or her own account" within the meaning of s 24(2A)(e).

It followed that the Tribunal made an error of law in holding that he had not suffered a loss of earnings on his own account because the partnership accounts showed a net loss in all but one year after expenses had been deducted from the partnership income. The Tribunal should have held that the loss of **gross** income was a loss of earnings on his own account.

Carr J observed that the *VE Act* is beneficial legislation and the word "earnings" should be construed favourably to the veteran. Accordingly, it should be construed as meaning **gross** earnings, before deducting the cost of goods sold.

Mr Counsel was entitled (jointly with his wife) to every dollar which was paid for livestock or other produce of the farm. Those receipts were the product of the labours of him and his wife. His interest in those monies from time to time constituted "earnings" within the meaning of s 24(2A)(e).

Hypothetical earnings

Mr Counsel submitted also that Tribunal had erred in law in not addressing the hypothetical position as to whether the farming business would have been profitable if he had been free of his incapacity.

The Full Court said that in view of its decision, it was not necessary to consider this second ground of appeal.

Formal decision

The Full Court allowed Mr Counsel's appeal and remitted the matter to the Tribunal with the direction that he was entitled to the Special rate.

Graham v Repatriation Commission

Dowsett J

FCA 792
21 June 2002

Death – unknown primary cancer – whether war-caused

Mrs Graham appealed to the Federal Court against the decision of the Tribunal that the death of her late husband was not war-caused.

Mr Graham served in the Australian Army during World War 2 and had operational service in New Guinea. Mrs Graham gave evidence that he commenced to smoke and drink heavily during his army service and that those habits continued until his death. She also claimed that following his discharge, and until his death, he suffered regularly from severe stomach pains. He experienced gastro-intestinal bleeding in 1967, the cause of which was unknown.

In January 1977 a secondary carcinoma was located in the veteran's neck. His doctor discovered an epigastric mass and inferred that there was probably a "pancreatic primary". On further investigation, he was found to be suffering from cancer in the right supra-clavicular region and in the epigastrium. He died in October 1978. Post-mortem examination disclosed widespread cancer particularly in the vicinity of the

stomach, adrenals, pancreas, liver, kidneys and bowel.

Mrs Graham put forward the hypothesis at the AAT that:

1. The veteran was infected with *Helicobacter pylori* while serving in the army. (This point was conceded by the Commission).
2. That infection caused him to develop peptic ulcer disease.
3. The peptic ulcer disease caused a primary cancer site to develop inside the stomach. The primary cancer was probably a gastric lymphoma of mucosal-associated lymphoid tissues (MALT).
4. The primary gastric MALT lymphoma gave rise to the reticulum cell sarcoma which caused his death.

The AAT rejected the hypothesis as being unreasonable for the following reasons:

1. There was no evidence that the veteran was ever infected with *Helicobacter pylori*.
2. There was no evidence that the veteran ever suffered from peptic ulcer disease.
3. The veteran had a normal barium meal in or about January 1977.
4. The post-mortem report showed that there was no primary cancer site inside the veteran's stomach.

Submissions

Mrs Graham submitted on appeal that the AAT had erred in law:

- by failing to decide the matter on the material before it, and erroneously attributing weight to misleading evidence;
- by failing to make a finding that the veteran had peptic ulcer disease and *Helicobacter* infection despite concessions by the Commission; and
- by failing to identify material before it which satisfied the relevant factors in the Statements of Principles and as such, raised a reasonable hypothesis as required by law.

Court's conclusions

Dowsett J dismissed the appeal. He observed that the only step undertaken by the AAT was to consider the reasonableness of the hypothesis. That process did not involve resolution of conflicts in the medical evidence. The only question was whether the material, or any part of it, pointed towards the hypothesis. (See *Bull v Repatriation Commission* (2001) 17 *VeRBosity* 118)

In this case, the hypothesis had to identify a possible cause of death and a possible basis for linking it to the veteran's service. Mrs Graham's hypothesis was that death occurred as a result of a **primary** gastric lymphoma, but there was no evidence suggesting that the veteran suffered such a condition.

Dowsett J observed:

> "Mere consistency with some aspects of the material does not point to the validity of the hypothesis. Dr Milliner identified only the possibility of gastric lymphoma. Dr Ades was unable to exclude such a bare possibility, but neither of them identified any material pointing in that direction. In particular, *Helicobacter pylori* infection and peptic ulcer disease may be relevant preconditions for gastric lymphoma, but they do not demonstrate its presence."

