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War Pensions Number

VETERANS' ENTITLEMENTS APPEAL BOARD

Name: Peter John Kearsley CLARK

Service Number and Rank: W40376 Warrant Officer Class 1

Address: 10 Clark Avenue, Pirimai, Napier

Grounds of appeal: Appeal against the 13 February 2020 decision of the Review Officer to uphold the 16 November 2018 decision of the Decision Officer declining cover for Osteoarthritis Right Shoulder as service-related under the Veterans' Support Act 2014

Held: at Wellington on 16 April 2021

Parties:

The Appellant, Mr Peter Clark

Mr Mike Perreau, Appellant's representative

Respondent, Veterans' Affairs New Zealand, representatives Ms Ann-Marie Tribe, Manager Decisions and Entitlements, Ms Paula Carr, Decisions Team Leader

Outcome:

The Appeal Board revokes the Review Officer's decision and substitutes its own decision that Mr Clark's claim for claim for osteoarthritis in his right shoulder is accepted as service-related under the Veterans' Support Act 2014.

Summary of reasons for decision:

The circumstances of Mr Clark's qualifying operational service are consistent with the factor set out in section 9(7) of the Statement of Principles No. 61 of 2017 Osteoarthritis (Reasonable Hypothesis) (**the SoP**). The Appeal Board accepts that, during his service in Vietnam, Mr Clark would have experienced multiple discrete events involving the application of significant force to or through his shoulder that caused damage to the joint, and then experienced symptoms and signs of pain and tenderness, as well as a limitation of range of movement that lasted for a period of at least seven days following their onset.

DECISION

This is an appeal by Peter Clark against the 13 February 2020 decision of the Review Officer to uphold the 16 November 2018 decision of the Decision Officer declining cover for osteoarthritis of the right shoulder as service-related under the Veterans' Support Act 2014 (the Act).

Background

Qualifying service

Mr Clark served as a rifleman in the New Zealand Army between 26 June 1967 and 11 March 1971. He has qualifying routine service during the period 26 June 1967 to 8 May 1969, and 8 May 1970 to 11 March 1971. He has qualifying operational service in Vietnam between 8 May 1969 and 8 May 1970.

Mr Clark's service in the New Zealand Army between 1974 and 2002 is not qualifying service for the purposes of the Act.

The Appeal Board thanks the Appellant for his service.

Medical evidence available prior to the claim made under the Act

On 13 June 2013 Radiologist Abdul Al-Ansari reported that an X-ray taken that day showed "No significant focal bony or joint abnormalities" and "no soft tissue calcification".

On 19 September 2013, Orthopaedic Specialist Stephen Bentall examined Mr Clark and reported on his right shoulder. Mr Bentall wrote in part:

He gives a history of gradually increasing discomfort in his right shoulder which has to some extent been overshadowed by his problems of glenohumeral arthritis in the left shoulder, for which he is awaiting shoulder replacement. ...

As you know, Peter served in the New Zealand Army from 1967 to 1998 in the infantry (sic), including service in Viet Nam. He describes carrying heavy packs on his shoulders and having to dive for cover with these in place, and thinks he may have strained his shoulder at such times.

Mr Bentall recorded his examination findings and noted:

His physical examination is consistent with a supraspinatus tear of his rotator cuff, and this is confirmed on an ultrasound scan obtained at Hawkes Bay Radiology on 5 July. This demonstrates a full thickness tear of the anterior supraspinatus measuring at least 13 mm x 11 mm, though to my eye it may be larger than this.

Plain X-rays of the shoulder taken on 13 June this year show a normal gleno-humeral joint and well preserved acromio-humeral interval.

Mr Clark's claim

On 28 May 2018, Mr Clark applied for cover for a number of conditions, including osteoarthritis in his right shoulder.

On 22 August 2018, Orthopaedic Specialist, Sudhindra Rao, assessed Mr Clark and reported in relation to the right shoulder:

The right shoulder, ... has been problematic for him for some years and he has persistent discomfort in the upper lateral arm, particularly with at or above shoulder activities and occasionally pain at night-time when he lies on that side. He is unable to extend in any position and when he is driving, he has to have his arm by his side. He also has difficulty putting on his clothes, in particular his jacket, from time to time.

Mr Rao reported on imaging as follows:

The right shoulder suggests some early left acromioclavicular joint arthritis but no other arthritis in the shoulder joint per se and he does not have any proximal migration of the humeral head suggesting chronic rotator cuff disease.

