



War Pensions Number

VETERANS' ENTITLEMENTS APPEAL BOARD

Name: [REDACTED] Reference number: 2016/7

Service Number and Rank: N/A

Address: [REDACTED]

Grounds of appeal: Appeal against decision of the Review Officer to decline to accept application for a Surviving Spouse or Partner Pension

Held: at Wellington on 1 December 2016

DECISION

1. This is an appeal by [REDACTED] (the **Appellant**) against the decision of the Review Officer (**RO**) dated 20 April 2016 to uphold the Decision Officer's decisions of 7 December 2015 and 11 January 2016 to decline her application for a **Surviving Spouse or Partner Pension**.
2. The Appellant appeared at the appeal hearing via audio-visual Skype, accompanied by her advocate Ms Samantha Dalton of Brisbane Legacy, Australia. Veterans' Affairs New Zealand (**the Respondent**) was represented by Mr Graeme Astle who appeared in person at the hearing. The brother of the deceased appeared as a witness by telephone.

Background to the appeal

3. On 7 December 2015, the Decision Officer declined to accept the Appellant's application for a Surviving Spouse or Partner Pension. The reason for her decision was: "*The information available shows [the Appellant and the deceased] were living apart at the time of [the deceased's] death. [The deceased] stated on his return to New Zealand that he was living apart/separated and intended to remain in New Zealand. There is no information to show that [the Appellant] contributed to [the deceased's] welfare immediately before his death, nor does the information provided establish [the Appellant and the deceased] were living apart principally because of [the deceased's] health. The information/evidence available is not sufficient to meet the criteria for payment of a Surviving Spouse or Partner Pension under section 66 of the Veterans' Support Act 2014.*" On 11 January 2016, in an addendum to her decision dated 7 December 2015, the Decision Officer, having considered additional information received from the Appellant on 23 December 2015, determined: "*Unfortunately I have concluded that the information does not alter the decision of 7 December 2015, which was to decline [the Appellant's] application for a Surviving Spouse or Partner Pension under the Veterans' Support Act 2014 for the reasons previously stated.*"

4. On 20 April 2016, the RO upheld the *"Decision Officer's decision of 7 December 2015 (addendum completed on 11 January 2016 to the decision of 7 December 2015) to decline application for a Surviving Spouse or Partner Pension as the criteria are not met under section 66 of the Veterans' Support Act 2014."* In coming to her decision, having noted that *"Veterans' Affairs received a completed Surviving Spouse or Partner Pension Application Form on 25 September 2015"*, the RO observed that *"[the Appellant] wrote on the application form she was married to [the deceased] but she was not living with him at the time of his death....'my husband returned to New Zealand due to his health. I was unable to go with him'."* The RO had regard to a letter from Mr John D Fox that had been provided with the application form *"saying he knew [the Appellant and the deceased]"* and that *"[the deceased] told him he was going back to New Zealand to visit his family and he passed away in hospital in New Zealand."* The RO further observed that *"no information was provided showing [the Appellant] had contact with [the deceased] whilst he was in New Zealand or contributed to his welfare immediately prior to his death."* She noted that *"documentation shows [the deceased] returned to New Zealand on 26 May 2005 and was residing with his brother"*, and that *"Veterans' Affairs noted on 28 June 2005 that [the deceased] had phoned Veterans' Affairs to advise that he was in New Zealand with the intention to stay."* The RO also noted that the deceased had applied for a Veterans' Pension in July 2005 *"on the basis that he was unable to work"*, and that he had written on his application form that he *"did not have a partner; he was living apart / separated"*, that *"Work and Income also noted that [the deceased] was separated"*, and that *"as well as applying for a Veterans' Pension [the deceased] made arrangements to have his service-related payments transferred to a bank account in New Zealand."* She further noted that *"all actions taken in respect of [the deceased's] War Disablement Pension following his death were completed through [the deceased's] brother..."* who wrote in a letter to War Pension Services on 15 February 2015 *"My brother had no assets and had returned to New Zealand away from his ex-wife."*

