

War Pensions Number

VETERANS' ENTITLEMENTS APPEAL BOARD

Name: [REDACTED]

Service Number and Rank: [REDACTED]

Address: [REDACTED]

Grounds of appeal: Appeal against decision of the Review Officer to decline to accept his claimed conditions

Held: at Wellington on 24 May 2018

DECISION

1. This is an appeal by [REDACTED] (the **Appellant**) against the decision of the Review Officer (**RO**) dated 21 October 2016 to uphold the Decision Officer's decision of 8 July 2016 and decline to accept his claimed conditions of **Blood Pressure and Hypertension, Atrial Fibrillation and Inguinal Hernias Both Sides** as being service related, and his claimed conditions of **Scrub Typhus, Leptospirosis and Jungle Fever** on the ground that there is no medical evidence to verify these as current conditions.
2. The Appellant did not appear in person at the appeal hearing, however, he was represented by his advocate, Mr John Capill. The Respondent, Veterans' Affairs New Zealand (**VANZ**), was represented by Mr Graeme Astle, with Ms Anne-Marie Tribe in attendance.

Background to the appeal

3. On 8 July 2016, the Decision Officer (**DO**) declined to accept the Appellant's claimed conditions of Hypertension and Blood Pressure, and Atrial Fibrillation "*as all the available evidence has been considered and it has been found not to be related to service because the link to service has not been established.*" The DO also declined to accept the Appellant's claimed conditions of Inguinal Hernias Both Sides and Scrub Typhus, Leptospirosis and Jungle Fever "*as all the available evidence has been considered and it has been found that there is no medical practitioner verification to confirm [the Appellant] currently has [these conditions].*"
4. On 21 October 2016 the RO reviewed the DO's decision. Having noted that "*[the Appellant] has qualifying service under the Veterans' Support Act 2014 in respect of qualifying operational service during the Malayan Emergency (posted to Active Service 10 November 1957); disembarked Singapore 15 December 1957; ceased to be on Active Service 13 June 1959; and qualifying non-operational service (i.e. service other than Malayan Emergency) for his period of service 15*

September 1955 to 9 August 1959,” the RO upheld the DO’s decision of 8 July 2016 and declined to accept the Appellant’s claimed conditions of Blood Pressure and Hypertension, Atrial Fibrillation and Inguinal Hernias Both Sides as being service related. She also declined to accept his claimed conditions of Scrub Typhus, Leptospirosis and Jungle Fever “...as there is no medical evidence to verify these as current conditions.” In coming to her decision, the RO had regard to the information provided in the Appellant’s service medical documentation, including notes relating to his medical examinations on 23 June 1955 and 24 June 1957, to the period March – September 1958 and to his Medical Review Board held on 13 June 1959 (following overseas service). The RO also had regard to the information in the Appellant’s Disablement Pension Application received by the Respondent on 10 May 2016, in which the Appellant wrote about how he believed his service caused, contributed to or aggravated each of his claimed conditions, and to other information available in the Appellant’s War Disablement Pension file. The RO noted the Appellant’s occupations post military service, and had regard to information in his War Disablement Pension application received 27 July 2009, observing that General Practitioner Dr Graham Loveridge had treated the Appellant for hypertension for seven years and for atrial fibrillation since November 2002, but that he had not treated the Appellant for Scrub Typhus; that in a hospital letter dated 15 November 2002 it was noted that an ECG had confirmed a diagnosis of atrial fibrillation; that a further hospital letter dated 16 March 2004 noted the Appellant’s blood pressure as being 145/80, and that the Appellant’s accepted service-related disabilities included ‘Sinus’. The RO observed that the Appellant had advised in a letter in 2010 *“that he had a right sided hernia repaired 30 years previously; that his left side had ‘now gone’, and that he had been wearing a hernia belt for 14 years”* and that the conditions of Blood Pressure/Hypertension and Atrial Fibrillation were declined for War Disablement Pension in 2010 *“on the basis that the conditions were not attributable to [the Appellant’s] Service”,* and that *“the condition of Scrub Typhus was also declined on the basis [the Appellant] no longer had this condition.”*

