Veterans Review and Appeal Board

Representative:	Vibhu Raj Jhanji
Decision number:	100002897141
Decision type:	Federal Court Order to Rehear Entitlement Appeal
Location of Hearing:	Charlottetown, Prince Edward Island
Hearing Date:	12 July 2017

The Entitlement Appeal Panel decides:

INSTABILITY RIGHT ANKLE
OSTEOARTHRITIS LEFT ANKLE WITH INSTABILITY

No entitlements granted for service in the Canadian Armed Forces, Reserve Force.
Section 45, *Canadian Forces Members and Veterans Re-establishment and Compensation Act*

Panel Members: Thomas W. Jarmyn
B.T. LeBlanc
D. Kean

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D. Kean

INTRODUCTION

This claim is being reheard pursuant to the Order of the Federal Court dated 3 January 2017, on an Application for Judicial Review which quashed the decision of a previous Appeal Panel and ordered this matter be remitted to a differently constituted panel for redetermination.

In rehearing this appeal, the Panel has considered the arguments made by the Appellant's counsel at the rehearing, which seek variation of the Veterans Review and Appeal Board Entitlement Review decision dated 19 August 2014, which denied disability award entitlement for instability right ankle and osteoarthritis left ankle with

instability, for service in the Reserve Force, under section 45 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*.

PRELIMINARY MATTERS

This hearing proceeded by way of videoconference.

ISSUE

Are the Appellant's conditions of instability right ankle and osteoarthritis left ankle with instability permanent disabilities, which arose in whole, or in part, out of the Appellant's service with the Reserve Force?

Instability Right Ankle
Osteoarthritis Left Ankle with Instability

EVIDENCE AND ARGUMENT

In the Veterans Affairs Canada Official Decision dated 21 May 2013, the Minister for Veterans Affairs denied entitlement for instability right ankle. The Minister concluded that instability of the ankle is not a valid diagnosis indicative of a permanent disability. Furthermore, the Minister found that there was no injury to the right ankle sustained during Reserve Force service and noted the absence of any evidence of injury to the right ankle on the official DND medical record in 1984.

With regard to osteoarthritis of the left ankle with instability, the Minister accepted that there was a valid diagnosis indicating a permanent disability, both from an X-ray dated 21 December 2012 and the Medical Questionnaire dated April 2013. In reviewing the Appellant's DND medical records, the Minister noted that there was no mention of an injury to the Appellant's left ankle in the statements made by the Appellant or in the 1977 Medical Absentee Certificate. The Minister also noted that the Appellant's Release Medical Statement dated 9 October 1984 states that the Appellant did not sustain any physical injuries during her Reserve Force service. Consequently, entitlement was denied.

In the Entitlement Review decision dated 19 August 2014, the Panel concluded that there was no evidence of a service-related injury to either the right or the left ankle. The Panel found that there had been an injury sustained in 1982, when she stepped off a curb while she was engaged in activities that were unrelated to military service. The records indicated that this was a severe injury to the ankle, because medical treatment was required. The Review Panel also noted that records relating to the 1985 injury showed that it had been sustained while the Appellant was playing badminton. The Panel ruled that this was also a non-service-related injury, and did not establish service connection.

In the Entitlement Appeal decision dated 14 July 2015, once again entitlement was denied, given the conclusion that there was insufficient credible evidence to support a causal link between the Appellant's claimed conditions and her military service.

The Appellant then applied for a judicial review of the Entitlement Appeal decision dated 14 July 2015. The Federal Court ruled on 3 January 2017 to allow the Application for Judicial Review, and quashed the decision of the Appeal Panel. The Court also ordered the matter remitted to a differently constituted panel for redetermination.

In the rehearing of this appeal by videoconference on 12 July 2017, the Advocate for the Appellant submitted that the Appeal Panel failed to recognize the injuries sustained by the Appellant. He reproached the earlier Panel for preferring the documents that had been signed by the Appellant at the time of her release over her subsequent statement, which was made as part of her disability claim. In the Advocate's view, earlier documents which indicated that she had not sustained any injuries during the course of her military service deserved little weight.