Formal decision

The Court dismissed Mrs Graham's appeal.

High Court of Australia

Applications for special leave to appeal – leave refused

The High Court heard special leave applications in the cases of ***Budworth*** and ***Benjamin*** on 21 June 2002. The High Court (Gleeson CJ, McHugh & Gummow JJ) dismissed both applications for the reason that "we agree with the decision of the Full Court of the Federal Court".

In *Budworth*, the Full Federal Court held that when determining whether a claimed injury or disease exists, that issue must be decided to the "reasonable satisfaction" of the decision maker in accordance with s 120(4) of the *VE Act.* The Full Court's decision is noted at 17 *VeRBosity* 109.

Similarly, in *Benjamin*, the Full Court held that the "kind of injury, disease or death" (ie, diagnosis) must be determined on the reasonable satisfaction standard of proof and is not a matter to be considered under s 120(1), (2) or (3). (See 17 *VeRBosity* 119).

Statements of Principles issued by the Repatriation Medical Authority

June - August 2002

Number of Instrument	Description of Instrument
44 of 2002	Revocation of Statement of Principles (Instrument No.170 of 1995 concerning **multiple sclerosis** and death from multiple sclerosis), and Determination of Statement of Principles under subsection 196B(2) concerning multiple sclerosis and death from multiple sclerosis.
45 of 2002	Revocation of Statement of Principles (Instrument No.171 of 1995 concerning **multiple sclerosis** and death from multiple sclerosis), and Determination of Statement of Principles under subsection 196B(3) concerning multiple sclerosis and death from multiple sclerosis.
46 of 2002	Revocation of Statement of Principles (Instrument No.27 of 1999 concerning **lumbar spondylosis** and death from lumbar spondylosis), and Determination of Statement of Principles under subsection 196B(2) concerning lumbar spondylosis and death from lumbar spondylosis.
47 of 2002	Revocation of Statement of Principles (Instrument No.28 of 1999 concerning **lumbar spondylosis** and death from lumbar spondylosis), and Determination of Statement of Principles under subsection 196B(3) concerning lumbar spondylosis and death from lumbar spondylosis.
48 of 2002	Revocation of Statement of Principles (Instrument No.29 of 1999 concerning **thoracic spondylosis** and death from thoracic spondylosis), and Determination of Statement of Principles under subsection 196B(2) concerning thoracic spondylosis and death from thoracic spondylosis.
49 of 2002	Revocation of Statement of Principles (Instrument No.30 of 1999 concerning **thoracic spondylosis** and death from thoracic spondylosis), and Determination of Statement of Principles under subsection 196B(3) concerning thoracic spondylosis and death from thoracic spondylosis.
50 of 2002	Revocation of Statement of Principles (Instrument No.31 of 1999 concerning **cervical spondylosis** and death from cervical spondylosis), and Determination of Statement of Principles under subsection 196B(2) concerning cervical spondylosis and death from cervical spondylosis.
51 of 2002	Revocation of Statement of Principles (Instrument No.32 of 1999 concerning **cervical spondylosis** and death from cervical

spondylosis), and Determination of Statement of Principles under subsection 196B(3) concerning cervical spondylosis and death from cervical spondylosis.

52 of 2002 — Revocation of Statement of Principles (Instrument No.62 of 1999 concerning **gastro-oesophageal reflux disease** and death from gastro-oesophageal reflux disease), and Determination of Statement of Principles under subsection 196B(2) concerning gastro-oesophageal reflux disease and death from gastro-oesophageal reflux disease.

53 of 2002 — Revocation of Statement of Principles (Instrument No.63 of 1999 concerning **gastro-oesophageal reflux disease** and death from gastro-oesophageal reflux disease), and Determination of Statement of Principles under subsection 196B(3) concerning gastro-oesophageal reflux disease and death from gastro-oesophageal reflux disease.

54 of 2002 — Revocation of Statement of Principles (Instrument No.5 of 2000 concerning **aortic stenosis** and death from aortic stenosis), and Determination of Statement of Principles under subsection 196B(2) concerning aortic stenosis and death from aortic stenosis.

