

[REDACTED]  
**War Pensions Number**

**VETERANS' ENTITLEMENTS APPEAL BOARD**

**Name:** [REDACTED]

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**Service Number and Rank:** [REDACTED]

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**Address:** [REDACTED]

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**Grounds of appeal: Appeal against the 29 May 2019 decision of the Review Officer David McGregor to uphold the 14 August 2018 decision by the Head of Veterans' Affairs New Zealand.**

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**Held: on the papers at Wellington on 10 July 2020**

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**Parties:**

**The Appellant**

**The Respondent, Veterans' Affairs New Zealand, represented by Ms Tracy Lamb**

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**Publication:**

Pursuant to the powers vested in it by section 238 of the Veterans' Support Act 2014, the Appeal Board, on its own initiative and after consultation with the Appellant, makes an Order prohibiting publication of the name, service number, rank and address of the Appellant.

**Outcome: Confirm Review Officer's decision**

**Summary of reasons for decision:**

The Veterans' Entitlements Appeal Board confirms the 29 May 2019 decision of the Review Officer that the Appellant is not eligible for entitlements under Scheme One of the Veterans' Support Act 2014. This is because the Appellant has eligibility under Scheme Two.

The Appeal Board has no jurisdiction under the Veterans' Support Act 2014 to reconsider the 2012 and 2013 decisions made under the War Pensions Act 1954.

It is unnecessary for the Appeal Board to make a finding in relation to ground 3 because the Appellant's claim fails under grounds 1 and 2.

# DECISION

This is an appeal by [REDACTED] (the Appellant) against the decision of the Review Officer David McGregor dated 29 May 2019 to uphold the Head of Veterans' Affairs (Veterans' Affairs) decision of 14 August 2018 in relation to the Appellant's entitlements under the Veterans' Support Act 2014.

## Background

### Qualifying service

Following a 6 April 2018 gazette notice declaring service at the New Zealand Embassy, Moscow, in the Union of Soviet Socialist Republics (USSR), between 1 August 1978 and 31 July 1992, to be operational service, the Appellant had qualifying operational service under the Veterans' Support Act 2014.

The Appellant's service is recorded as being in the New Zealand Army. He was deployed to the New Zealand Embassy in Moscow undertaking two tours of duty. The first tour was from 8 September 1978 to 14 January 1979. The second tour was from 28 October 1979 to 7 March 1980.

The Appeal Board thanks the Appellant for his service and notes that he was in the unusual situation of undertaking two tours of duty to the USSR.

## War Pensions Act 1954

### Application for War Disablement Pension

On 29 May 2012, the Appellant applied for a War Disablement Pension under the War Pensions Act 1954 for irritable bowel, chronic abdominal pain, intestinal tract polyps and post-traumatic stress disorder (PTSD).

### War Pensions Claims Panel decision

On 19 June 2012, the War Pensions Claims Panel declined the Appellant's claim on the basis that he did not have service in a recognised war or emergency. The letter specifically states:

The War Pensions Act 1954 provides that from 1 April 1974 a War Disablement Pension may only be granted for disablement found to be attributable to, or aggravated by, service in a recognised war or emergency. Consequently, as you do not have service in a recognised war or emergency, you are not eligible for a War Disablement Pension under the War Pensions Act 1954. Therefore, the Claims Panel has declined to consider your claim.

The decision was conveyed to the Appellant in a letter dated 9 July 2012. That letter set out the reason for the War Pensions Claims Panel's decision and advised the Appellant of his

right under section 15D of the War Pensions Act 1954, to apply to have the decision reviewed by the National Review Officer. The letter advised that the Appellant would need to submit a written Application for Review within six months of the date of the 9 July 2012 letter.

On 19 December 2012, the Appellant applied to have the decision reviewed by a National Review Officer.

### **National Review Officer Decision**

On 1 February 2013, a National Review Officer considered the Appellant's application. The decision of the National Review Officer was to uphold the War Pensions Claims Panel's decision. The reasons for the decision included that:

The Claims Panel determined on 19 June 2012 to decline to consider the Appellant's claims for irritable bowel syndrome, chronic abdominal pain, intestinal tract polyps and post-traumatic stress disorder, as they occurred post 1 April 1974, outside of a recognised war and emergency, therefore the provisions of the War Pensions Act 1954 do not apply.

The National Review Officer noted:

I have reviewed the Appellant's service and service medical file. The Appellant served in the New Zealand Army post 1974 and he did not serve in a recognize (sic) war or emergency, therefore the provisions of the War Pensions Act 1954 do not apply.