Mr Rao commented on the cause of his condition, noting:

It is likely that the lumbar spine condition is related to him carrying heavy packs which would have been a significant issue at the time when he was in the Army. The other conditions would appear to be a progressive attritional problem with no clear evidence in the past of any particular traumatic episode.

Carrying Heavy Loads Questionnaire

On 16 June 2018 Mr Clark completed the questionnaire, noting the following:

Describe the load being carried	Activities being undertaken when carrying occurred	Weight of the load	Frequency carrying	Date
Equipment packs and ammunition basic Corps trg NZ in Malaysia	Training daily and military exercises	40-50 kg	Daily	30/6/67 to 18/5/69
Equipment packs and ammunition	Vietnam War	50 kg plus	Daily	20 May 1969 - May 1970
Military courses GPMG SF CSE 106 RCL CSE Mortar 81 RM CSE	Infantry courses Waiouru and Tekapo	50 kg plus	Twice per week	1972 - 1994
Battle efficiency training and fitness endurance training	Military fitness requirements	30 kg	Monthly	1967 - 1998

Decision Officer's decision

On 16 November 2018, the Decision Officer declined Mr Clark's application for osteoarthritis in his right shoulder, on the basis that:

There are no factors outlined in the above SoP's [Osteoarthritis (No. 61 of 2017)] which can be linked to his qualifying service.

The Decision Officer also declined Mr Clark's application for osteoarthritis in his left and right hips on the basis there was no evidence he suffered from those conditions.¹

¹ Veterans' Affairs has now accepted cover for those conditions.

That decision was notified to Mr Clark on 26 November 2018.

Review application

On 4 December 2018, Mr Clark applied for a review of the decision by completing a Review of Decision Application Form. In relation to his right shoulder, he wrote:

I believe the deterioration of my right shoulder can be attributed to my service, 33 years Infantry by carrying heavy packs and equipment as per my questionnaire.

He provided an email in support, dated 2 December 2018, stating that he was not happy with Mr Rao's report as Mr Rao did not know about the questionnaire on carrying heavy loads. He asked for a consultation with another specialist.

On 10 December 2018, Mr Clark completed another Review of Decision Application Form. He included an undated letter noting the following about the periods of service relevant to the appeal:

I am writing information in support of my military service of approximately 33 years in uniform. From 1967 on joining the army, I was subject to the carrying of heavy load, i.e. packs and equipment that was necessary to my Infantry career.

Throughout my training for overseas deployment, we were constantly carrying heavy loads, including my pack, webbing equipment and a SLR 7.62 mm rifle. In 1968 I was deployed to Malaysia for tropical pre-deployment training for Vietnam.

Once again, we were subjected to carrying all the equipment and weaponry required for active service in Vietnam.

We deployed to Vietnam in May 1969 for 12 months, returned to Singapore in May 1970.

Within this 12 month period, we were on operations in the field for a total of 269 days out of 365.....

Review Officer's decision

On 13 February 2020, the Review Officer declined to accept Mr Clark's claim for osteoarthritis in his right shoulder, because none of the factors set out in SoP No. 61 of 2017 Osteoarthritis (Reasonable Hypothesis) could be identified, linking Mr Clark's condition to his qualifying service.

Medical information considered by the Review Officer included Dr Kleinert's note that osteoarthritis of the right shoulder was first diagnosed on 30 April 2018, the Heavy Loads Questionnaire and Mr Rao's opinion. The Review Officer noted the carrying of heavy loads could only be considered as contributing to osteoarthritis for joints of the lower limb.

He noted the factors set out in section 9(13)(a) and (b) of the SoP, related to the development of osteoarthritis in a joint of the upper limb. His conclusion was that there was no evidence that Mr Clark met those factors. He then considered the factor set out in section 9(7), ie "having trauma to the affected joint before the clinical onset of osteoarthritis in that joint". He noted that "trauma to the affected joint" is defined in the dictionary in Schedule 1 to the SoP. The Review Officer found no evidence that Mr Clark sustained any injury to his right shoulder that would meet the definition of trauma during his qualifying service.

Veterans' Affairs communicated that decision to Mr Clark on 14 February 2020.

Mr Clark writes to Veterans' Affairs

On 2 April 2020, Mr Clark emailed Veterans' Affairs advising that his right shoulder had been:

...dislocated due to activities/training throughout my 33 year service in uniform. I don't understand why this is not shown on any of my military medical records. I was also hospitalised in Malaysia once whilst on an exercise, these records also do not appear on my records.

