

Veterans' Entitlements Appeal Board

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War Pensions Number

VETERANS' ENTITLEMENTS APPEAL BOARD

Name: Joseph EDWARDS

Service Number and Rank: Rifleman New Zealand Army

Address: 7A Sala Street, Whakarewarewa, Rotorua 3010

Grounds of appeal: Appeal against the 21 April 2020 decision of the Review Officer to uphold the 21 March 2018 decision of the Decision Officer to declining to accept cover for Loss of Teeth as service-related under the Veterans' Support Act 2014

Held: at Wellington on 16 October 2020, concluded on the papers on 11 December 2020

Parties:

The Appellant, Mr Joseph Edwards

The Respondent, Veterans' Affairs New Zealand, represented by Ms Ann-Marie Tribe

Outcome: Confirm Review Officer's decision

Summary of reasons for decision:

The Appellant's loss of teeth and need for a replacement denture is not service-related. The dental evidence shows that the condition of the Appellant's teeth prior to enlistment is the reason he had to have his teeth extracted and dentures fitted.

DECISION

This is an appeal by Joseph EDWARDS (the Appellant) against the 21 April 2020 decision of the Review Officer to uphold the 21 March 2018 decision of the Decision Officer to decline a Disablement Pension for Loss of Teeth as being service-related under the Veterans' Support Act 2014.

Background

Qualifying service

The Appellant served in the New Zealand Army between 4 June 1970 and 31 December 1973. He has qualifying routine service during the period 4 June 1970 to 31 December 1973.

The Appeal Board thanks the Appellant for his service.

Application for denture replacement

On 28 June 2018, the Appellant applied for "denture replacement". He noted that his dentures were ill fitting and his service had caused that condition:

As a result of pyria (sic)¹, contracted whilst serving in Burnham Camp, I had to have all teeth extracted and dentures fitted. I have replaced two sets and request a replacement of my current set. Attribute teeth extraction to be result of Dental Section neglect.

The Decision Officer investigated the claim including obtaining the Appellant's service dental records.

Service dental records

A dental examination on 26 June 1970 included X-rays and referred to a dressing of a left lower tooth.

On 27 July 1970, the Appellant had X-rays.

On 28 July 1970, the Appellant had two teeth dressed and a left upper tooth extracted.

On 30 November 1970, the Appellant had an X-ray and examination.

On 22 January 1971, the records refer to a left upper tooth.

On 28 April 1973, three lower right teeth were dressed. There is reference to periodontal disease and the record states, "Numerous stagnation areas in upper and lower LHS". "Consider full clearance and FF² optimal treatment".

Dental Treatment Form Charts, dated 30 November 1970, refer to the Appellant having upper clearance of his teeth for a denture and a review in three months for full upper and lower

¹ Pyorrhoea, now known as periodontitis, a gum infection that damages the soft tissue and bone that supports the teeth.

² Full upper and lower dentures.

dentures. The teeth were noted as being at level 4 (caries or other conditions, which will necessitate full extraction).

On 4 May 1971, the Appellant had a full clearance extraction of his teeth in hospital. Twelve upper teeth and 14 lower teeth were removed. He was fitted with full upper and lower dentures and on 31 August 1971 was examined and declared dentally fit.

In February 1973, the Appellant received new dentures after his were lost while on leave. He was again declared dentally fit.

Dr Salter, New Zealand Defence Force Dental Officer

Veterans' Affairs asked Dental Officer Dr Mark Salter why the Appellant's teeth were removed. Dr Salter advised said it was due to the condition of his teeth on enlistment. He wrote:

I have reviewed his notes and found the following detail.

First dental examination 20 Jun 70.

He had 4 teeth, 17, 15, 13 dressed and 16 extracted at this time.

On 28 April 1971, three more teeth, 34, 35, 37 dressed.

4 May 71 all remaining teeth extracted as condition of teeth so bad it was considered and discussed with patient that this was best treatment.