The Appellant had a right to appeal the National Review Officer's decision to the War Pensions Appeal Board, within 6 months of the date of the decision, under section 16 of the War Pensions Act 1954. The Appellant did not exercise that right.

### **The Veterans' Support Act 2014**

The Veterans' Support Act 2014 came into force on 7 December 2014. On the same date the War Pensions Act 1954 was repealed.

It appears from the response dated 7 December 2017, that on 6 December 2017, the Appellant wrote to the Hon Ron Mark, Minister for Veterans seeking to have his service in Moscow recognised as operational service.

On 25 February 2018, the Appellant wrote to Veterans' Affairs in relation to his service and challenging the decision made by the War Pensions Claims Panel.

### **Decision Officer's decision**

On 19 March 2018, a Decision Officer issued a decision on the Appellant's entitlement to an Independence Allowance under the Veterans' Support Act 2014. In particular the decision:

accepted post-traumatic stress disorder with insomnia and abdominal pain as service related under the Veterans' Support Act 2014, at 56% permanent impairment.

accepted erectile dysfunction as service-related under the Veterans' Support Act 2014, at 10% permanent impairment.

advised that the rate of payment for Independence Allowance (total combined Whole Person Impairment percentage) is 60%.

recommended further medical information be sought in respect of irritable bowel syndrome and intestinal tract polyps.

The decision was made in the absence of an application for an Independence Allowance by the Appellant.

### **Service declared operational**

On 25 March 2018, the Minister for Veterans approved a recommendation from the Chief of Defence Force that service at the New Zealand Embassy in Moscow between 1978 and 1992, should be considered qualifying operational service under the Veterans' Support Act 2014.

On 6 April 2018, that decision was gazetted.

On 5 April 2018, in anticipation of the gazette notice, Veterans' Affairs wrote to the Appellant advising that they were "able to look again at the application which you submitted to Veterans' Affairs in 2012 for a War Disablement Pension."

### **Series of Veterans' Affairs decisions and applications by the Appellant**

Veterans' Affairs advised that they had accepted post-traumatic stress disorder with insomnia and abdominal pain, and erectile dysfunction as service related conditions, and as causing permanent impairment. The letter states:

"When you made your application in 2012, you were seeking a War Disablement Pension. This is no longer available under the new Veterans' legislation (the Veterans' Support Act 2014). We are instead able to offer you an Independence Allowance."

The letter carried on to advise that the Appellant had been assessed as having a whole person impairment for the combined conditions of 60% so was entitled to receive a weekly payment of \$NZ176.37. The letter advised that the first payment would be made on 1 May 2018, covering the period from 1 April 2018. The letter also advised that the Independence Allowance would be backdated to 22 May 2012, which was noted to be, "When you first submitted your application to us". The letter advises that back payment of \$NZ53,918.82 was payable to the Appellant.

On 26 April 2018 Veterans' Affairs issued a decision to the Appellant in relation to Independence Allowance. The decision advised that his entitlements would start from 1 April 2018. That letter provided rights of review and noted that the letter of 5 April 2018 did not provide rights of review.

On 26 April 2018, the Appellant applied for weekly compensation under Scheme Two, section 100 of the Veterans' Support Act 2014. His application included medical certification from his general practitioner, and enclosed medical evidence in the form of imaging and a letter from his neurologist.

On 9 May 2018, a Decision Officer issued a decision advising that the Appellant was entitled to receive, "The full amount of weekly income compensation". That decision was reached on the basis that the Appellant had qualifying operational service under Scheme Two of the

Veterans' Support Act 2014, he had post-traumatic stress disorder that was accepted as a service-related condition with Veterans' Affairs on 26 April 2018, the Ministry for Social Development had confirmed he was unable to work from 22 June 2010 due to his mental health, and his general practitioner confirmed that he was incapacitated and unable to work fulltime from 22 June 2010.

On 27 June 2018, the Manager, Veterans Services, wrote to the Appellant. That letter advised that Veterans' Affairs had taken a benevolent approach in relation to Independence Allowance by granting payment from the date the Appellant applied for a War Disablement Pension in 2012. The letter also noted that Veterans' Affairs had decided to pay weekly compensation from the date that the entitlement came into existence for Scheme Two Veterans' Support Act on 7 December 2015.

On 1 July 2018, the Appellant sought to appeal the 27 June 2018 decision. He noted there was an inconsistency between the date that his Independence Allowance was granted (22 May 2012), and when his weekly compensation was granted (7 December 2015). He sought for his weekly compensation to be backdated to 25 May 2012, or even back to 2010 when he originally applied for a Disablement Pension.