On 31 July 2020, Veterans' Affairs wrote to Mr Clark, advising that his service records did contain information detailing injuries he sustained to his right shoulder after 1 April 1974, but this was not during his period of qualifying service.

On 21 September 2020, Mr Clark emailed Veterans' Affairs noting that he had:

Talked with my doctor about my hips and right shoulder. She has stated that the causation of my right shoulder is yes [sic] this would have started virtually from when I joined the military in 1967. It would have been aggravated [sic] over my long term service but not recognised due to my age and fitness especially the carriage of heavy loads bringing stress on all parts of my body from ankles up to my head.

Appeal against review decision

On 27 October 2017, Mr Clark appealed against the review decision to decline osteoarthritis of his right shoulder, noting in part:

I know that the shoulder was damaged and the causation was done during my operational service 1968-1971. The carriage of heavy equip (sic) whilst on operations would have aggravated [sic] the problem, also jumping in and out of vehicles on helicopters. This also damaged my lumbar spine and left shoulder which are both accepted as disabilities and shown on my treatment card.

These disabilities along with my right shoulder were continually aggravated [sic] later on in my service career.

In my deployment operational service, I was young and generally fit, and would not have noticed the pain to the same extent as I do now....

The Veterans' Entitlement Appeal Board accepted the late application for review on the basis that Covid-19 lockdown caused difficulties for Mr Clark obtaining information and support to lodge his appeal.

Hearing

Summary of the Appellant's case

Mr Clark's evidence

He was posted to Malaysia in 1968 for six months of pre-deployment training. He was then posted to Vietnam, landing on 5 May 1969. He spent 365 days in Vietnam and 269 of those were out on operations. He was initially deployed as a rifleman and then promoted to be second in command of his section as a temporary lance corporal. Mr Clark later took over the

section command, when his predecessor was medically evacuated. He had an additional role as section medic.

At the time he weighed about nine stone (57 kg) and he carried equipment weighing at least nine stone on his back, comprising ammunition for his rifle and for a machine gun, webbing, the pack itself and his weapon. The packs worn by soldiers in Vietnam were not comparable with those used in the Army today. They lacked frames and the weight sat on the soldiers' shoulders. His habitual method of putting on his pack was to reach down and put it over his right shoulder then throw it over his back. As a consequence, all of the weight went on his right arm as he flicked the pack up and around.

In the wet season, his section conducted operations for periods of a month at a time. When on operations, he would have contact with the enemy every six to 10 days. Those contacts would last between 30 and 45 minutes. His duties including jumping out of a helicopter or a moving truck, carrying his pack and equipment. At the start of a contact, he would hit the ground wearing the pack. He says that he felt injuries as a consequence, but did not focus on them because his adrenaline was high. When he returned to camp he would feel pain in his right shoulder. He recalls not being able to wash his hair with his right arm. He had to do it with his left arm. He would have that shoulder pain for about three to four days. Whilst he was on leave he was eating and drinking to excess, then returned to camp, reformed and the next day went back out on operations. The turnaround period was only five to six days. He did not like to let his friends and comrades down so he grinned and bore his pain and carried on back into the field. He was not worried about himself. He was a fit, young, adrenaline-filled soldier and the atmosphere was "kill or be killed". He cannot recall any specific accident requiring his medical evacuation.

He recalls having limitation of movement in his shoulder, then being given exercises by a medic, and after three to five days his movement would improve. Every time he was dropped off by helicopter he felt pain but adrenaline took over.

He recalls that his shoulder would ache. He had quite a lot of pain in about 1998, when he was out of uniform working as a finance officer for the Army.

There was an incident in Malaysia that was not documented. He had a bad fall whilst on exercise with the Malaysian forces. He cannot remember the dates but it was some time in 1977 or 1978, when he was crossing a stream on a fallen tree. Near the end of the crossing he slipped and fell about five or six feet, landing upside down on his back, head, neck and shoulders. He had severe pain in his back and other parts, as well as pain in his chest. He was taken to a Malaysian field hospital where he was treated for painful limbs and torn muscle ligaments in the ribs. He was hospitalised for three nights then returned to his unit.

In 1979 he slipped on the back of a land rover. His right shoulder went down onto the back of the land rover and he fell onto his left shoulder, injuring that.

In 1987 he hurt his right shoulder when he was with the Army sailing team. He had physiotherapy for two weeks after that.