The Advocate also drew the Panel's attention to page 21 of the Statement of Case (SOC), which is a Medical Absentee Certificate, and submitted that this document corroborated the fact that the Appellant had sustained injuries just as she had claimed, at the time of filing her subsequent disability claim The Advocate also relied on the medical opinion of Dr. Cronin dated 2 March 2015, submitted as Exhibit EA-J1, which opined that there was a causal link, or at the very least an aggravation of the Appellant's claimed conditions, as a result of her military service. Dr. Cronin concludes (SOC page 75):

> . . . I am included to believe Ms. [...]'s version of these events based on my experience in the military. My conclusion, based on evidence available to me, is that her ankle problems in all likelihood were caused by and certainly aggravated by her military-service. . . .
>
> [*As transcribed*]

The Advocate for the Appellant also drew the Panel's attention to a medical opinion dated 11 January 2014 by Dr. Chris Adam (SOC page 55). The Advocate referred to a number of VRAB cases which can be found on the Canadian Legal Information Institute website (CanLII).

The Advocate also submitted that cumulative joint trauma should apply with regard to the claimed conditions. When questioned as to the diagnoses in 2008, which consequently do not comply with the requirement of a diagnosis within 25 years of any claimed injury, the Advocate was unable to supply a reasonable explanation for why cumulative joint trauma should apply despite the fact that the Appellant's case does not meet the requisite criteria as set forth in the Guidelines. The Advocate submits that the entirety of the Appellant's claimed conditions are attributable to the injuries she sustained during her service, as well as to the rigours of military service, and consequently he submits that cumulative joint trauma should be applicable in this case. He seeks full entitlement for both claimed conditions.

ANALYSIS/REASONS

In rendering its decision, the Panel has considered the oral submission of the Advocate, as well as the documentary evidence and additional exhibit submitted in support of this appeal. 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.[1]

With regard to the Appellant's right ankle, the Panel has considered the Medical Questionnaire: Ankle Conditions prepared by Dr. Chris Adam on 12 April 2013, respecting an examination on 22 December 2012 (SOC page 31-35). He reported that the Appellant suffered recurrent right ankle sprains one to two times per year, but with no intra-articular fractures. He indicated, with respect to the right ankle, that she suffered "1-2 ankle inversion sprains first in 1977."

In Dr. Adam's letter dated 11 January 2014 (SOC page 55), he confirmed that the Appellant's current ankle problems involve bilateral instability, which manifested in episodes of falling or tripping, with "minimal inciting trauma or events." His letter then outlined the Appellant's recollections that she had a history of sprains to her right and left ankles, which dated back to and included a right ankle sprain during training with the military in 1977.

With respect to the left ankle, Dr. Adam reported in the 2013 Medical Questionnaire that the Appellant had a history of lateral ankle sprains, and that she reported "3-4 lateral ankle sprains, first in 1973." He said that the Appellant is currently suffering recurrent left ankle sprains, 2 to 3 times per year. He also reported that the Appellant is suffering from intermittent left ankle pain, once or twice per month. However, he noted that "intra-articular fracture" was "not applicable." He noted the severity of the pain reported in respect of the left ankle as being mild. In his letter of 11 January 2014, Dr. Adam also reported that the Appellant was currently suffering from one to two episodes of left ankle instability per month. He stated that osteoarthritis was present in the left ankle on an X-

ray performed in December 2012, which, in his opinion, would indicate that she had suffered previous left lateral ankle injuries.

In a letter from Dr. R. Cronin of 2 March 2015 (SOC page 75), he referred to Dr. Adam's diagnosis of bilateral ankle instability and osteoarthritis in the ankle joint, and indicated that the Appellant had related these conditions to the history of having two significant ankle injuries during her military training (undocumented).

Accordingly, the Appeal Panel notes that the current or present day evidence respecting the Appellant's right ankle indicates that she suffers from instability or weakness in both ankles. Dr. Adam's evidence confirms a longstanding history of issues with instability of the right ankle, which manifests as recurrent ankle sprains in the right ankle. On this point, he noted also that she has had episodes of tripping or falling over the right ankle without any precipitating event, which occurs two to three times per year.