On 11 July 2018, a Case Manager at Veterans' Affairs, wrote to the Appellant advising that his email dated 2 July 2018 (sic)<sup>1</sup> had been seen as more of a complaint than an appeal, and advised that the Appellant needed to complete the correct appeal form.

On 3 July 2018, the Appellant wrote to Veterans' Affairs advising that his letter of 1 July 2018 was an appeal and he wished it to be treated as one.

On 19 July 2019, the Manager, Decision and Entitlements, issued a decision that the Appellant was entitled to weekly compensation commencing on 4 July 2018. That decision provided rights of review. The Appellant did not apply for a review of that decision.

### **Head of Veterans' Affairs reconsideration of entitlements decision**

On 14 August 2018 Ms Bernadine MacKenzie, the Head of Veterans' Affairs advised that Veterans' Affairs had reconsidered the Appellant's entitlements under section 205 of the Act, in response to his 1 July 2018 enquiry about his entitlements. That decision advised that the Appellant was covered by Scheme Two. The letter explained that as the Appellant's qualifying service occurred after 1 April 1974 and he did not serve before 1 April 1974, he is a Scheme Two veteran, and therefore has no entitlement to a Disablement Pension or to weekly income compensation under Scheme One of the Veterans' Support Act 2014.

The decision advised that the Independence Allowance decision had been made in error because Veterans' Affairs should not have paid an Independence Allowance until it had received a formal Application for an Independence Allowance, and that the correct starting date for the Independence Allowance is 26 April 2018. Veterans' Affairs were responsible for the error in making payments to the Appellant from an earlier date than they should have been made, but they were not seeking to recover any of the overpayment.

The decision advised that weekly compensation payments, which commenced on 4 July 2018, should have commenced from 7 December 2015, so Veterans' Affairs would be backdating

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<sup>1</sup> 1 July 2018

payment to the date when weekly compensation first became available, which was 7 December 2015.

Ms MacKenzie apologised to the Appellant for the errors that had been made. By way of explanation she noted that this was the first case Veterans' Affairs had dealt with when an historical deployment was declared to be qualifying operational service.

Finally, Ms MacKenzie advised that the Appellant had a right to review that decision under section 215 of the Veterans' Support Act 2014.

On 16 August 2018, Veterans' Affairs advised that they would pay the Appellant \$NZ5,677.78 net weekly compensation arrears covering the period 7 December 2015 to 3 July 2018.

On 19 September 2018, Veterans' Affairs issued a new Independence Allowance decision covering the additional covered conditions of irritable bowel syndrome and colorectal adenoma.

### **Review application**

On 7 January 2019, the Appellant applied to review the 14 August 2018 Head of Veterans' Affairs reconsideration of entitlements decision.

The basis of his appeal was that he ought to be considered a veteran under Scheme One of the Veterans' Support Act 2014, and he sought for his weekly compensation to be backdated to 22 May 2012.<sup>2</sup>

### **Independent Review**

The Chief of Defence Force appointed Mr David McGregor as an independent reviewer to conduct the review.

### **Mr McGregor's review**

On 29 May 2019 Mr David McGregor, Review Officer issued a review decision, confirming the correctness of the Head of Veterans' Affairs 14 August 2018 decision. He concluded:

- a. The provisions of section 39 of the Veterans' Support Act 2014 do not apply to the Appellant, whose entitlements are therefore not eligible for consideration pursuant to the provisions of Part 3 Scheme One of the Act.
- b. The basis of the reconsideration of the Appellant's entitlements by the Head of Veterans' Affairs as conveyed in the letter of 14 August 2018 is correct.
- c. He could not find a basis on which sections 60 and 100 of the Veterans' Support Act 2014 had been misapplied, as conveyed in the letter of 14 August 2018 by the Head of Veterans' Affairs.

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<sup>2</sup> The Board understands this to be a reference to the date the Appellant applied for a war pension, which was 29 May 2012.

## **The Appellant's appeal**

On 15 October 2019, the Appellant appealed the Review Officer's 29 May 2019 decision on the following grounds:

Decline of Disablement War Pension.

"Wrongful interpretation or confusion of the [Veterans' Support Act 2014]."

The Review Officer's "report itself". In particular, this related to missing documentation, which he alleged gave a gross misinterpretation of facts concerning the case.