5. The RO observed that *“the Veterans’ Support Act, which replaced the War Pensions Act 1954, introduced new instruments including the Statements of Principles for determining whether or not a condition can be connected to the circumstances of a person’s qualifying service”,* and that *“as a result, conditions previously declined under the War Pensions Act 1954 can be applied for as new claims under the Veterans’ Support Act 2014.”* She noted however that *“the information available shows [the Appellant] was investigated / treated for symptoms of fever and headaches while on Active Service, possible diagnoses for which included Scrub Typhus and Leptospirosis”,* and that *“[the Appellant] stated on the medical review prior to discharge from the Army that he was in good health; and there is no medical evidence to show [the Appellant] currently has the conditions of Scrub Typhus, Leptospirosis and Jungle Fever.”* The RO accordingly determined that *“the [DO’s] decision of 8 July 2016 to decline the claim for Scrub Typhus, Leptospirosis and Jungle Fever is upheld on the basis that there is no medical evidence to show [the Appellant] currently has these conditions.”*
6. Having observed that the Appellant’s conditions of Hypertension, Atrial Fibrillation and Inguinal Hernia *“do not qualify for automatic acceptance under legislative service-related presumptions”,* the

RO observed that these conditions “are therefore determined in accordance with section 14 of the Veterans’ Support Act 2014, which applies the Statements of Principles for determining whether or not the condition is connected to a person’s qualifying service.” Having further observed that Statements of Principle (SoPs) “provide definitions of the disease or injury and specify what factors must exist for the condition to be causally connected to the person’s qualifying service”; that “only one factor need be met for the claim to be successful, provided the information available connects the factor with the circumstances of the person’s qualifying service”, and that “if no factors are met in the SoP, the condition cannot be connected to the person’s qualifying service and the case must be declined”, the RO noted that “the Statements of Principle currently adopted for use by New Zealand, relevant to the current condition and qualifying service are: Statement of Principles concerning Hypertension (Reasonable Hypothesis) No. 63 of 2013; Statement of Principles concerning Atrial Fibrillation and Atrial Flutter (Reasonable Hypothesis) No. 49 of 2014 [and] Statement of Principles concerning Inguinal Hernia (Reasonable Hypothesis) No. 5 of 2013.” Having considered “all factors in the relevant Statements of Principles”, the RO concluded that “the available information does not connect Hypertension, Atrial Fibrillation or Inguinal Hernia to the circumstances of [the Appellant’s] qualifying service” and determined to uphold “the decisions of 8 July 2016 to decline the conditions of Hypertension, Atrial Fibrillation and Inguinal Hernia on the basis the conditions are not service-related.”

Written submissions

7. On 3 November 2016 the Appellant lodged an appeal against the decision of the RO, first challenging the decision of the DO, and in that regard noting: “A lot of this information comes from the hospital records from the British Military Hospital in Taiping Malaya to which I submitted in my review. A paper also submitted on Scrub Typhus, a paper [about] what could happen using dibutyl phthalate for spraying uniforms while in the jungle in regards to fevers and headaches which I suffered from. The inguinal hernias were the result of being used as porters to carry arms ammunition and provisions to other platoons in the jungle. In my mind it weakened my sides. Please find correspondence from the review application which had medical records from the British Military Hospital and information supplied by me in the first review.” The Appellant further wrote: “I appeal the same conditions as in the Review on the 11 August 2016”, and continued to express his concerns about the difficulties that he was facing with his hearing aids that had been “supplied by War Pensions and fitted by Triton Hearing.” On 13 March 2018, the Veterans' Entitlements Appeal Board (**the Board**) received a written submission from the Appellant in the form of an email addressed to the Secretary of the Board, in which he wrote: “not everyone used dibutyl phthalate...on their uniforms in the jungle but it certainly had a health effect on me. Every time I was admitted to hospital bmh kamunting with headaches and fevers glandular fever it seemed to be after using thai-eight on my uniform...It didn't stop me from getting scrub typhus...I submitted an application for inguinal hernias as we had to carry supplies arms and ammunition to other troops in the jungle. My doctor knew I had a hernia but what he didn't know was that the hernia dropped down through my stomach and testicles... my partner found me laying on the floor and rushed me up to A and E at Nelson Hospital where they tried to push my stomach back up and they had me inhaling gas. The surgeon was standing by to operate but couldn't operate till the next morning because I

was taking heart pills and blood pressure pills. After the operation I had to rest up for 9 weeks.... On 25-5-1958 I was transferred to hospital bmh kamunting. The surgeon said I had never been well. He said the boy looks pale and ill and he said you are going to watch your health when you get home especially later on in life. This has been a very stressful time going on 2 years for this appeal especially with changes in case managers and secretaries for Veterans' Affairs and not knowing what is going on. I don't think that Veterans' Affairs is supposed to be like that. It has been stressful because I have had two trips to hospital for unilateral ectropion surgery on my left eye done privately at the medical centre in Collingwood St by Dr Sacha Moore, however it wasn't successful and it had to be done again at a public hospital and I have not wish to go through that again."