The condition of his teeth would have been very poor on enlistment, so bad that there was never any treatment to save his teeth, only to alleviate pain.

I can't see anything on this copy of the X-rays, however I could go to archives to view the originals to prove the amount of dental caries he had on enlistment, if you require this.

Veterans' Affairs did not make any further request of Dr Salter.

Decision Officer's decision

On 21 March 2018, Ms Rachel Gardener, Decision Officer, declined Loss of Teeth as service-related under the Veterans' Support Act 2014.

She relied on Dr Salter's opinion that Mr Edwards had poor oral hygiene on enlistment into the Army. Further, that there were no factors in the Balance of Probabilities Statement of Principles concerning Loss of Teeth (125 of 2015) which could be linked to the Appellant's qualifying service.

On 8 April 2019, the Appellant applied for a review of that decision.

The reason the Appellant gave was that dental records did not contain the statement from the Dental Officer referenced by the Decision Officer.

Smoking Questionnaire

On 14 May 2019, the Appellant completed a Smoking Questionnaire. He noted that he began smoking in 1970 because everyone around him smoked. He said his smoking habit changed during service in that he smoked more because of smoke breaks.

Review Officer's letter

On 16 April 2020, Mrs Christine Gane, Review Officer wrote to the Appellant, providing the request from the Decision Officer to the Dental Officer and the Dental Officer's reply.

The Appellant replied in part, the same day:

My perusal of the dental records has me astonished that the Dental Officer can make the statement:

"The condition of his teeth would have been very poor upon enlistment, so bad that there was never any treatment to save his teeth, only to alleviate pain".

The records are brief, and on the initial inspection there is no mention of the state of my teeth.

On 28 April 1971 they did work on three teeth and extracted one tooth. On 4 May 1971 they did a full extraction, don't you think ? this is a strange thing to do after the Dental Officer saving three of my teeth six days earlier.

I am of the opinion that the NZDF Dental Officer who supplied the report that enabled the Decision Officer in February 2019 to decline my claim for support from Veterans' Affairs for dental repairs and replacement, to be biased and a slyte (sic) to my character.

Hopefully, you may see that the records that you have access to are inadequate for you to make an informed decision to this matter and that you will rule favourably towards my being supported by Veterans' Affairs on the above matter.

Review Officer's decision

On 21 April 2020, the Review Officer's decision was to uphold the Decision Officer's decision of 21 March 2019 and to decline to accept Loss of Teeth as service-related under the Veterans' Support Act 2014.

The Review Officer, Mrs Christine Gane, gave the following reasons:

Dental examination shows dental work was undertaken after Mr Edwards enlisted in the army (repair of several teeth and extraction of one tooth in the first 10 months). Documentation suggests clearance of upper teeth was then recommended, and following review, clearance of both upper and lower teeth. There is comment of "numerous stagnation areas in upper and lower", and that full clearance of teeth and insertion of dentures provided the best treatment. This appears consistent with the history noted in Mr Edwards' Disablement Pension Application, that he had his teeth removed as a result of pyorrhoea (also known as periodontitis). Full teeth clearance followed by insertion of full dentures was subsequently undertaken.

The SoP's relevant to Mr Edwards' loss of teeth are:

- Loss of teeth 125 of 2015
- Dental caries, number 123 of 2015
- Periodontitis, number 48 of 2013

Dental caries and periodontitis are both factors for loss of teeth. In order for loss of teeth to be connected with the circumstances of Mr Edwards' qualifying service, a factor needs

to be met in the SoP for Dental caries and/or the SoP for Periodontitis that can connect dental caries or periodontitis with the circumstances of Mr Edwards' qualifying service.

I have considered all of the available information, including Mr Edwards' smoking history, which was not previously available to the Decision Officer.