5. Having had regard to the Decision Officer's decision dated 7 December 2015 and the reasons that she had given for that decision, the RO observed that *"on 23 December 2015 a letter was received from Ms Samantha Dalton, Brisbane Legacy, dated 14 December 2015, in response to a letter from Mr Gregory Crott, Manager Decisions and Entitlements, dated 3 November 2015, asking [the Appellant] to provide additional information to support her application for a Surviving Spouse or Partner Pension"*, and that Mr Crott had *"requested a reply to his letter by Friday 4 December 2015."* She further noted that the following evidence had been received from Ms Dalton: *"Statutory Declaration from Mrs Sylvia Buehler, dated 26 November 2015; Statutory Declaration from Mr Fred Rainsford dated 3 December 2015; Statement from Ms Carmen Vella dated 25 November 2015; Statement from Miss Nancy Lyall dated 25 November 2015, and documents from the Australian Department of Veterans' Affairs showing [the Appellant and the deceased] were married and identified as being in a partnership according to Australian Law."* The RO further observed that *"in the interests of justice to ensure all evidence was considered, the Decision Officer re-considered [the Appellant's] application for a Surviving Spouse or Partner Pension Application taking into account the...new evidence"* and that *"the Decision Officer determined on 11 January 2016 (Addendum to decision dated 7 December 2015) to decline [the Appellant's] application for a*

Surviving Spouse or Partner Pension under the Veterans' Support Act 2014 for the reasons previously stated."

6. The RO noted that *"Veterans' Affairs received an application from [the Appellant] on 10 February 2016, requesting a Review of the Decision Officer's decision"*, observing that the Appellant had written on the application form: *"I have provided as much info to show that my husband and I were separated due to illness and that he returned to New Zealand as his family informed him they could not bring his body back from Australia for cultural reasons. I do not have a passport and survive on a pension therefore I couldn't go to support him at or near his passing. I would like it noted that I was still listed as his NOK at the hospital and the Drs kept me informed of his progress as well as of his passing."* Having stated that *"all available information has been considered as part of the Review of the above Decision Officer decision"*, the RO observed that *"whilst [the Appellant has] provided evidence to show that [she] was married to [the deceased] on 12 November 1994 and ...living together as husband and wife prior to his departure for New Zealand on 26 May 2005, [the deceased] has signed a Veterans' Pension Application Form dated 5 July 2005, saying he did not have a partner and he was living apart/separated"*, noting that *"[the deceased] wrote on the same form that he was living with his brother..."* She also observed that the deceased *"advised War Pension Services on 1 July 2005 he had opened a New Zealand Bank account and any service-related payments were to be credited to this account rather than his bank account in Australia"*, and that *"[the deceased's brother] wrote on 15 February 2006 (letter to War Pension Services): 'My brother had no assets and had returned to New Zealand away from his ex-wife.'" The RO concluded that "the only evidence available after [the deceased] returned to New Zealand shows he was living apart from [the Appellant]. There is no evidence available to show [the deceased and the Appellant] maintained a relationship as a married couple after he returned to New Zealand. Given he applied for a Veterans' Pension, opened a New Zealand bank account and arranged for service-related payments to be credited to this account rather than to his Australian bank account, the evidence indicates [the deceased] did not intend to return to live in Australia. [The deceased's] brother referred to [the Appellant] as his brother's ex-wife in correspondence with War Pension Services."* The RO determined that *"[the deceased and the Appellant] were living apart and not maintaining a relationship in the nature of marriage when [the deceased] passed away"* and accordingly upheld the Decision Officer's decision on the grounds that the *"criteria are not met under section 66 of the Veterans' Support Act 2014."*