8. The Respondent submitted its written submission in response on 17 April 2018. Having acknowledged the points made by the Appellant in his submission emailed to VANZ on 13 March 2018, Mr Astle submitted that the points raised *"do not add any additional information to what has previously been provided and considered when reaching the determinations to decline the claims that are the subject of this appeal."* By way of background, Mr Astle noted that previous applications for each of the conditions that were the subject to appeal had been made under the War Pensions Act 1954, and declined. He observed that the War Claims Panel (when dealing with the Appellant's claim under that legislation) had noted that for *"Blood Pressure and Hypertension, Atrial Fibrillation and Hiatus Hernia there was no information available to confirm these conditions were caused by an event or incident in [the Appellant's] service."* Mr Astle also observed that for the conditions of *"Scrub Typhus, Leptospirosis and Jungle Fever the Claims Panel noted that information available for these conditions indicated that [the Appellant] no longer had the conditions."* Mr Astle further observed that the Appellant had *"the following conditions accepted as being related to service – Sinus; Tinea; Varicose Veins; and Sensorineural Deafness."* Having further observed the basis upon which each of the Appellant's conditions had been declined by the DO on 8 July 2016, Mr Astle noted the points that the Appellant had highlighted relating to each of his conditions in his application for review of the DO's decision: ***"Blood Pressure and Hypertension – 'I certainly suffered with Jungle Fever and headaches that could be caused by Thai-eight on our jungle uniforms'; Atrial Fibrillation – 'who is to say that these conditions are not caused by jungle war-fare especially when you read the paper on problems on a possible result of Scrub Typhus repellent use'; Scrub Typhus, Leptospirosis and Jungle Fever – 'jungle medical records were produced, as intimated in army medical records and by producing paper on causes by using a product called Thai Eight DPB which led to jungle fevers through impregnation of this product onto our jungle uniforms'; and Inguinal Hernias (both sides) – 'we had to carry a lot of arms, ammunitions and supplies to different platoons. In the jungle we were used as porters'."***
9. In relation to the RO's decision, which he noted *"is the subject of the appeal"*, Mr Astle highlighted a number of points. Having observed that the Appellant has *"qualifying service under Scheme One of the Veterans' Support Act 2014 with regards to service in the New Zealand Army including service during the Malayan Emergency"*, and that *"his service is recorded as Compulsory Military Training (CMT): Basic Rifleman training 15 September 1955 – 29 November 1955 and 16 days training 1956/57; Regular Force: Attested 15 July 1957 – entered camp 18 July 1957 and discharged 9*

August 1959; Malayan Emergency: posted to Active Service 10 November 1957 – disembarked Singapore 15 December 1957 and ceased to be on Active Service on 13 June 1959”, Mr Astle noted the information that the RO had considered i.e. “[the Appellant’s] service medical documentation along with information and comments provide by [the Appellant] relating to each of the conditions that are the subject of this appeal”; the “information relating to occupations [the Appellant] has undertaken post his military service was reviewed”; the “information contained in [the Appellant’s] War Disablement Pensions application received on 27 June 2009...including information from General Practitioner Dr Graham Loveridge who treated [the Appellant] for hypertension and atrial fibrillation”, and “hospital letters dated 15 November 2002 (atrial fibrillation) and 16 March 2004 (blood pressure)...” Mr Astle further noted the conclusions to which the RO had come with regard to each condition “after reviewing all the available information.” More specifically, Mr Astle noted that with regard to the Appellant’s conditions of Blood Pressure and Hypertension, the RO had concluded “these conditions do not qualify for automatic acceptance under service-related presumptions in the Veterans’ Support Act 2014 and are therefore determined in accordance with section 14 of this Act, which applies the Statement of Principles (SoPs) for determining whether or not the condition is connected to a person’s qualifying service. Only one factor needs to be met for the claim to be successful, provided the information available connects the factor with the circumstances of the person’s qualifying service. The relevant SoP for Hypertension (Reasonable Hypothesis) is No. 63 of 2013”, and that “having considered all the factors detailed in the SoP for Hypertension and the available information” the RO had concluded that “that there was no qualifying factor to connect this condition to the circumstances of [the Appellant’s] qualifying service.” Mr Astle also noted that with regard to the Appellant’s condition of Atrial Fibrillation, the RO had similarly concluded that “this condition does not qualify for automatic acceptance under service-related presumptions in the Veterans’ Support Act 2014”, and that “the relevant SoP for Atrial Fibrillation and Atrial Flutter (Reasonable Hypothesis) is No. 49 of 2014”, but that “having considered all the factors detailed in the SoP for Atrial Fibrillation and Atrial Flutter and the available information”, the RO had concluded “that there was no qualifying factor to connect this condition to the circumstances of [the Appellant’s] qualifying service.” Mr Astle observed that this had been elaborated on in DO’s decision, where factor 6(o) – which specifies endurance physical activity for an average of 20 hours per week for a continuous period of at least five years and the onset of atrial fibrillation within 20 years of cessation – had been considered, and noted that the Appellant’s “service activity and timeframes would not meet this factor.” With regard to the conditions of Scrub Typhus, Leptospirosis and Jungle Fever, Mr Astle observed that it had been noted (among other things) in the Appellant’s service medical documentation for the period March – September 1958 that “...Scrub Typhus fever/Leptospirosis/acute pharyngitis/acute tonsillitis/acute bronchitis” was suspected, but that “having considered all available information it was found that there was no medical practitioner verification to confirm that [the Appellant] concurrently has these conditions.” With regard to the Inguinal Hernias (both sides) - after noting that “these conditions do not qualify for automatic acceptance under service-related presumptions in the Veterans’ Support Act 2014”, Mr Astle noted that “the relevant SoP for Inguinal Hernia (Reasonable Hypothesis) is No. 5 of 2013”, but that “having considered all the factors detailed in the SoP...and the available information”, the RO concluded that “there was no qualifying factor to connect this condition to the