Unfortunately, no factors are met to connect dental caries or periodontitis with the circumstances of Mr Edwards' qualifying service, which in turn means Mr Edwards' Loss of Teeth and subsequent denture requirement cannot be determined as service related under the Veterans' Support Act 2014.

On 5 June 2020 that decision was notified to the Appellant.

The Appellant's appeal

On 9 June 2020, the Appellant appealed the decision on the basis that he had been enlisted for almost 10 months before it was deemed necessary to extract all of his teeth.

Hearing on the papers

Procedure

The Board had specific regard to all the principles specified in section 10(b) of the Veterans' Support Act 2014, and the overarching benevolent intent of the Act. The hearing was adjourned for Veterans' Affairs to consider settling the matter, or obtaining an independent expert opinion about the state of the Appellant's teeth at the time of enlistment.

Professor Leichter

Jonathan Leichter, Associate Professor in the Department of Oral Science at University of Otago provided an opinion on 6 November 2020, then a revised opinion on 13 November 2020 after reviewing a summary of events, X-rays and the Appellant's dental records. Professor Jonathan Leichter's opinion was:

... There is no evidence to suggest that the extraction of Mr Edwards' teeth in 1971 was a result of his service. The need to extract Mr Edwards' teeth was a direct result of the pre-existing condition of his teeth. The radiographs provided, which were taken at the time of Mr Edwards' enlistment in the NZ Army, show extensive decay in many of the posterior teeth. There is no evidence to suggest that there had been any significant additional deterioration in the teeth between the time of the enlistment and the time that the teeth were extracted, which was on or about 4 May 1971. Indeed, it is biologically implausible that there could have been any significant deterioration in the client's dental health in the 10 months between the time of enlistment and the time that the teeth were extracted. Full mouth extraction of a compromised, often neglected dentition, was commonly used dental management strategy during this period of time, not only in the military, but in the public sector.

Professor Leichter commented on the Appellant's dental health on enlistment. He acknowledged that there was no evidence of bone loss in the X-rays provided that would be consistent with periodontitis, and significant bone loss from periodontitis would be unusual for a person of the Appellant's age. He noted that tooth 36 was missing, teeth 17, 16, 26 and 47

were severely decayed, the posterior teeth were heavily restored, with large amalgam restorations on almost all of the posterior teeth.

Professor Leichter's opinion was that there was no evidence of any deterioration in the Appellant's dental health during the 10 months from enlistment to extraction of the teeth and provision of dentures. He explained that while tooth 16 was extracted during this time, "The extraction of this tooth was a direct result of the severely decayed, pre-enlistment status of this tooth".

Professor Leichter's opinion was that there was:

No evidence of negligence, a deviation from the standard of care or a deviation from the generally accepted means of treatment for [the Appellant] during his military service. [The Appellant] appears to have received accepted treatment with regards to his extractions and dentures.

His opinion was:

Based on the decay that was noted in the X-rays at the time of enlistment, there is little doubt that the teeth were extracted due to dental decay and dental neglect that occurred prior to enlistment. The same treatment for the teeth would have been required, even if this individual had not enlisted in the NZ Army."

Summary of the Appellant's case

The Appellant made the following main points in his oral submissions:

- He does not accept that when he enlisted he had a dental condition which led to his teeth being extracted. The state of his teeth when he enlisted was not described.
- He does not accept that he had periodontitis before he enlisted.
- He did not receive any medication for pain relief because he believes his teeth were in a pretty good state when he enlisted.
- He challenges Dr Salter's opinion that his teeth were poor on enlistment. In fact he had several appointments where he had treatment for his teeth.
- The Review Officer's decision was not based on all of the relevant evidence. Dr Salter did not look at his X-rays.
- He accepts that a decision to extract his teeth was made five months after he began service.
- He wants new dentures.

Summary of the Respondent's case

Ms Tribe made the following main points in oral and written submissions:

- No Statements of Principles (SoP) factors were met that could be connected with the circumstances of the Appellant's service.