55 of 2002 — Revocation of Statement of Principles (Instrument No.6 of 2000 concerning **aortic stenosis** and death from aortic stenosis), and Determination of Statement of Principles under subsection 196B(3) concerning aortic stenosis and death from aortic stenosis.

56 of 2002 — Revocation of Statement of Principles (Instrument No.21 of 1998 concerning **psoriasis** and death from psoriasis), and Determination of Statement of Principles under subsection 196B(2) concerning psoriasis and death from psoriasis.

57 of 2002 — Revocation of Statement of Principles (Instrument No.22 of 1998 concerning **psoriasis** and death from psoriasis), and Determination of Statement of Principles under subsection 196B(3) concerning psoriasis and death from psoriasis.

58 of 2002 — Revocation of Statements of Principles (Instrument No.23 of 1996, as amended by Instrument No.5 of 1998 concerning malignant neoplasm of the colon and death from malignant neoplasm of the colon), and revocation of Statements of Principles (Instrument No.25 of 1996, as amended by Instrument No.3 of 1998 concerning malignant neoplasm of the rectum and death from malignant neoplasm of the rectum), and Determination of Statement of Principles under subsection 196B(2) concerning **malignant neoplasm of the colorectum** and death from malignant neoplasm of the colorectum.

59 of 2002 — Revocation of Statements of Principles (Instrument No.24 of 1996, as amended by Instrument No.6 of 1998 concerning malignant neoplasm of the colon and death from malignant

	neoplasm of the colon), and revocation of Statements of Principles (Instrument No.26 of 1996, as amended by Instrument No.4 of 1998 concerning malignant neoplasm of the rectum and death from malignant neoplasm of the rectum), and Determination of Statement of Principles under subsection 196B(3) concerning **malignant neoplasm of the colorectum** and death from malignant neoplasm of the colorectum.
60 of 2002	Revocation of Statement of Principles (Instrument No.91 of 1996 concerning colorectal adenomatous polyp or familial adenomatous polyposis and death from colorectal adenomatous polyp or familial adenomatous polyposis), and Determination of Statement of Principles under subsection 196B(2) concerning **familial adenomatous polyposis** and death from familial adenomatous polyposis.
61 of 2002	Revocation of Statement of Principles (Instrument No.92 of 1996 concerning colorectal adenomatous polyp or familial adenomatous polyposis and death from colorectal adenomatous polyp or familial adenomatous polyposis), and Determination of Statement of Principles under subsection 196B(3) concerning **familial adenomatous polyposis** and death from familial adenomatous polyposis.
62 of 2002	Determination of Statement of Principles under subsection 196B(2) concerning **colorectal adenoma** and death from colorectal adenoma.
63 of 2002	Determination of Statement of Principles under subsection 196B(3) concerning **colorectal adenoma** and death from colorectal adenoma
64 of 2002	Amendment of Statement of Principles, Instrument No.51 of 2002, under subsection 196B(3) concerning **cervical spondylosis** and death from cervical spondylosis

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 14 AUGUST 2002

Description of disease or injury	Date gazetted
Allergic rhinitis [Instrument Nos 65/95 & 66/95 as amended by Nos 160/95 & 161/95]	01-08-01
Atherosclerotic peripheral vascular disease [Instrument Nos 87/95 & 88/95]	25-10-00
Atrial fibrillation [Instrument Nos 9/96 & 10/96]	19-09-01
Carotid artery disease [Instrument Nos 346/97 & 347/97]	28-02-01
Chronic fatigue syndrome [Instrument Nos 90/97 & 91/97]	19-09-01
Chronic myeloid leukaemia [Instrument Nos 7/97 & 8/97]	16-01-02
Chronic sinusitis [Instrument Nos 211/95 & 212/95]	01-08-01
Dental pulp disease (including pulpal abscess) [Instrument Nos 370/95 & 371/95]	06-03-02
Diabetes mellitus [Instrument Nos 82/99 & 83/99 as amended by Nos 9, 10, 91 & 92/01]	28-11-01
Gulf War syndrome	17-11-99
Hiatus hernia [Instrument Nos 42/99 & 43/99]	14-08-02