circumstances of [the Appellant's] qualifying service." He further observed that this was "elaborated on in the [DO's] decision where it was noted that [the Appellant] had one inguinal hernia medically repaired in about 1980 and the other repaired in 2011, and there is no current medical practitioner verification to confirm that [the Appellant] currently has bilateral inguinal hernias." By way of conclusion, Mr Astle submitted that the DO's "decision made on 8 July 2016 to decline the Appellant's applications for Hypertension and Blood Pressure; Atrial Fibrillation; Scrub Typhus, Leptospirosis and Jungle Fever, and Inguinal Hernias (both sides) which was upheld by the National Review Officer's [sic] decision on 21 October 2016 was the correct one."

10. In a further written submission received on 23 April 2018, the Appellant provided additional information relating to his service – that he was under 21 when he joined the service with his father's written permission to go to Malaya and that he had been paid "under 21s wages" – and information about his personal and family circumstances, including that his father died while he was in Malaya. He advised that he was now a Kaumatua of the Ngai-Tahu tribe, and that he "still stood by the hospital records of the British military hospital in Tai-ping and Ipoh in the State of Perak", noting that he learned later that the trouble with his glands "could be caused by phthalate being sprayed on our uniforms..." The Appellant drew to the Board's attention that his name "is listed in the great hall of memories of the [REDACTED] High School] as being in Malaya along with those who had gone to Korea and Viet-nam..." and that he had been a [REDACTED] in [REDACTED] Company and a [REDACTED] in Waiouru..." He reiterated that "he stood by what the professional doctors and British military hospital said" – that "I was lucky to get through what I had and it will probably affect you later in life..."

The appeal hearing

11. At the hearing of the appeal on 24 May 2018, Mr Capill advised the Board that after some discussion with the Appellant, the Appellant had accepted that it was necessary for his claimed conditions to be current in order to be eligible for a disablement pension, and that as he was not currently suffering from Scrub Typhus, Leptospirosis and Jungle Fever, the Appellant wished to withdraw his appeal in respect of those conditions. After noting that the Appellant was a smoker, Mr Capill produced for the Board's consideration a brief letter from Dr Janneke Patterson, in which she advised that the Appellant was a longstanding patient of the Harley Street Medical Practice, that "he has a number of medical issues", and that she "would fully support his application for support." Dr Patterson enclosed "copies of his admission and surgical discharge summary from 2012 where he had his left sided inguinal hernia surgically repaired..." Mr Capill then advised that he had no written submission to produce to the Board, and that he had nothing further to add to the material that had already been provided to the Board for its consideration.

12. Mr Astle also advised that the Respondent had nothing further to add to the submissions already made. He acknowledged Mr Capill's input at the hearing, noting that it had been helpful, and expressed the Respondent's wish to acknowledge also the conditions from which the Appellant suffers. Mr Astle advised Mr Capill that if the Appellant's "scrub typhus comes back, he should come to VANZ so that it can be looked at again..." and that "if something new occurs" or "if there is any

fresh evidence”, the Appellant should come to Veterans’ Affairs New Zealand (**VANZ**) and speak to his Case Manager who would be able to give him all the necessary advice.