Although the evidence indicates that the Appellant now suffers from clinical signs of osteoarthritis (OA) in her left ankle, there is no clinical evidence of OA in the right ankle. Recurrent sprains in the right ankle and left ankle appear to be a longstanding medical condition, which was symptomatic at certain points in time during the 1970s and 1980s, before the Appellant was released from the Reserves. The Appellant continues to suffer from recurrent sprains at this time. However, the evidence does not show that she has a permanent or irreversible and disabling condition in the right ankle. In order to establish entitlement to the payment of a disability award under section 45 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, there must be evidence of a permanent disability, which resulted from a service-related injury or disease or the aggravation of a non-service injury or disease. The evidence does show that the Appellant has radiological and clinical symptoms of permanent OA in her left ankle. OA is considered a permanent disability.

The Panel must now determine whether the Appellant's bilateral ankle instability and recurrent sprains in the right ankle, and the OA in her left ankle, resulted from or was aggravated by an acute or cumulative injury to the ankle joint that arose from her Class A service in the Reserve Force, between 5 July 1972 and 26 October 1984.

The Advocate referred to the fact that the Appellant's bilateral ankle instability was diagnosed during her service as weak ankles, and he argued that the ankle weakness was a deformity that was aggravated by injuries, which occurred during military service. Specifically, he submitted that the injuries sustained during her service predisposed the Appellant to recurrent ankle injuries. He argued the injuries, which she suffered in 1982, and 1985, were caused by earlier injuries in military service.

The Advocate also noted that the Veterans Affairs Canada Entitlement Eligibility Guidelines (EEGs) on Osteoarthritis indicate that an "anatomically abnormal" ankle joint is a predisposing factor for the development of osteoarthritis. He submitted that the diagnosis of "weak ankles" recorded in the Medical Absentee Certificate from 1977, when considered with the more recent testimony of the Appellant and her recollections to her doctors, corroborated that the Appellant did sustain ankle injuries during her

Reserve Force service, which were responsible for her current ankle problems, including the development of OA in the left ankle.

The Panel notes that the period of time which is relevant to the Appellant's disability claim is the 12 years during which the Appellant was a member of the Reserves on Class A service, between 5 July 1972 and 26 October 1984. The document dated 24 June 2015 (SOC page 74) clarified that the Appellant's Class A service between 1972 and 1984 was part-time, except during the summer months, when she was full-time. Her trade was an Administrative Clerk. In late autumn of 1984, the Appellant released from Class A Reserve service, and transferred to the Supplementary Reserve list. At this point in time, she remained available to be called up, should the Canadian Armed Forces so require. However, she was not required to participate in training for the Reserve Force to the same extent as when she was a member of the Class A Reserve Force.

During the relevant period of time, between July 1972 and October 1984, a Medical Absentee Certificate of Dr. Kristjannson, at page 21 of the Statement of Case, contains the sole document referencing the existence of ankle complaints or symptoms. The Appellant's file also contains a signed declaration dated 9 October 1984, that the Appellant completed and signed on release from her Reserve Force Service. In this document, she declared that she did not have an injury, disease or illness attributable to military service in the Reserve Force between 5 July 1972 and 9 October 1984.

The Appellant's more recent statements made in 2012, when she filed for disability claim respecting her left and right ankles and her recollections to Dr. Adam and Dr. Cronin, as well as in the Appellant's testimony to a VRAB Entitlement Review Panel in August of 2014, are to the effect that she had several ankle injuries to both ankles, at various times during her Reserve Force service.

In the Appellant's testimony to the VRAB Entitlement Review Panel in August 2014, she stated that she sustained an injury to her left ankle, which was undocumented, when she was training in Wainwright in 1973 (SOC page 51). She testified that this left ankle injury occurred when she stepped into a gopher hole. She said that she sought treatment and was provided with a tensor bandage, and went back into the field. She testified that it had healed by the end of her training course. She testified that she had also sustained an undocumented injury to her right ankle in 1977, when she stumbled and tripped while running on an upstairs balcony in Minto, spraining her right ankle. She said those were the only injuries of which she had a recollection during her Reserve Force service.