Hypertension [1] [Instrument Nos 31/01 & 32/01]	24-04-02
Ischaemic heart disease [Instrument Nos 38/99 & 39/99]	28-11-01
Loss of teeth [Instrument Nos 374/95 & 375/95]	06-03-02
Macular degeneration [Instrument Nos 29/97 & 30/97]	06-06-01
Malignant neoplasm of the brain [Instrument Nos 40/99 & 41/99]	10-01-01
Malignant neoplasm of the oral cavity or hypopharynx [Instrument Nos 113/96 & 114/96]	06-03-02
Malignant neoplasm of the salivary gland [Instrument Nos 25/97 & 26/97]	06-03-02
Malignant neoplasm of the stomach [Instrument Nos 67/97 & 68/97 as amended by Nos 9/98 & 10/98]	24-04-02
Malignant neoplasm of the testis and paratesticular tissues [Instrument Nos 3/97 & 4/97]	14-08-02
Melioidosis [Instrument Nos 344/95 & 345/95 as amended by Nos 14/02 & 15/02]	29-05-02
Mitral valve prolapse	16-01-02
Myeloma [Instrument Nos 72/99 & 73/99]	19-09-01
Non-Hodgkin's lymphoma [Instrument Nos 80/99 & 81/99]	03-07-02

[1] This investigation follows a declaration by the Specialist Medical Review Council under subsection 196W(4) that there is sound medical-scientific evidence to justify amendment of the SoPs for hypertension to include as a factor *"occupational or work related stress consequent upon working in a high demand, low decision latitude or control job".*

Non melanotic malignant neoplasm of the skin [Instrument Nos 43/01 & 44/01 as amended by Nos 51/01 & 52/01]	08-05-02
Obesity	28-02-01
Osteoporosis [Instrument Nos 61/97 & 62/97]	25-10-00
Subarachnoid haemorrhage [Instrument Nos 48/99 & 49/99]	29-05-02
Tinea [Instrument Nos 27/94 & 28/94 as amended by Nos 184/95, 185/95, 7/02 & 8/02]	29-05-02

Administrative Appeals Tribunal decisions – April to June 2002

Attendant allowance

Sleep, K J 30 Apr 2002

Carcinoma

multiple myeloma

- inability to obtain appropriate clinical management

Judge, D B 31 May 2002

prostate

- animal fat consumption

Thomas, J W 02 May 2002

Roberts, D Y 15 May 2002

Bailey, M C 12 Jun 2002

rectum

- smoking & alcohol consumption

Peckham, D 28 Jun 2002

Cardiovascular disease

hypertension

- alcohol abuse

Groombridge, R J 17 May 2002

- inability to obtain appropriate clinical management

Pepper, M L 19 Jun 2002

- obesity & alcohol dependence or alcohol abuse

Ogden, G 26 Jun 2002

- salt ingestion

Ross, J 21 Jun 2002

ischaemic heart disease & dyslipidaemia

- high fat diet

Bailey, M C 12 Jun 2002

secondary cardiomyopathy

- alcohol consumption

Arnold, A E 05 Apr 2002

varicose veins

- deep vein thrombosis

John, O 19 Apr 2002

Chronic fatigue syndrome

chronic fatigue syndrome

- inability to obtain appropriate clinical management

Husband, N F 24 May 2002

Death

carcinoma of colon

- smoking

Gamley, G E 20 May 2002

carcinoma of prostate

- animal fat consumption

Wheal, J I 18 Apr 2002

Lay, D M 07 Jun 2002

cerebrovascular accident

- alcohol consumption

Ferres, S H 24 May 2002

- alcohol consumption – Broome service

Smith, F 21 Jun 2002

hypertensive heart disease

- alcohol consumption

Mychael, S 27 Jun 2002

ischaemic heart disease

- dyslipidaemia – high fat diet

Oliver, G E 29 May 2002

- hypertension - salt ingestion

Ross, J 21 Jun 2002

metastatic adenocarcinoma of unknown primary

- smoking

Pritchard, M K 14 Jun 2002

viral cardiomyopathy

- alcohol consumption

Dowzer, M 31 May 2002

Dependant

divorced from veteran

- whether in a marriage-like relationship

Moore, M M 27 Jun 2002

Diabetes

diabetes mellitus
- obesity
  Groombridge, R J 17 May 2002

Gastrointestinal disorder

ulcerative colitis
- whether smoking defence-caused
  Laurie, R B 17 May 2002

Jurisdiction

review of entitlement by Commission
- whether SoP not before decision-maker
  Jones, T N 18 Jun 2002

