



2013-149

Representatives: Marc Unger and Mark Phillips

Decision No: 100001878149

Decision Type: Federal Court Order to Rehear Entitlement Appeal

Location of Hearing: Teleconference/videoconference

Date of Decision: 21 August 2013

The Entitlement Appeal decides:

ADJUSTMENT DISORDER WITH MIXED MOOD

Entitlement granted in the amount of five-fifths for service in the Canadian Forces (Regular Force), with effect from the date of this decision.

Section 45, *Canadian Forces Members and Veterans Re-establishment and Compensation Act*

Before:	Richard Bonin	Presiding Member and Writer
	Jean-Paul Arsenault	Member
	J.S. Martel	Member

Reasons
delivered by: _____

Richard Bonin

INTRODUCTION

This claim is brought forward pursuant to a Federal Court ruling regarding the Entitlement Appeal Panel's decision of 20 October 2011.

PRELIMINARY MATTERS

The Panel accepted a video recording as new evidence, without further formality because its purpose was not to provide testimony from a witness but visual proof in support of the Appellant's claim of workplace harassment.

ISSUE

Were service-related factors the only cause of the Appellant's adjustment disorder with mixed mood, or did they cause an aggravation of this condition in an amount greater than the two-fifths entitlement granted by Veterans Affairs Canada?

EVIDENCE AND ARGUMENT

The Panel reviewed all of the evidence, including the Veterans Affairs Canada decision dated 22 September 2008, the Departmental Review dated 3 November 2009, the Entitlement Review Panel's decision dated 8 June 2010 and the Entitlement Appeal Panel's decision dated 20 October 2011.

The Panel reviewed the Federal Court's decision dated 28 February 2013 (EA-Attach-G1) and Justice Harrington's reasons for ruling that the Appellant's case be heard again.

The Panel also reviewed the Appellant's Medical Information Disclosure Request Form dated 21 January 2004 (EA-Attach-G2), the main issue in the Federal Court's decision.

The Panel reviewed the Veterans Affairs Canada Entitlement Eligibility Guidelines for adjustment disorder, as well as the written submission prepared on behalf of the Appellant by Borden Ladner Gervais and the various representations contained in that document.

ANALYSIS/REASONS

The Panel has reviewed all of the evidence and has also taken into consideration the Advocate's submissions. In doing so, the Panel has applied the requirements of Section 39 of the *Veterans Review and Appeal Board Act*. This section requires the Panel to:

- (a) 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;
- (b) accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and
- (c) 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.

This means that in weighing the evidence before it, the Panel will look at it in the best light possible and resolve doubt so that it benefits the applicant or appellant. The Federal Court has confirmed, though, that the Act does not relieve the applicant or appellant of the burden of proving the facts needed in their cases to link the claimed condition to service. The Panel does not have to accept all evidence presented by an applicant or appellant if it finds that it is not credible, even if it is not contradicted.¹

In view of the Medical Information Disclosure Request Form dated 21 January 2004, in which Dr. Patrice Trottier states that the Appellant's adjustment disorder with mixed mood was resolved on 28 November 2003, the Panel cannot consider this as a pre-existing condition.

The Panel has also viewed the copy of the video recording from 21 February 2007 on DVD (EA-Attach -G3) and considers that none of the allegations made against the Appellant at that time warrant a summary investigation. The Panel considers that this could have reasonably been perceived by the Applicant as harassment.

The Panel has also reviewed the whole of the medical evidence establishing a service connection for the Appellant's condition of adjustment disorder with mixed mood, and notes there is no description of personal factors, other than a mention of the Appellant's personality type.

In this respect, the Panel notes that, pursuant to the Guidelines for Adjustment Disorder, entitlement may be granted if, and only if, the Appellant might have had "a clinically significant psychiatric condition* within the three months before the clinical onset of Adjustment Disorder." The Panel finds that this is not the case for the Appellant.

After having reviewed all the evidence, the Panel finds that the Appellant's condition of adjustment disorder with mixed mood is fully related to his service in the Regular Force, thereby entitling the Appellant to a full disability award.

The Panel outlined this reasoning for the Appellant's advocates, indicating that additional submissions were unnecessary given the Panel's review of the evidence prior to the hearing.

DECISION

In light of these considerations, the Board increases disability award entitlement to five-fifths for the Appellant's condition of adjustment disorder with mixed mood, under section 45 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, Regular Force service.

EFFECTIVE DATE

The effective date for the disability award entitlement in the amount of five-fifths for adjustment disorder with mixed mood is 21 August 2013, date of this decision.

Applicable Statutes:

Canadian Forces Members and Veterans Re-establishment and Compensation Act, [S.C. 2005, c.21.]

Section 45

Veterans Review and Appeal Board Act, [S.C. 1987, c. 25, s. 1; R.S.C. 1985, c. 20 (3rd Supp.), s. 1; S.C. 1994-95, c. 18, s. 1; SI/95-108.]

Section 3

Section 25

Section 39

1. *MacDonald v. Canada (Attorney General)* 1999, 164 F.T.R. 42 at paragraphs 22 & 29; *Canada (Attorney General) v. Wannamaker* 2007 FCA 126 at paragraphs 5 & 6; *Rioux v. Canada (Attorney General)* 2008 FC 991 at paragraph 32.

Date Modified: 2014-08-12