Appeals under the Veterans' Support Act (VSA)

13. Under the VSA, 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.

The review decision

14. The Board noted that the RO had correctly identified that the Appellant had qualifying service for the purposes of the VSA in respect of qualifying operational service during the Malayan Emergency “(posted to Active Service 10 November 1957; disembarked Singapore 15 December 1957; ceased to be on Active Service 13 June 1959)”, and qualifying routine service “(i.e. service other than Malayan Emergency) for his period of service from 15 September 1955 to 9 August 1959.” The Board also noted that the RO had correctly decided that the Statement of Principles (SoP) concerning Hypertension No. 63 of 2013 (Reasonable Hypothesis), Statement of Principles (SoP) concerning Atrial Fibrillation and Atrial Flutter No. 49 of 2014 (Reasonable Hypothesis) and Statement of Principles (SoP) concerning Inguinal Hernia (No. 5 of 2013 (Reasonable Hypothesis) were the appropriate SoPs to apply (to the conditions remaining subject to this appeal) given the Appellant's qualifying service. The Board observed that each of these SoPs is listed in Schedule 1 of the Veterans’ Support Regulations 2014, and that such SoPs are therefore Australian Statements of Principles that apply for the purposes of the VSA. The Board concurred with the RO’s decision that none of the Appellant’s conditions qualified “for automatic acceptance under the legislative service-related presumptions” and that therefore the Appellant’s conditions should be determined in accordance with section 14 of the VSA, which she had noted “applies to the Statements of Principles for determining whether or not the condition is connected to the person’s qualifying service.”

15. The Board observed that in paragraph 4 of each of the SoPs under consideration in this appeal, the Repatriation Medical Authority (**RMA**) states that it has formed the view that there is sound medical evidence the [condition in question] can be related to service; that paragraph 5 of each SoP provides in effect that at least one of the factors specified in paragraph 6 must be related to the person's service, and that paragraph 6 of each SoP sets out the factors which must exist for a claim to succeed.
16. With regard to the Appellant's conditions of Blood Pressure/Hypertension, the Board noted in passing that the Appellant's conditions of Hypertension and Atrial Fibrillation had been diagnosed in or about 2002, some 43 years after his operational service with the New Zealand Army. Having had regard to all the evidence before it, and having considered the SoP applicable to Hypertension and Atrial Fibrillation respectively, the Board agreed with the RO's decision that the available information does not connect the conditions of either Blood Pressure/Hypertension or Atrial Fibrillation to the circumstances of the Appellant's qualifying service.
17. With regard to the Appellant's condition of Inguinal Hernia Both Sides, the Board observed that there was some evidence of recurrence of the condition on his left side, but nonetheless determined that on the evidence available there was no evidence to show that any factor in the applicable SoP had been met. The Board accordingly agreed with the RO's decision that the available information does not connect the Appellant's condition of Inguinal Hernia to his qualifying service.

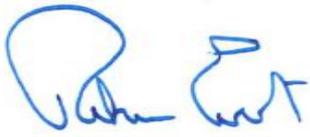
Appeal Board Decision

18. Having had regard to all the evidence before it, and having had specific regard to all the principles specified in s10(b), and the overarching benevolent intent of the VSA, the Board determined that the hypothesis that the Appellant's conditions of Hypertension, Atrial Fibrillation and Inguinal Hernia (Both Sides) respectively were not consistent with the Statement of Principles concerning Hypertension No. 63 of 2013 (Reasonable Hypothesis), the Statement of Principles concerning Atrial Fibrillation and Atrial Flutter No. 49 of 2014 (Reasonable Hypothesis) or the Statement of Principles (SoP) concerning Inguinal Hernia (No. 5 of 2013 (Reasonable Hypothesis)). In so finding, the Board agreed with the RO's decision to decline to accept the Appellant's conditions of Hypertension, Atrial Fibrillation and Inguinal Hernia as being service-related under the VSA.
19. The Board accordingly determined to **confirm** the decision of the RO dated 21 October 2016 to uphold the decision of the DO of 8 July 2016 and decline to accept Blood Pressure and Hypertension, Atrial Fibrillation and Inguinal Hernia Both Sides on the basis that such conditions are not service-related under the VSA.

Order relating to the publication of decision

20. Pursuant to the powers vested in it by section 238(3) of the VSA, the Board, on its own initiative makes an order prohibiting the publication of the name, service number, rank, address, War Pension Number and other specific identifiers of the Appellant.

The appeal is dismissed.



Ms Rebecca Ewert, Chairperson



Dr Chris Holdaway, Member



Ms Raewyn Anderson, Member



Dr Hillary Gray, Member

6 June 2018