Written submissions

7. On 23 May 2016, the Appellant signed a notice of appeal form appealing the review decision, contending that:
 - " - The decision has been made on information from [the deceased's cousin] (sic) rather than his wife*
 - All statements provided by [the Appellant] seem to have been ignored*
 - [The Appellant's] financial position has been ignored when considering her ability to go with her husband to New Zealand (e.g. no passport, no pension etc)*
 - The veteran informed his wife he was going on a holiday only*

- *[The Appellant] was listed as the next of kin at the hospital and was being updated by the treating doctor/s and by veteran himself*
- *The veteran once sick in New Zealand informed his wife that he went back to New Zealand because his family said they would not pay for his body to return from Australia to New Zealand and [the deceased] wanted a cultural burial*
- *[The Appellant and the deceased] did NOT share money as [the deceased] liked to gamble, therefore, [the Appellant's] pension went on providing necessities e.g. food, power, gas etc- [The Appellant and the deceased] lived separately at times due to [the deceased's] mental health (the veteran tried to commit suicide etc)*
- *[The Appellant] said that if she knew that the veteran was going to NZ to die, she would have tried to do what she could to get there*
- *[The deceased] left all his military medals with [the Appellant]*
- *[The Appellant and the deceased] never separated or divorced and were still legally married."*

8. The Veterans' Entitlements Appeal Board (**the Board**) recalled that as part of the case management process, it had requested that the brother of the deceased, and his wife, with whom the deceased lived on his return to New Zealand, provide any information that they considered relevant to the deceased's intentions and relationship with the Appellant. In a letter to the Board dated 26 October 2016, the deceased's brother wrote: *"I am writing this letter to confirm that my brother [the Appellant] moved to New Zealand about April 2005. He had separated from his second wife [the Appellant], they had no children together. He moved in with my family just prior to us moving to 143 Main Highway, OTAKI. He told me that he was finished with [the Appellant] for good and had no intention of moving back. I have attached a copy of a letter he was writing to his doctor in Queensland for his medical records to be sent to Otaki Medical Centre so he could get on the war pension, dated 17/07/2005. When he passed away on the 11th August 2005, I took him back to Karangahape Marae in Matangirau, Kaeo for his tangi, where he is buried. [The Appellant] did not attend his Tangi, and I do not know why she didn't as she would have been welcomed as with all visitors to the Tangi. [The deceased] was married before [the Appellant]...and had two children...both born in Australia...If any money is available it should go to [the deceased's son] who lives in Brisbane now aged 42 years and his older sister...who is special needs born that way. Living in a special needs place in Queensland. I am writing this on behalf of my wife...and [the deceased's son]..."* The Board noted that attached to his letter was the deceased's death certificate as well as a copy of what appeared to be an unfinished letter that [the deceased] had written requesting his doctor in Queensland, Dr Gundelach as follows: *"Can you please sent [sic] my medic records to my doctor in Otaki as I have moved back to live in New Zealand. I need it so I can get back on to the War pension."*
9. Having observed that *"the Appellant's representative contacted Veterans' Affairs on 18 October 2016 advising that no written submissions were being presented and that a verbal submission would be made at the appeal hearing"*, Mr Astle, on behalf of the Respondent, noted the letter received from the deceased's brother dated 26 October 2016, in particular that the deceased had advised that he was *"finished with [the Appellant] and had no intention of moving back"*, and that