The Panel notes there is no evidence concerning the circumstances of these injuries, their nature or their severity. The Medical Absentee Certificate of Dr. Kristjannson, which is dated 22 September 1977, stated that the Appellant should refrain from running and drilling due to weak ankles. It appears from this certificate that her symptoms were sufficiently problematic to require that the Appellant be relieved from running and drilling for an indefinite period of time. The term "indefinite" used in the medical certificate indicates that this may have been a situation of some permanence. There is no

information showing when the limitations on running and drilling would have been lifted or removed.

The Medical Absentee Certificate shows that the Appellant's ankles were sufficiently symptomatic in 1977 to require that she refrain indefinitely from running or drilling for an indeterminate period of time. However, the certificate does not indicate that this was precipitated by a specific incident or injury such as an ankle sprain or other ankle injury. The certificate shows also that in the autumn of 1977, the Appellant was suffering from a condition that was described or diagnosed fairly generically as "weak ankles." The certificate does not indicate that it was only the right ankle which was problematic. Thus, it is not entirely consistent with the Appellant's recent recollection that she had suffered a right ankle sprain at some unspecified time in 1977, when running on an upstairs balcony. There is also no evidence concerning the circumstances of the incident, which the Appellant recollected, happened in 1977, in Minto. Even if the Panel had sufficient evidence to establish that the Appellant had suffered a sprain to the right ankle in 1977, there is no evidence to show that this was a second or third degree sprain or inversion sprain of the right ankle. There is also no evidence to show that this incident arose from the Appellant's Reserve Force Service.

The Panel noted that *The Merck Manual* excerpts, which were provided by the Advocate in support of the Appellant's claim, confirm that an inversion sprain may cause chronic joint instability, which will result in a predisposition to additional sprains. *The Merck Manual* also indicates that this would involve the lateral ligament, usually the anterior talofibular ligament. Furthermore, *The Merck Manual* provides that "severe 2nd and 3rd degree sprains may sometimes cause chronic joint instability and predispose to additional sprains." However, *The Merck Manual* also describes ankles sprains as a very "common injury." The information in *The Merck Manual* establishes that an ankle sprain may be minor in nature. However, if an ankle sprain involves inversion sprain of the lateral ligaments, or is a "severe 2nd and 3rd degree sprain," it may cause chronic joint instability and predispose to additional sprains.

The Panel notes that the opinion evidence from Dr. Adam, who is a specialist in sports medicine, dated 11 January 2014, indicated that the Appellant "has described ongoing ankle problems mostly manifested by episodes of instability, falling or tripping over the ankle with minimal inciting trauma or events." Accordingly, this evidence indicates that by the Appellant's own account, she was, and apparently still is, prone to falling or tripping without any precipitating event. The evidence shows that instability and falling over on the ankle or ankle sprains had been a longstanding issue, which was evident during her military service in the 1970s and in the 1980s, and afterward.

The Panel concludes the evidence shows that the Appellant's weak ankles and ankle instability arose from an anatomical condition, which was active and periodically symptomatic during her Reserve Force service. The Panel finds that it is reasonable to accept that the Appellant had symptoms associated with her underlying anatomical abnormality, and resulting ankle instability during her Class A Reserve Forces service.

The Panel is of the view that it is necessary to understand that the symptoms of ankle instability must be distinguished from the cause of ankle instability.

Dr. Adam's letter also stated the Appellant described a right "lateral ankle sprain" in 1977, during training with the military. He said that the Appellant recollected that she had other right ankle injuries of a lateral/ inversion sprain type during her military training. He noted that the tearing of the lateral ligament "can lead to increased instability in terms of lateral ankle complex, which can lead to the bona-fide diagnosis of the lateral ankle instability." He noted also that she did not have any recollection of any previous right ankle injuries before military training. Dr. Adam also stated that the Appellant recollected a similar injury to her left ankle in 1973, and that she reported three or four left lateral ankle injuries/sprains. He said that the presence of osteoarthritis in her ankle on an X-ray of December 2012 would indicate that she had previous lateral ankle injuries.