Submissions made on Mr Clark's behalf

Mr Perreau produced a photograph of a Vietnam soldier taken at Waiouru showing the pack and machine gun ammunition belts Mr Clark would have carried when on operations. He estimated it would weigh 45 kgs. Mr Perreau made the following main points:

- Mr Clark's osteoarthritis was caused or aggravated by and can be attributed to his qualifying service in Vietnam.
- SoPs 61 and 62 of 2017 do not define *degenerative joint disorder*. He proposed using a website definition of degenerative and cited information from the Mayo Clinic website regarding osteoarthritis. Osteoarthritis is a degenerative condition.
- Degenerative does not mean there is one particular incident or accident, but causation may be from a considerable period back in time. Mr Clark does not need to identify one particular injury.
- The circumstances of Mr Clark's qualifying operational service are consistent with the factors set out in section 9(7) and (13) of the SoP.
- Mr Clark had previously stated that the original accidents were after the 1974 date. He has corrected that statement as follows: "I know that my back, hips and shoulder problems were created a long time prior to the later accident."
- Infantry soldiers routinely experienced trauma, undertook repetitive actions and carried heavy loads. They lived in adverse conditions, often completely saturated by sweat or monsoon rain and sleeping directly on the ground. These factors, which were present whether in training or on active service, were a large contributing factor to Mr Clark's right shoulder osteoarthritis.
- Veterans' Affairs has not produced evidence showing that the osteoarthritis was not caused, aggravated by, or contributed to by Mr Clark's qualifying service.
- Mr Clark's general practitioner believes his osteoarthritis is caused by his service.
- Mr Clark has osteoarthritis in his left and right hips, left and right knees, left shoulder, and left ankle. His repetitive actions and injuries during service has caused his osteoarthritis.
- The Board must exercise benevolence. If cover could not be extended to Mr Clark for osteoarthritis then he could not imagine another scenario where it would be.

Summary of the Respondent's case

Submissions

Ms Tribe spoke to written submissions for Veterans' Affairs. She made the following main points:

- Mr Clark enlisted in 1967 and was accepted as fit for service. That does not support the presence of an underlying condition being present at the time.

- There is evidence to support Mr Rao's diagnosis of osteoarthritis being present in the right shoulder in 2018.
- The requirement for Mr Clark's qualifying routine and operational service to carry heavy loads allowed for a reasonable hypothesis to be established that service may be linked to the development of osteoarthritis. However, under the SoP that factor only applies to lower limb joints, not the right shoulder as in Mr Clark's case.
- There is no evidence that Mr Clark sustained trauma to his right shoulder during his qualifying service, so the factor set out in section 9(7) of the SoP is not met. Although Mr Clark's medical records are not full and complete, Veterans' Affairs has considered all the evidence and not limited itself to looking at documented evidence of one injury occurring.
- The thresholds for the factor set out in section 9(13)(a) of the SoP are specific and high. Mr Clark does not meet them. The factor requires a repetitive task to be performed at least 50 times per hour for 30 hours a week over 10 years. Even if Veterans' Affairs set aside the 10 year requirement and examined the seven years of Mr Clark's qualifying service, he would not meet the criteria.
- The factor set out in section 9(13)(b) of the SoP also requires that the causative action be performed for 10 years. Mr Clark does not have 10 years' qualifying service. That notwithstanding, Veterans' Affairs did consider that a 7.62 calibre self-loading rifle (**SLR**) or general purpose machine gun could be a percussive tool.
- Mr Clark sustained an overuse injury to his right shoulder in 1987 (during non-qualifying service) when he was diagnosed with supraspinatus tendonitis in his right shoulder from participating in yacht match racing. He has an ACC claim for that injury.
- The injuries in 1979 are also outside the period of qualifying service.
- Veterans' Affairs acknowledged there are gaps in NZDF service/medical files and those gaps would be particularly pertinent in respect of field hospitals/operational areas. They work with a guiding principle of trusting what veterans tell them, unless there is evidence that contradicts the information they are providing or it is implausible for an incident or situation to have taken place. Mr Clark has noted in previous correspondence that he had been hospitalised in Malaysia, although he had not expanded on the injuries and incident, his recall now is consistent with his earlier comments. The incident noted by Mr Clark will have likely occurred in the 60's not the 70's. Recalling things many decades later is difficult, and so mis-stating of the dates would not negatively affect the validity of Mr Clark's evidence.
- Mr Clark was a very credible witness.

Process to decide whether to accept a claim

Section 14 of the Act sets out the 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.

Analysis

The SoPs are a decision-making tool used by Veterans' Affairs to establish the link between a veteran's illness and their eligible service under the Act.