the deceased had requested that his medical records be returned to New Zealand. Mr Astle also drew to the Board's attention that this was the Appellant's "...second application made for a Surviving Spouse Pension. The first application was made in 2006 under the War Pensions Act 1954. At that time the Secretary of the War Pensions Board [sic] declined the application on the basis that [the Appellant] was not living with her late husband at the time of his passing. In addition, prior to his passing her late husband had declared that he was single when he applied for a Veteran's Pension." In relation to the RO's decision of 20 April 2016, Mr Astle highlighted a number of points, including: that the deceased had qualifying operational and routine service (his period of service being from 6 March 1967 to 5 March 1969, and that he had served in the Vietnam War); that the Appellant had written in her application form "that she was married to [the deceased] but she was not living with him at the time of his death"; that "a letter was provided by Mr John Fox with the application form saying he knew [the deceased] and [the Appellant] and that [the deceased] had told him that he was going back to New Zealand to visit his family"; that "on 23 December 2015 a letter was received from Ms Samantha Dalton, Australian Pensions Advocate, that provided additional information in support of [the Appellant's] application. This included separate information from four people supporting [the Appellant's] application confirming [the deceased's] and [the Appellant's] marital status and that they were living together before [the deceased] left Australia and came to New Zealand"; that the RO had referred to the Decision Officer's decision "where it was noted that [the deceased] had applied for a Veteran's Pension in 2005 on the basis that he was unable to work"; that the deceased had written "on the application form that he did not have a partner; he was living apart/separated" and that "[the deceased] had also made an application to Work and Income where he stated that he was separated"; that "in addition to applying for a Veterans' Pension [the deceased] had made arrangements to have his service-related payments transferred to a bank account in New Zealand"; that "following [the deceased's] death all actions taken in respect of his War Disablement Pension were completed by his brother...", and that on 15 February 2006 the deceased's brother "wrote to War Pension Service advising that his brother had no assets and had returned to New Zealand away from his ex-wife." Mr Astle also observed that the Review Officer had noted that: "[the Appellant] had endorsed the review application form that she had provided as much information as she could to show that she was separated from [the deceased] due to illness and that he returned to New Zealand as his family informed him they could not bring his body back from Australia and for cultural reasons"; that "[the Appellant] also noted she did not have a passport and survived on a pension and therefore could not support [the deceased] at or near his passing" and that she "was still listed as [the deceased's] next of kin at the hospital and that doctors kept [the Appellant] informed of [the deceased's] progress as well of his passing."

10. Mr Astle further noted that in upholding the decision of the Decision Officer, the Review Officer found that: "although there was evidence to show that [the Appellant] was married to [the deceased] on 12 November 1994, and that they were living together as husband and wife prior to his departure for New Zealand on 26 May 2005...their ongoing marital status was not supported by documentation completed by [the deceased] in New Zealand", and that the deceased "had completed and signed a Veterans' Pension application form (dated 5 July 2005) saying he did not have a partner and he was living apart/separated...he was living with his brother". Mr Astle

observed that the RO "also took into account that [the deceased] had advised the War Pensions Service on 1 July 2005 that he had opened a New Zealand bank account and that any service-related payments were to be credited to this account rather than his bank account in Australia" and that the deceased's brother "had written on 15 February 2006 that his brother had no assets and had returned to New Zealand away from his ex-wife." Mr Astle also observed that the RO had concluded that "the only evidence available after [the deceased] returned to New Zealand was that he was living apart from [the Appellant]. There was no evidence available to show that [the deceased] and [the Appellant] maintained a relationship as a married couple after he returned to New Zealand" this being "...supported by [the deceased] opening a bank account in New Zealand and arranging for his service-related payments to be credited to this account rather than his Australian bank account." Mr Astle further observed that "the evidence indicated [the deceased] did not return to Australia. In addition, [the deceased's] brother referred to [the Appellant] as his brother's ex-wife", and that the deceased and the Appellant "were living apart and not maintaining a relationship in the nature of a marriage when [the deceased] passed away."

11. Mr Astle submitted that the RO "in reaching the determination to uphold the Decision Officer's decision...has correctly interpreted the Veterans' Support Act 2014, section 66(2)(a) and (b) and correctly found that [the deceased] and [the Appellant] were living apart and that there is no evidence that [the Appellant] was contributing to [the deceased's] day-to-day care." Mr Astle further submitted the following points for consideration:

- "...[the Appellant filed an application for a Surviving Spouse Pension in 2006 under the War Pensions Act 1954. At that time the Secretary of the War Pension Board [sic] declined the application on the basis that [the Appellant] was not living with her late husband at the time of his passing. This decision was not reviewed. Veterans' Affairs respectfully submits that the circumstances and information available at that time had not changed in any substantial way when the application under the Veterans' Support Act 2014 was declined by the Review Officer.
- In support of [the Appellant's] application are statements from five people along with her own information and a subsequent summary of information from Ms Samantha Dalton, Pensions Advocate. Despite this information the reason [the deceased] returned to New Zealand is unclear. Some thought he was going on holiday and planning to return to Queensland. Others thought he was either unwell or planning to return to New Zealand to die as he wanted to be buried in New Zealand. [The Appellant] stated in her application that he returned to New Zealand due to his health. However, Ms Dalton's comments note that [the deceased] informed his wife he was going on holiday only and then once he became sick informed [the Appellant].
- In terms of legislative requirements of section 66(2)(a) of the Veterans' Support Act 2014 the information provided by [the deceased] in the form of a statement to Work and Income New Zealand, dated 5 July 2005, was that he was living apart/separated. The documentation is endorsed by a Work and Income staff member 'client is separated'. [The deceased] also completed a Living Alone Payment Application. The 'Partner's Overseas Residence Details' were not completed. Earlier [the deceased] had advised War Pensions

on 27 June 2005 of his intention to stay in New Zealand. This is endorsed in a copy letter dated 29 June 2005 from War Pensions requesting verification of his bank details.

- *In relation to section 66(2)(b) of the Veterans' Support Act 2014, [the Appellant] acknowledges she was not contributing to [the deceased's] day-to-day welfare and noted that she did not have a passport and was on a pension and could not go to New Zealand to support him."*

Mr Astle concluded his submission by arguing that *"the information provided supporting [the Appellant's] application is not sufficient to meet the requirements of section 66(2) of the Veterans' Support Act 2014."*

The appeal hearing

Preliminary matter

12. At the commencement of the hearing of the appeal on 1 December 2016, the Board advised both the Appellant and her advocate, Ms Dalton, that it had requested that the deceased's brother attend the hearing via teleconference, to enable the Board to ask questions, as necessary, of both him and the Appellant, in each other's hearing, for the purposes of clarifying any matter of evidence. The Board then invited the Appellant, with the assistance of her advocate, to give evidence and in particular her account of her relationship with the deceased immediately prior to his death.

Oral Evidence

13. The Appellant explained to the Board that the deceased *"had been living with me"* and then *"told me he was going home for a holiday. I found out he was sick and the next thing I knew he was in hospital. I didn't know what to do - I just said to him 'stay strong', I'll talk to you later."* The Appellant then advised the Board that the deceased's brother (who interjected his denial) had *"years before told [me] that if his brother died in Australia he would not bring his body back to New Zealand."* In response to questions from the Board regarding her relationship over the two years prior the deceased's death, the Appellant advised that their relationship *"was good - everything was fine - there wasn't any problem. He used to ring me every day from the RSL or wherever it was and he would tell me that he had played the pokie machines, that he loved the pokie machines."* The Appellant informed the Board that she couldn't remember exactly when the deceased became ill - that *"he never went to the doctor's much"* but she noticed that *"he was losing more and more weight."* She further advised that *"about a week before he went home I asked him why he was going back to New Zealand, but all he said was that he just wanted to go home, and he packed up everything and went home to New Zealand."* When asked what the deceased took with him when he moved to New Zealand, the Appellant stated *"he took everything he owned - everything - he rang the next day and told me it had cost him \$200 in excess luggage."* She advised the Board she couldn't have gone to New Zealand - that she had *"no money, no passport, no nothing."*
14. The deceased's brother advised the Board, via telephone, that his brother had rung him in April/May and told him that *"he was coming back home."* He advised further that when his brother did arrive back in New Zealand, he picked him up from the airport and noted that he had *"quite a few suitcases"* and that it seemed like he had *"brought everything home."* The deceased's brother

