



## 2016-304

Representative: Steven Woodman, Bureau of Pensions Advocates  
 Decision No: 100002549304  
 Decision Type: Federal Court Order to Rehear Entitlement Appeal  
 Location of Hearing: Charlottetown, Prince Edward Island  
 Date of Decision: 8 March 2016

### The Entitlement Appeal Panel decides:

#### REDUCTION OF DISABILITY AWARD

The Minister's Decision dated 31 January 2013 reducing the disability award for post traumatic stress disorder by \$129,215.79, and affirmed by the Review Panel on 10 July 2013 and by the Appeal Panel on 28 January 2014, is set aside. This Panel reinstates the full amount of the disability award for post traumatic stress disorder of \$129,215.79.

<b>Before:</b>	Thomas W. Jarmyn	Presiding Member
	B.T. LeBlanc	Member
	J.M. Walsh	Member

**Reasons delivered by:** \_\_\_\_\_  
 Thomas W. Jarmyn

### INTRODUCTION

This is a court ordered reconsideration of an Entitlement Appeal Decision dated 28 January 2014, which affirmed the Minister's Decision dated 31 January 2013 reducing the disability award for the condition of post traumatic stress disorder by \$129,215.79.

### 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 Appellant. The Federal Court has confirmed, though, that this law does

not relieve appellants 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 appellant if it finds that it is not credible, even if it is not contradicted.<sup>1</sup>

In paragraph 19 of the Federal Court Decision of *Malott v. Canada (Attorney General)*, 2015 FC 1267, Justice O'Reilly held that the Appeal Panel's finding that Workplace Safety Insurance Board (WSIB) benefits represented payment for non economic loss was unreasonable.

Given the unique circumstances and facts of this case and the findings of the Federal Court, this Appeal Panel concludes that no reduction in the disability award was appropriate. This Panel reinstates the full amount of the disability award effective 31 January 2013.

## **DECISION**

The Appeal Panel sets aside the Minister's Decision to withhold \$129,215.79 and orders payment of the full disability award with respect to the awarded condition of post traumatic stress disorder.

## **EFFECTIVE DATE**

This Panel reinstates the full amount of the disability award of \$129, 215.79, effective 31 January 2013, date of the Minister's Decision.

## **Applicable Statutes:**

*Canadian Forces Members and Veterans Re-establishment and Compensation Act*, [S.C. 2005, c21.]

Subsection 52(3)

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

Section 3  
Section 25  
Section 39

## **Exhibits:**

EA-M1: a letter from Ms. W. Pugh, Case Manager, Permanent Benefit Services Branch, to the Appellant dated 12 August 2013 (one page).

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i. *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: 2016-05-05