



2003-297

Representative: Jane Michael, BPA
Decision No: 100000560297
Decision Type: Entitlement Appeal
Location of Hearing: Charlottetown, Prince Edward Island
Date of Decision: 25 June 2003

As a result of the Appellant's Entitlement Appeal hearing held 25 June 2003, this Board rules as follows:

RULING

CHOROIDAL NEOVASCULAR MEMBRANE OF MACULA LEFT EYE RESULTING IN VISION LOSS

Did not arise out of nor was it directly connected with service in peace time in the Regular Force.
Subsection 21(2), *Pension Act*

_____ Presiding Member
J.A. Boisvert

_____ Member
Robert Benoit

Original signed by:
_____ Member
Armand L. Brun

ISSUES

An Entitlement Appeal hearing was held in Charlottetown, Prince Edward Island, on 25 June 2003 as the Appellant was dissatisfied with an Entitlement Review decision of 25 July 2001. Ms. Jane Michael, Bureau of Pensions Advocates, was the representative.

EVIDENCE

Submitted as additional evidence for this claim is:

- EA-M1: a statement from the Appellant dated 7 April 2003;
- EA-M2: a statement from the Appellant dated 10 April 2003;
- EA-Attach-M1: a Physical Examination report dated 14 January 1971;
- EA-Attach-M2: a Physical Examination report dated 8 February 1973; and
- EA-Attach-M3: an extract from a Virtual Calendar.

Choroidal Neovascular Membrane of Macula Left Eye Resulting in Vision Loss

FACTS AND ARGUMENT

The Advocate submits that the Appellant attributes his left eye vision loss to a particular incident that occurred on 21 March 1973, at the Base Auto Club, at 9:20 in the morning.

It is submitted that the Entitlement Review Panel of 25 July 2001 accepted that the 1973 injury was very serious in nature and most likely the cause of the loss of vision in the Appellant's left eye. However, the Review Panel was unable to establish the duty-relationship.

The success of this appeal revolves around the duty status of the Appellant at the time of the accident.

In his statement dated 7 April 2003 (Exhibit EA-M1), the Appellant states, in part:

It is my understanding that in CFB Gagetown where the injury to my left eye occurred at the Base Auto Club, the duty mechanic, R.C.E.M.E. was assigned to the Auto Club, daily or weekly by his Officer in Charge of the R.C.E.M.E. I also believe that this was at the direction or orders of the Base Commander. I do not wish to lay blame on the mechanic on duty at the time but it was because of neglect on his part while working on my car that caused the car's battery to blow up in my face and because of that, I am now legally blind in my left eye. ...

PS - I was on duty and in uniform on that day and had permission from my PL warrant officer to be in the Auto Club at that time. ...

In his statement dated 10 April 2003 (Exhibit EA-M2), the Appellant states:

...All of the gentlemen who signed their name on my last letter were members of the military and all of them served in CFB Gagetown, NB and also used the facilities at the Base Auto Club themselves at one time or another. Also, we ... all agreed that while we were on duty during that day & had permission, we were able to use the facilities at the Base Auto at any time. Also, one Member, was Sgt. At Camp Gagetown & used to dispatch the duty mechanic "RCEME" to the Auto Club daily, one for the toll crib and two mechanics. It was a duty for them. ...

The Advocate, on behalf of the Appellant, contends that the practice of having private cars repaired at the Club was a customary practice, which was accepted and used by all members of the Base.

In her written submission, the Advocate argues that the Appellant is entitled to benefit from the presumption of a service relationship established in subsection 21(3) of the *Pension Act*. It is submitted that subsection 21(3) provides that an injury shall be presumed to have been directly connected with military service if incurred in the course of:

- f. Any military operation, training or administration, either as a result of a specific order or **established military custom or practice**, whether or not failure to perform the act that resulted in the disease or injury or aggravation thereof would have resulted in disciplinary action against the member.

(as transcribed)

The Advocate concludes her written submission as follows:

...Accordingly, based on the preceding evidence, and the provisions of Subsection 21(2) and Paragraph 21(3)(f) of the *Pension Act*, it is contended that there is a reasonable inference of a service-relationship. Any doubt must be resolved in the appellant's favour, in accordance with Section 39 of the *Veterans Review and Appeal Board Act*, leading to an award of full pension entitlement, pursuant to Subsection 21(2) of the *Pension Act*.