went on to inform the Board that the deceased had told him that he had *"finished with [the Appellant]"* and that, when he had commented that the deceased and the Appellant had *"broken up a few times before, living at another address"*, the deceased had been *"adamant that he was not going back to Australia."* The deceased's brother referred the Board to the letter that the deceased had written requesting that his medical files be sent to New Zealand, and reiterated that the deceased had made it clear to him that it was *"over between him and [the Appellant]"* and that he had *"no intention of going back there."* When asked about whether the deceased called the Appellant, the deceased's brother advised that he was *"not sure who called who"*, but acknowledged that the deceased did speak on the phone to the Appellant, *"but not that often"*, and that he *"didn't really comment on what they talked about, but it was quite a few years ago."*

15. In an oral submission to the Board, Mr Astle invited the Board to consider the wording of section 66 (2) (a) and (b) of the Veterans' Support Act 2014 (the **VSA**) and submitted that on the evidence the legislative criteria were not met. He invited the Board to consider the Decision Officer's and RO's detailed analysis of the deceased's actions, including the documents he completed on returning to New Zealand, which he submitted clearly established that he and the Appellant were living apart. While acknowledging that the Board had *"two versions to consider"*, Mr Astle invited the Board to uphold the RO's decision that the deceased's relationship with the Appellant *"was over"* for the purposes of section 66 (2) of the VSA.
16. In her oral submission to the Board, Ms Dalton advised that there was no further evidence that she or the Appellant could provide, and that with the Appellant's testimony *"we have provided as much as we can."* She noted that given the Appellant's financial circumstances, *"she couldn't help [the deceased] with his day to day welfare."* The Appellant reiterated that she didn't know why the deceased would have thought that their relationship was over - *"he didn't tell me it was over"* - and asked: *"how come he rang me from the hospital, how come I was next of kin and got the documents from the hospital - where are the divorce papers - we are still married."* The Appellant concluded: *"[the deceased] told two different things - one to [his brother] and one to me."*

Appeals under the Act

17. Under the Act, a review decision may be appealed by the person who applied for the review or by VANZ. An appeal made to the Board is a *de novo* appeal, and the Board 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 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 Board may determine an appeal without hearing oral evidence from the Appellant. The 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 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 Board revokes the decision it is required to substitute its decision for that of the RO or require VANZ to make the decision again in accordance with directions it gives to VANZ.

Appeal Board Decision

18. The Board was of the view that the issue for its consideration was essentially one of interpretation of section 66 of the VSA, which provides:

"(1) Subsection (2) applies in relation to a deceased veteran if -

(a) the veteran's death was a service-related death; or

(b) at the time of the veteran's death, the veteran was receiving -

(i) a permanent war disablement pension under part 2 of the War Pensions Act 1954 in relation to disablement of 70% or more; or

(ii) a permanent disablement pension granted under subpart 3 in relation to whole-person impairment of 52% or more; or

(c) VANZ considers that, had the veteran not died, the veteran would have been eligible to receive a pension specified in paragraph (b) (i) or (ii) (to the extent or impairment specified) had he or she applied for it immediately before his or her death.

(2) Subsection (1) does not apply if, immediately before the veteran's death, -

(a) the veteran and the claimant were living apart or were not maintaining a relationship in the nature of marriage; and

(b) the claimant was not contributing to the veteran's day-to-day welfare.

(3) Subsection (2) does not apply if the circumstances described in the subsection occurred principally because of the health, imprisonment, or employment obligations of the veteran or the claimant.

(4) A spouse or partner of the veteran is entitled to a surviving spouse or partner pension at a rate specified in regulations made under section 265."

19. On analysing in detail the requirements of this section, the Board formed the view that on an ordinary reading of the section, a spouse or partner of a veteran, in any given case, would not be entitled to a surviving spouse or partner pension if (among other things), immediately before the veteran's death the veteran and the claimant were living apart or were not maintaining a relationship in the nature of marriage, and the claimant was not contributing to the veteran's day-to-day, unless the veteran and the claimant were living apart or not maintaining a relationship in the nature of marriage and the claimant was not contributing to the veteran's day-to-day welfare principally because of the health, imprisonment, or employment obligations of the veteran or the claimant.