- Although the extraction of the Appellant's teeth occurred whilst he was serving in the military, it is probable that the damage to his teeth occurred prior to his enlistment, based on the dental records.
- The extent of tooth decay necessitating the extraction of the Appellant's teeth would not have occurred during the period from enlistment in June 1970 to when the recommendation was made on 30 November 1970 to fit full dentures.

Analysis

Process to decide whether to accept a claim

Section 14 of the Veterans' Support Act 2014 sets out the sequential steps to be taken in deciding whether to accept a claim. The first step is to consider all the available material that is relevant and decide whether the material is consistent with a hypothesis that the veteran's injury, illness, or death was service-related. If the material is consistent with such a hypothesis then the second step is to decide whether there is a SoP that applies. If there is no SoP that applies, then section 15 applies. If there is a SoP that applies, the third step is to decide whether the hypothesis is consistent with the SoP. If it is consistent with the SoP, the claim must be accepted unless there are reasonable grounds for believing that the veteran's injury, illness, or death was not service-related.

The Appeal Board confirms the Review Officer's decision.

The Appellant only has qualifying routine service under the Veterans' Support Act 2014.

The relevant Statements of Principles are:

- Loss of teeth, number 125 of 2015
- Dental caries, number 123 of 2015
- Periodontitis, number 48 of 2013.

Is the Appellant's Loss of Teeth service-related under the Veterans' Support Act 2014?

The Appeal Board acknowledges the Appellant's genuine need for new dentures and his concern about the evidence that Veterans' Affairs relied on to reach its decision.

Pursuant to section 14, the first step is for the Appeal Board to decide whether the facts are consistent with a hypothesis that the veteran's injury was service-related. Section 7 defines "service-related" as "caused by, contributed to, or aggravated by qualifying service."

The Appeal Board must make its decision based on the dental evidence. That evidence shows, on the balance of probabilities, that the Appellant's need to have his teeth extracted was a direct result of the condition of his teeth prior to enlistment, as opposed to being caused by, contributed to, or aggravated by his qualifying service. That is the expert opinion of both Dr Salter and Professor Leichter.

Dr Salter did not view the Appellant's X-rays. He gave his opinion based on the Appellant's dental records alone. His opinion was that the condition of the Appellant's teeth would have been very poor on enlistment, so bad that there was never any treatment to save them, only to alleviate pain.

Professor Leichter reviewed all of the dental evidence including the X-rays. He is independent and well qualified to give an opinion. His opinion is that there is no evidence to suggest that the extraction of the Appellant's teeth was service-related. It was instead a direct result of the pre-enlistment condition of his teeth.

He gave clear reasons for his opinion. He described the state of the Appellant's teeth on enlistment. He said there is no evidence of any deterioration in the Appellant's dental health during the 10 months from enlistment to extraction of the teeth. He specifically noted that whilst tooth 16 was extracted during this time, that was a direct result of the severely decayed pre-enlistment status of that tooth.

The evidence is therefore not consistent with a hypothesis that the Appellant's Loss of Teeth was service-related.

The Review Officer went on to consider the SoPs relevant to Loss of Teeth. She found that the information did not support Loss of Teeth being a result of dental caries and/or periodontitis, so Loss of Teeth could not be determined as service-related.

For the sake of completeness the Appeal Board notes that there are also no SoP factors connecting the Appellant's Loss of Teeth with his service.

Conclusion

The Appeal Board confirms the 21 April 2020 decision of the Review Officer, that the Appellant is not entitled to a Disablement Pension because his Loss of Teeth is not service-related.

Outcome

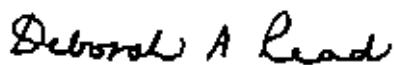
The Appeal Board dismisses the appeal.



Ms Raewyn Anderson, Chairperson



Mr Christopher Griggs, Member



Dr Deborah Read, Member



Dr Chris Holdaway, Member

Date: 21 December 2020