The Appellant provided 169 pages of supporting documentation. That documentation included detail about his deployment to Moscow. In summary, he developed appendicitis that became peritonitis, and was admitted to the Moscow Public Hospital where he underwent surgery on 24 February 1980. His wound became infected. What occurred next is described in a psychiatric report dated 7 November 2009, and involves him being interrogated after being injected.

## **Hearing on the papers**

### **Procedure**

Arrangements were made for the Appellant to attend the Appeal Board's 10 July 2020 hearing by audio visual link from Australia.

On 9 July 2020 the Appellant advised that he would no longer attend. He then inquired as to whether Veterans' Affairs would be attending the review hearing, in circumstances where he was not. Veterans' Affairs then advised the Appeal Board that it would not attend the hearing in person and the appeal could be determined on the papers.

Pursuant to section 52(3) of the Veterans' Support Regulations 2014 the Appeal Board can determine the appeal without hearing oral evidence from the Appellant and the Appeal Board decided it was appropriate to do so in this case.

### **Summary of the Appellant's case**

First, the Appellant wishes the Appeal Board to revisit the 2012 War Pensions Claims Panel decision and the 2013 National Review Officer's decision.

Second, the Appellant has challenged the interpretation of the Veterans' Support Act 2014 in determining that he has coverage, and is therefore eligible for entitlements, under Scheme Two of the Veterans' Support Act 2014. The Appellant wishes to come within Scheme One.

Third, the Appellant submitted the Review Officer's decision was flawed because he was not given access to documents relevant to a Scheme One claim and did not consider them. He also submitted the Review Officer was not independent because Ms MacKenzie had a conflict of interest in appointing him.

## **Summary of the Respondent's case**

The Respondent provided a statutory declaration from Bernadine MacKenzie declaring in summary that the Appellant's review is the first independent review under the Veterans' Support Act 2014. There was no conflict of interest in David McGregor's appointment. She has not had any personal or professional relationship with him. She recommended his appointment to the Chief of Defence Force. The Chief of Defence Force was free to determine the suitability of a candidate and reject the recommendation.

The Respondent further submitted that:

The Appellant has received all the entitlements he is legally eligible to receive at present.

Veterans' Affairs and the Appeal Board have no jurisdiction to reconsider decisions made under the War Pensions Act 1954.

The Appellant only has general eligibility under Scheme Two of the Veterans' Support Act 2014.

The appointment of Mr McGregor as Review Officer was valid and the result of his independent review is valid and correct.

## **Appeals under the Veterans' Support Act 2014**

An appeal made to the Appeal Board is a de novo appeal, and it is not bound by any findings of fact made by the decision maker whose decision is the subject of the appeal.

Appeals are required to be heard and determined without regard to legal or procedural technicalities. When hearing an appeal, the Appeal Board may, among other things, receive any evidence or information that, in its opinion, may assist it to determine the appeal, whether or not that evidence or information would be admissible in a court of law.

The Appeal Board may determine an appeal without hearing oral evidence from the Appellant.

The Appeal Board is required, among other things, to comply with the principles of natural justice, and in accordance with the following principles: the principle of providing veterans, their spouses and partners, their children, and their dependants with fair entitlements; the principle of promoting equal treatment of equal claims; the principle of taking a benevolent approach to the claims; and the principle of determining claims in accordance with substantial justice and the merits of the claim, and not in accordance with any technicalities, legal forms, or legal rules of evidence.

The Appeal Board, by majority vote, must confirm, modify or revoke the review decision, or make any other decision that is appropriate to the case. If the Appeal Board revokes the decision it is required to substitute its decision for that of the Review Officer or require Veterans' Affairs to make the decision again in accordance with directions it gives to Veterans' Affairs.

## **Analysis**

The issue on appeal was the Review Officer's 29 May 2019 decision to uphold the 14 August 2018 Head of Veterans' Affairs review decision.

The Appeal Board confirms the Review Officer's decision.

The Appeal Board confirms that the law does not allow us to find in the Appellant's favour irrespective of the volumes of evidence and submissions he has provided. In summary, this is essentially because there are two separate processes under the War Pensions Act 1954 and the Veterans' Support Act 2014. They are mutually exclusive processes and a veteran comes under either one or the other. Veterans do not have a choice about which Act they come within. At the time, the War Pensions Act 1954 was in force, the Appellant's service did not qualify under that Act, so he could not make a claim under that Act.

The Appellant's first submission confirms that grounds 1, 2 and 3, as set out below, are the matters on which the Appellant seeks a decision of the Board.