Musculoskeletal disorder

enthesitis left elbow & epicondylitis right elbow
- repetitive trauma
  Jameson, B A 27 Jun 2002

internal derangement of the knee
- trauma due to intoxication
  Roncevich, J J 14 May 2002

Osteoarthrosis

generalised
- trauma – air crew
  Roberts, D Y 15 May 2002

knee
- trauma – fall from truck
  Bell, N L 22 May 2002

Practice & Procedure

Administrative Appeals Tribunal
- application for extension of time
  Risson, R G 06 Mar 2002
- power to review all aspects of decision
  Ogden, G 26 Jun 2002

Psychiatric disorder

alcohol dependence & anxiety disorder
- no diagnosis
  Wensor, R E 10 May 2002

alcohol dependence or alcohol abuse
- experiencing a severe stressor – merchant navy
  Smith, J 28 Jun 2002

alcohol dependence or abuse, generalised anxiety disorder & depressive disorder
- experiencing a severe stressor - Vietnam service
  Ducat, A J 07 May 2002

anxiety disorder
- experiencing a severe psychosocial stressor – Malaysian service
  Hunter, B K 21 Jun 2002

depressive disorder
- severe psychosocial stressor
  Holland, B E 21 May 2002

generalised anxiety disorder
- clinical onset
  Meehan, J S 22 Apr 2002

generalised anxiety disorder & alcohol dependence or alcohol abuse
- experiencing a severe stressor – Vung Tau service
  Ogden, G 26 Jun 2002

post traumatic stress disorder
- experiencing a severe stressor – Vietnam service
  Sneddon, K J 03 May 2002
  Drew, J 24 May 2002
  Maplesden, P 21 May 2002
  Burling, R D 13 Jun 2002

post traumatic stress disorder & alcohol dependence or alcohol abuse
- experiencing a severe stressor – Vung Tau service
  Smith, R J 28 Jun 2002

post traumatic stress disorder & anxiety disorder
- experiencing a severe stressor – Sea Venom accident
  Bounds, B R C 13 Jun 2002

post traumatic stress disorder & generalised anxiety disorder
- experiencing a severe stressor - Vietnam service
  O'Neill, R J 10 May 2002

post traumatic stress disorder & psychoactive substance abuse or dependence

- experiencing a stressor – Navy service

Groombridge, R J 17 May 2002

psychoactive substance abuse or dependence & generalised anxiety

- experiencing a severe stressor – Vung Tau service

Atkinson, G 21 Jun 2002

Qualifying service

whether warlike service

- Ubon service

Ireland, H R 28 Jun 2002

Remunerative work

economic loss

- hotel business

Hicks, P D 24 Apr 2002

whether genuinely seeking to engage in

- garden furniture business

Bradd, W H 03 May 2002

whether prevented by war-caused disabilities alone

- boilermaker

O'Neill, R J 10 May 2002

- business consultant

Adams, B J 19 Jun 2002

- car rental business

Allen, M I 14 Jun 2002

- loss of fishing vessel

Thomson, D H 28 May 2002

- non war-caused disabilities

Atkinson, G 21 Jun 2002

- plant operator – arm tremor

Burling, R D 13 Jun 2002

- sales representative – back condition

Pannell, R M 03 Jun 2002

- trades assistant

Townson, J R 16 May 2002

- tradesman's assistant – back condition

Sims, R C 03 Jun 2002

Aldcroft, B 06 Jun 2002

- voluntary redundancy

Reeves, C 18 Apr 2002

whether unable to work 8 hours a week

- warehouse foreman

Vince, J C 30 Apr 2002

Respiratory disorder

chronic bronchitis & emphysema

- smoking

Johnston, R 21 Jun 2002

Peckham, D 28 Jun 2002

Spinal disorder

cervical spondylosis

- trauma

Peckham, D 28 Jun 2002

cervical spondylosis

- trauma – motor vehicle accident in Vietnam

Burling, R D 13 Jun 2002

intervertebral disc prolapse

- smoking

Aldcroft, B 06 Jun 2002

lumbar intervertebral disc prolapse

- trauma – fall from ladder

Hill, B J 17 May 2002

lumbar spondylosis

- trauma – motor vehicle accident

Warhurst, R 19 Apr 2002

spondylolisthesis

- inability to obtain appropriate clinical management

Aldcroft, B 06 Jun 2002

thoracic & lumbar spondylosis

- trauma

Jameson, B A 27 Jun 2002