Section 14(5) of the Act provides that if any SoP applies, then it must be decided whether the hypothesis is consistent with the statement of principles. That is, it must be used in the decision-making process.

Mr Clark has qualifying routine and operational service under the Act.

Under regulation 15(3) and Schedule 1 of the Veterans' Support Regulations 2014, there are two potentially relevant SoPs; Osteoarthritis (reasonable hypothesis) No. 61 of 2017 and Osteoarthritis (balance of probabilities) No. 62 of 2017.

The reasonable hypothesis SoP applies to the period of Mr Clark's operational service. The evidential threshold is that there is a reasonable hypothesis of a connection between the claimant's service and his condition. We do not need to consider SoP No 62 of 2017 for the purposes of this decision, so we are referring to No 61 of 2017 when we mention the SoP.

Osteoarthritis is defined in the SoP as follows:

For the purposes of this Statement of Principles, osteoarthritis means a degenerative joint disorder with:

- (a) clinical manifestations of pain, impaired function and stiffness; and
- (b) radiological, other imaging or arthroscopic evidence of loss of articular cartilage or osteophytes, and
- (c) excludes acute articular cartilage tear and osteochondritis dissecans.

In section 9(7), the SoP recognises the following as a factor, based on which it can be said that a reasonable hypothesis has been raised connecting a claimant's osteoarthritis with his service:

...having trauma to the affected joint before the clinical onset of osteoarthritis in that joint.

Trauma to the affected joint is defined by Schedule 1 of the SoP as follows:

Trauma to the affected joint means a discrete event involving the application of significant physical force to or through the affected joint, that causes damage to the joint and the development, within 24 hours of the event occurring, of symptoms and signs of pain and tenderness, and either altered mobility or range of movement of the joint. These symptoms and signs must last for a period of at least seven days following the onset, save for where medical intervention for the trauma to that joint has occurred and that medical intervention involves one of the following:

- (a) immobilisation of the joint or limb by splinting or some other external agent;
- (b) injection of corticosteroids or local anaesthetics into that joint; or

- (c) surgery to that joint.

In relation to osteoarthritis of a joint of the upper limb only, section 9(13) of the SoP recognises the following factors:

- (a) performing any combination of repetitive activities or tasks involving repeated or sustained pinch grip or hand/power grip, for an average of at least 30 hours per week, for a cumulative period of at least ten years within a continuous period of 15 years, before the clinical onset of osteoarthritis in that joint, or
- (b) using a hand-held, vibrating percussive tool or object on more days than not, for a cumulative period of at least ten years, before the clinical onset of osteoarthritis in that joint.

Is Mr Clark's osteoarthritis of the right shoulder service-related under the Act?

The first step for the Appeal Board is to decide whether the facts are consistent with a hypothesis that Mr Clark's right shoulder osteoarthritis was service-related. Section 7 of the Act defines service-related as caused, contributed to, or aggravated by qualifying service.

The Appeal Board must make its decision based on the medical evidence, as well as the evidence as to the nature of Mr Clark's qualifying service. There is no dispute that Mr Clark has osteoarthritis in his right shoulder. The only question which the Appeal Board needs to resolve is whether the evidence establishes, on the balance of probabilities, facts that are consistent with a hypothesis that Mr Clark's osteoarthritis was caused, contributed to, or aggravated by qualifying service.

To establish a link between Mr Clark's osteoarthritis and his service, one or more of the factors set out in section 9 of the SoP must be present within the context of Mr Clark's qualifying service. We cannot take into account evidence which might tend to support the presence of factors outside his period of qualifying service.

Repetitive activities and tasks (section 9(13)(a) of the SoP)

Mr Clark's evidence is that he carried and fired an SLR during his one year of operational service. There is no doubt that he did that on many, many occasions. He recounted patrolling with his gun held in a position ready to fire. He did therefore perform a repetitive task involving a sustained hand/power grip. However, he did not do that activity for sufficient time during his qualifying service to meet the criteria in the factor. The necessary service connection cannot be established based on this factor.

Using hand-held vibrating percussive tool (section 9(13)(b) of the SoP)

Again, while Mr Clark carried and fired a rifle and at times fired a machine gun, his period of qualifying service does not meet the timeframe criterion, therefore the necessary service connection cannot be established based on this factor.