The Appeal Board has considered each of the three grounds of appeal the Appellant has raised together with the additional matters raised in the Appellant's second set of submissions filed on 3 July 2020.

### **Ground 1**

The Appellant wishes the Appeal Board to revisit the 2012 and 2013 decisions.

At page 13 of the 169 pages the Appellant filed in support of his appeal, he wrote:

On 22 May 2012 I made application for a disability pension under the War Pensions Act 1954 and it was rejected. The grounds used were stated as operational service and is not in a recognised war or emergency service under the War Pensions Act 1954.

I could not afford to appeal that decision in the High Court of New Zealand and had to accept the National Review Officer's decision.

RNZ RSA had made it extremely clear they would not support me anymore on this issue.

I disagreed with the Secretary of War Pensions, Advisory Board and NRO decision then as I do now. I believe they took an unduly narrow view of my case.

The Appeal Board has no jurisdiction to revisit the 2012 and 2013 decisions.

The Appellant exercised his right to appeal the 19 June 2012 decision of the War Pensions Panel by applying for a review. That review was considered and determined by the National Review Officer in 2013.

The Appellant had the right to appeal the 1 February 2013 decision of the National Review Officer, within six months of the date of that decision, to the War Pensions Appeal Board under section 16 of the War Pensions Act 1954. The Appellant did not exercise his right of appeal. The right of appeal expired on 2 July 2013. The right of appeal is not able to be exercised under the Veterans' Support Act 2014 because, under the transitional provisions in clause 5 of Part 1 of Schedule 1 to that Act, if there is (or was) an appeal right under the War Pensions Act, that right subsists "as if [the Veterans' Support Act] had not been passed". The effect of this is that, because the Appellant had an appeal right under the War Pensions Act 1954, he cannot also have an appeal right under the Veterans' Support Act 2014.

Unfortunately for the Appellant, his right to appeal the 2013 decision of the National Review Officer to the War Pensions Appeal Board has expired. This Appeal Board does not have jurisdiction to extend the time for filing such an appeal and notes the War Pensions Appeal Board is now defunct.

For essentially the same reasons, there is no jurisdiction for decisions made in 2012 by the War Pensions Panel and in 2013 by the National Review Officer under the War Pensions Act 1954 to be reconsidered under section 205 of the Veterans' Support Act or reviewed under section 215 of that Act. Those review mechanisms are equivalent to the review mechanisms which were provided for in Part 1 of the War Pensions Act and which the Appellant exercised in part. As we mention above, clause 5 of Part 1 of Schedule 1 to the Veterans' Support Act provides:

Any right of review or appeal under the War Pensions Act 1954 that existed but which had not been exercised at the commencement of this Act may be exercised and the review or appeal continued and concluded *as if this Act had not been passed*. [Emphasis added.]

The effect of that provision is that, because the Appellant had rights of review under the War Pensions Act in respect of the 2012 and 2013 decisions, those rights apply to the exclusion of any provisions in the Veterans' Support Act 2014. Even if we were wrong about that, it is clear from the terms of sections 205 and 215 of the Veterans' Support Act that those provisions only apply to a decision made by Veterans' Affairs. Veterans' Affairs was not the decision maker under the War Pensions Act 1954. Veterans' Affairs only came into existence on 7 December 2014, pursuant to section 198 of the Veterans' Support Act 2014.

**The Appeal Board finds** that it has no jurisdiction to consider the Appellant's appeal against the 2012 and 2013 decisions.

## **Ground 2**

The Appellant has challenged the Head of Veterans' Affairs interpretation of the Veterans' Support Act 2014 in determining that he has cover, and is therefore eligible for entitlements, under Scheme Two of the Veterans' Support Act 2014. The Appellant wishes to come within Scheme One.

The Appeal Board finds that the Appellant has eligibility under Scheme Two, not Scheme One.

"Qualifying operational service" is defined in section 8(2) of the Veterans' Support Act 2014 as

Service on any deployment treated as a war or emergency for the purposes of the War Pensions Act 1954; and

Service on any deployment declared to be operational service under section 9.

On 25 March 2018, acting under section 9, the Minister of Defence declared service by personnel, such as the Appellant:

at the New Zealand Embassy, Moscow, in the Union of Soviet Socialist Republics (USSR), later known as the Russian Federation, between 1 August 1978 and 31 July 1992, to be operational service for the purposes of the Act

That declaration was gazetted on 6 April 2018. The Gazette Notice is an enactment for the purposes of the Interpretation Act 1999. Section 7 of the Interpretation Act 1999 provides that "An enactment does not have retrospective effect." Therefore, the Appellant's service became

operational service on the date of the Minister's declaration and the Appellant's right to entitlements began on 25 March 2018.