20. Having had regard to all the evidence, it was clear to the Board that the Appellant and her late husband were living apart immediately before her late husband's death. In this regard the Board noted, in particular, that the Appellant herself had stated in her application for a surviving spouse or

partner pension that she was not living with her late husband at the time of his death. It was also clear to the Board on the evidence before it, that immediately before the deceased's death, the deceased and the Appellant were not maintaining a relationship in the nature of marriage. In this regard, the Board noted that, although various statements had been made regarding the 'reasons' for the deceased's return to New Zealand, it was clear to the Board from the deceased's actions (including taking back to New Zealand, in the words of the Appellant, *"everything he owned"*; setting up a bank account in New Zealand and requesting that his service-related payments be transferred to that account; requesting his medical records to be returned to New Zealand; declaring to WINZ that he was *"living apart/separated"* and stating in his Veteran's Pension application form that he did not have a partner) and from his statements to his brother prior to and when he was back in New Zealand (that the deceased had rung him in April/May and told him that he *"was coming home"*; that he *was finished with [the Appellant]"* and that he had *"was adamant that he was not going back"*) that the deceased intended thereafter to live permanently in New Zealand, apart from his wife, the Appellant. Further, the Board considered that, although the Appellant remained the deceased's next-of-kin and she and the deceased communicated occasionally by phone while he was in New Zealand, on the evidence presented (including evidence from the Appellant herself i.e. *"I couldn't have gone to New Zealand, I had no money no passport, no nothing"*), it was unable to conclude that the Appellant was contributing to her late husband's day-to-day welfare immediately before his death.

21. Having made such determinations, the Board proceeded to consider s66(3) of the VSA applied i.e. whether the Appellant and her late husband were living apart or not maintaining a relationship in the nature of marriage, and whether the Appellant was not contributing to her late husband's day-to-day welfare *"principally because of the health...of the veteran or the claimant."*
22. With regard to this matter, the Board noted Mr Astles' submission, that in regard to the deceased's returning to New Zealand, *"some thought [the deceased] was going on holiday and planning to return to Queensland. Others thought he was either unwell or planning to return to New Zealand to die as he wanted to be buried in New Zealand. [The Appellant] stated in her application that he returned to New Zealand due to his health. However, Ms Dalton's comments note [the deceased] informed his wife he was going on holiday only and then once he became sick informed [the Appellant]."* The Board also noted that the Appellant herself had given evidence at the hearing that she could not have gone to New Zealand - that she *"had no money, no passport, no nothing"*, and that Ms Dalton had submitted on behalf of the Appellant that given the Appellant's financial circumstances *"she couldn't help [the deceased] with his day to day welfare."* Having carefully considered the evidence before it, the Board was unable to conclude either that the Appellant and her late husband were living apart or not maintaining a relationship in the nature of marriage *"principally because of the health...of the veteran or the claimant"* or that the Appellant was not contributing to her late husband's day-to-day welfare *"principally because of the health...of the veteran or the claimant"*.

23. Having had specific regard to all the principles specified in s10(b), and the overarching benevolent intent of the Act, the Board determined that the decision of the RO to uphold the Decision Officer's decisions of 7 December 2015 and 11 January 2016 to decline the application for a Surviving Spouse or Partner Pension was correct and accordingly **confirmed the review decision**.

Order relating to the publication of decision

24. Pursuant to the powers vested in it by section 238 of the VSA, the Board, on its own initiative and after consultation with the Appellant makes an order prohibiting the publication of the name and the address of the Appellant.

The appeal is dismissed.



Ms Rebecca Ewert, Chairperson



Dr Chris Holdaway, Member



Ms Raewyn Anderson, Member



Dr Hillary Gray, Member

18 February 2017