(as transcribed)

REASONS AND CONCLUSION

In arriving at this decision, this Board has carefully reviewed all the evidence, medical records and the submissions presented by the Representative, and has complied fully with the statutory obligation to resolve

any doubt in the weighing of evidence in favour of the Applicant or Appellant as contained in sections 3 and 39 of the *Veterans Review and Appeal Board Act*.

The Board, having made a complete review of the file and having taken into account the written submission of the Advocate, as well as the exhibits and the attachments, confirms that its interpretation of the provisions of subsection 21(2) and paragraph 21(3)(f) is that the activities foreseen by paragraph 21(3)(f) are for the furtherance of military duties and obligations. The activities are meant to be military activities carried out in the context of military undertakings.

The Board cannot accept personal car repairs to be included in the furtherance of military duties and obligations.

Therefore, this Board rules to affirm the decision of the Entitlement Review Panel dated 25 July 2001.

RELEVANT LEGISLATION

Paragraph 21(2)(a) of the *Pension Act* states that in respect of military service rendered in the non-permanent active militia or in the reserve army during World War II and in respect of military service in peace time, where a member of the forces suffers disability resulting from an injury or disease or an aggravation thereof that arose out of or was directly connected with such military service, a pension shall, on application, be awarded to or in respect of the member in accordance with the rates for basic and additional pension set out in Schedule I.

Paragraph 21(3)(f) of the *Pension Act* provides the following:

For the purposes of subsection (2), an injury or disease, or the aggravation of an injury or disease, shall be presumed, in the absence of evidence to the contrary to have arisen out of or to have been directly connected with military service of the kind described in that subsection if the injury or disease or the aggravation thereof was incurred in the course of

(f) any military operation, training, or administration, either as a result of a specific order or established military custom or practice, whether or not failure to perform the act that resulted in the disease or injury or aggravation thereof would have resulted in disciplinary action against the member.

Subsection 29(1) of the *Veterans Review and Appeal Board Act* states that an appeal panel may

- (a) affirm, vary or reverse the decision being appealed;
- (b) refer any matter back to the person or review panel that made the decision being appealed for reconsideration, re-hearing or further investigation; or
- (c) refer any matter not dealt with in the decision back to that person or review panel for a decision.

Section 25 of the *Veterans Review and Appeal Board Act* states that an applicant who is dissatisfied with a decision made under section 21 or 23 may appeal the decision to the Board.

Section 26 of the *Veterans Review and Appeal Board Act* states that the Board has full and exclusive jurisdiction to hear, determine and deal with all appeals that may be made to the Board under section 25 or under the *War Veterans Allowance Act* or any other Act of Parliament, and all matters related to those appeals.

Section 3 of the *Veterans Review and Appeal Board Act* states that the provisions of this Act and of any other Act of Parliament or of any regulations made under this or any other Act of Parliament conferring or imposing jurisdiction, powers, duties or functions on the Board shall be liberally construed and interpreted to the end that the recognized obligation of the people and the Government of Canada to those who have served their country so well and to their dependants may be fulfilled.

Section 39 of the *Veterans Review and Appeal Board Act* states that in all proceedings under this act, the Board shall draw from all the circumstances of the case and all the evidence presented to it every reasonable

inference in favour of the applicant or appellant; accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.

Subsection 28(1) of the *Veterans Review and Appeal Board Act* states that an appellant may make a written submission to the appeal panel or may appear before it, in person or by representative and at their own expense, to present evidence and oral arguments.

DECISION BEING APPEALED

CHOROIDAL NEOVASCULAR MEMBRANE OF MACULA LEFT EYE RESULTING IN VISION LOSS

Did not arise out of nor was it directly connected with service in peace time in the Regular Force.

Subsection 21(2), *Pension Act*

VRAB Entitlement Review, 25 July 2001

The Appellant first applied for pension entitlement for this condition on 11 October 2000.

Date Modified: 2012-01-24