The provisions of section 83 of the Veterans' Support Act 2014 have applied to the Appellant since 25 March 2018. The Appellant is a veteran with qualifying operational service performed on or after 1 April 1974, so he comes within Scheme Two and is eligible for entitlements under that scheme.

Section 39 of the Veterans' Support Act 2014 only applies to claims made between 7 December 2014, when most of that Act (excepting Part 4) came into force, and 6 December 2015, the day before the date on which Part 4 (Scheme Two) came into force. Under the transitional provisions already mentioned above in this decision, section 39 does not apply to claims made prior to 7 December 2014, because they are exclusively covered by the War Pensions Act 1954. Section 39 is clearly intended to fill a "gap" between the coming into force of the Veterans' Support Act and the commencement of Scheme Two, by providing eligibility under Scheme One for those veterans who fall into that "gap".

The Appellant did not make a new claim between 7 December 2014 and 6 December 2015. In fact, he could not because his service was not declared to be qualifying service until 25 March 2018, well after the "gap" had closed. Accordingly, section 39 does not apply in the Appellant's case.

The Appeal Board notes that the Veterans' Support Act 2014 is a code. A veteran must meet the statutory criteria to be eligible for entitlements under a Scheme. The Act is drafted in such a way that a claim may be made under either Scheme One or Scheme Two, not both and it is not for the veteran to choose which Scheme they come under.

**The Appeal Board finds** the Appellant is eligible for entitlements under Scheme Two.

The Appeal Board also accepts Veterans' Affairs submission that the Appellant has received all of the entitlements that he is eligible for at the present time under Scheme Two.

### **Ground 3**

The Appellant submitted that the Review Officer, Mr McGregor's decision was flawed because he was not given access to documents relevant to his Scheme One claim and he did not consider them.

It is unnecessary for the Appeal Board to make a finding in relation to ground 3 because the Appellant's claim fails under grounds 1 and 2. The Appeal Board notes that the Appellant's case would not be affected by any amount of additional proof of his undisputed suffering at the hands of the USSR during the Cold War and the health consequences that has had for him. That has been recognised by the entitlements awarded to the Appellant under Scheme Two.

The Appeal Board has considered the additional grounds of appeal raised by the Appellant.

As a consequence of the Appeal Board's findings of law it is also unnecessary for it to consider the Appellant's allegations of the Head of Veterans' Affairs having a conflict of interest in the appointment of the Review Officer or the allegation of impropriety against the secretariat of the Appeal Board. However, the Board observes that it does not have before it evidence which would justify such serious allegations. The Appeal Board accepts that the Review Officer was properly appointed to undertake the Review.

The Appeal Board notes that the issue of medallic recognition mentioned in the Appellant's submissions is outside its jurisdiction.

The Appeal Board notes that the Head of Veterans' Affairs 14 August 2018 decision is benevolent in terms of the extent of backdated weekly compensation paid to the Appellant in terms of section 10(b)(iii) of the Veterans' Support Act 2014. That decision backdated the Appellant's entitlement to weekly compensation to 7 December 2015 when entitlement to weekly compensation under that Act came in to force. In fact, because the declaration that the Appellant's service in Moscow was qualifying service did not have retrospective effect, the Board observes that the Appellant was only entitled to weekly compensation from the date of that declaration, 25 March 2018. The Appeal Board notes that the Head of Veterans' Affairs is bound by her representation to pay weekly compensation to the Appellant from 7 December 2015.

### **Conclusion**

The Appeal Board confirms the 29 May 2019 decision of the Review Officer that the Appellant is not eligible for entitlements under Scheme One of the Veterans' Support Act 2014. This is because the Appellant has eligibility under Scheme Two.

The Appeal Board has no jurisdiction under the Veterans' Support Act 2014 to reconsider the 2012 and 2013 decisions made under the War Pensions Act 1954.

It is unnecessary for the Appeal Board to make a finding in relation to ground 3 because the Appellant's claim fails under grounds 1 and 2.

### **Outcome**

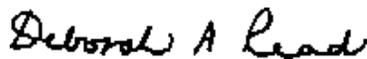
The Appeal Board dismisses the appeal.



Ms Raewyn Anderson, Chairperson



Mr Christopher Griggs, Member



Dr Deborah Read, Member



Dr Chris Holdaway, Member

Date: 31 July 2020