Having trauma to the affected joint before the clinical onset of osteoarthritis in that joint (section 9(7) of the SoP)

Mr Clark's service medical records do not refer to symptoms and signs of shoulder pain, tenderness and altered mobility or range of movement of his shoulder joint. The Appeal Board

accepts that his medical records during his operational period of service are incomplete. This is perhaps an inevitable consequence of forces which were dispersed and engaged in intense jungle warfare. Mr Clark gave evidence that one of his roles was to act as the section medic. The permanent medical staff were based at headquarters (we are unsure whether this was at platoon or company level). Mr Clark also gave detailed evidence of accidents that occurred during his service overseas that do not appear in his medical service file, including an incident in Malaysia that led to him being hospitalised.

The Appeal Board unreservedly accepts the evidence of Mr Clark as to conditions in the field in Vietnam. The Appeal Board found him to be both credible and a reliable witness in describing his conditions of service. The Appeal Board noted that Mr Clark was a leader in his section and was impressed by his stated commitment to continue serving in combat without complaint, despite personal pain or discomfort. He would not abandon his comrades. This is the mark of a leader. On the uncontroverted evidence of Mr Clark, the Appeal Board accepts that he would have experienced multiple discrete events involving the application of significant force to or through the shoulder that caused damage to the joint, and then experienced symptoms and signs of pain and tenderness, as well as a limitation of range of movement that lasted for a period of at least seven days following their onset.

In particular, the Appeal Board accepts that Mr Clark could have suffered such a discrete event when he threw his equipment, weighing in excess of 45 kilograms, onto his back after placing it on his right shoulder. Other discrete events could have included situations when, on contact with the enemy, he threw himself and his pack to the ground and then engaged the enemy with his SLR for between 30 and 45 minutes, with the attendant recoil which is well known to any serviceman who has fired that weapon. Mr Clark said, and we accept, that his section was in contact with the enemy every six to seven days. Other discrete events could have included jumping from hovering helicopters and moving trucks while wearing his pack on his shoulders.

Mr Clark gave a credible account of experiencing a limited range of movement in his right shoulder when he returned to camp from patrols, in particular that he was unable to raise his arm above his shoulder in order to wash his hair when showering. The Appeal Board accepts that it is likely that Mr Clark continued to experience pain and tenderness in his shoulder and even a limited range of movement in his shoulder when he returned to the field, but that would have been masked by his adrenaline, and in his words, the need to “grin and bear it and carry on”.

In reaching the findings that it has, the Appeal Board has been cognisant of the principles provided for in section 10(b) of the Act, but in particular the principle of taking a benevolent approach to claims and the principle of determining claims in accordance with substantial justice and the merits of the claim. On the evidence before it and in particular having regard to the evidence given at the hearing by Mr Clark, the Appeal Board accepts that there is a sufficient evidential basis for us to conclude that, during his qualifying service in Vietnam, Mr Clark suffered trauma to his right shoulder within the meaning of Schedule 1 of the SoP. This of course was many years before the clinical onset of osteoarthritis in that joint.

The Board accepts that whilst there is a gap of approximately 43 years before Mr Clark's osteoarthritis was at a stage where it was able to be diagnosed via an X-ray, it is highly likely that his osteoarthritis was developing prior to that time.

The Appeal Board also acknowledges Mr Rao's opinion that the osteoarthritis in Mr Clark's right shoulder "appeared to be a progressive attritional problem with no clear evidence in the past of any particular traumatic episode". The Appeal Board has had the benefit of hearing Mr Clark's evidence about the shoulder trauma he experienced while on operational service in Vietnam in particular.

In view of its conclusion under SoP No 61, it does not need to consider SoP No 62 of 2017. However, for completeness, the Appeal Board notes that Mr Clark did not identify any discrete trauma to his right shoulder related to that period of his routine service, between 26 June 1967 to 8 May 1969, and 8 May 1970 to 11 March 1971. Given the comment made by Veterans' Affairs in respect of the timing of Mr Clark's accident in Malaysia, it may be that he had such a trauma during his period of qualifying routine service, but we do not need to resolve that question in view of our findings concerning his qualifying operational service.

Conclusion

The Appeal Board finds that Mr Clark's claim for claim for osteoarthritis in his right shoulder must be accepted as service-related under the Act.

Outcome

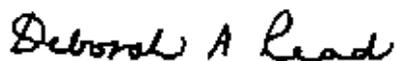
Acting under section 237 of the Act, the Appeal Board revokes the Review Officer's decision and substitutes its decision that Mr Clark's claim for osteoarthritis in his right shoulder is accepted as service-related under the Veterans' Support Act 2014.



Ms Raewyn Anderson, Chairperson



Mr Christopher Griggs, Member



Dr Deborah Read, Member



Dr Chris Holdaway, Member

Date: 20 April 2021