Dr. Adam's evidence is consistent with the information in *The Merck Manual,* that inversion sprains cause or contribute to increased instability in an ankle joint, that may already be prone to instability. However, his statement that the Appellant suffered a right ankle inversion sprain in 1977 is not based on any fact that is evident to the Panel. It would appear that this statement was based on the Appellant's own recollections as to her history of sprains and ankle injuries, and perhaps the 1977 Medical Absentee Certificate, although this was not specifically referred to by Dr. Adam. His opinion, which is based on present-day X-rays and clinical findings, and proposes that the Appellant must have suffered an initial inversion ankle sprain of her right ankle at some time in the past, appears credible. The conclusion that there was a right ankle inversion sprain in 1977 during military training is not credible, because it is inconsistent with the contemporaneous evidence before the Board, including the Appellant's 1984 statement that she was not injured in military service, and the fact that there is no other circumstantial evidence to indicate that an inversion sprain of the right ankle occurred in 1977, as a result of military service in the Reserves.

The Panel notes that Dr. Adam did not refer to the contemporaneous medical evidence from 1982, which shows that the Appellant did, in fact, sustain a left lateral ligament sprain. However, it did not arise during training for military service. There are detailed records at pages 59 to 61 of the SOC, showing that the Appellant had sustained a first or second degree sprain of the left lateral ligament on 18 June 1982. There are several medical entries concerning this lateral ligament sprain in July of 1982. One entry dated 2 July 1982 states that:

> . . . Doctor Brown applied a cast one week ago, foot is in equinus. She is ambulating partially with the heel. From the description of her injury this is probably a 1st or 2nd degree sprain of the lateral ligament. . . .

The record shows that the Appellant was immobilized for some time after the sprain, her ankle was "casted" and bandaged, and she had to use crutches. The medical entries indicate that three weeks after her 18 June 1982 left lateral ligament sprain, the

Appellant's left ankle remained swollen and was still bandaged. She was restricted from sports, other than swimming, and was instructed to use proper walking shoes.

The Appeal Panel notes that there is no suggestion that the injury in 1982 arose from Reserve Force service. The Appellant herself attested that she sustained the injury in 1982 in a non-service-related context, when she was out shopping with a friend and rolled her ankle when stepping off a curb. She said that she required medical treatment as a result of that injury, went to the hospital and was provided with crutches.

The Appellant suffered another left ankle sprain in 1985. A Walk In Clinic record dated 22 November 1985, at page 63 of the SOC, stated that the Appellant sustained a left ankle injury when she was playing badminton two weeks before her visit to the clinic. Bruising was noted, and it was indicated that an X-ray could be performed if she wished. A subsequent report from the same Walk In Clinic in Winnipeg dated 25 November 1985 indicates that the Appellant returned and wanted to know if she needed an X-ray on her left ankle. The left ankle sprain injury occurred in 1985, after she had released from Class A service. The evidence shows that it occurred when playing badminton. Consequently, the Panel concludes that the 1985 injury was non-service related.

The Appellant asserted that the injuries to her ankles in 1982 and 1985 were the result of earlier injuries that arose during her Reserve Force service, which predisposed her to recurrent strains or sprains. However, it is noteworthy that medical documentation in 1982 did not contain any findings or record of previous ligament sprain, or other previous ankle injury prior to the 1982 left ankle ligament injury. The Panel notes also that the ligament injury in 1982 was the type of injury which is known to increase or worsen ankle instability and predispose to further sprains.

The Panel has also considered the opinion dated 2 March 2015 of Dr. Cronin, who was of the opinion that the Appellant's bilateral ankle instability and OA in the left ankle were related to her service. Dr. Cronin reported that the Appellant had two significant injuries during training in, or for, military service, but noted that these were apparently undocumented. He then explained that, in his opinion, the lack of documentation could be explained based on military culture or attitude. Dr. Cronin's opinion appears to be correct, in part, in the sense that he may be referring to the ankle injuries which occurred in 1982 and 1985, which the record shows to be significant, when he said that the Appellant had suffered significant injuries. However, much like Dr. Adam, Dr. Cronin did not appear to have access to reliable facts, such as the dates of these significant ankle injuries. While he believes that they happened during military training, the evidence in the record indicates otherwise.

The Panel notes also that his opinion is focused more on providing an explanation for why there is no record of any ankle injuries during military service, than on providing a medical explanation, based on medical authority, to show that the anatomical condition of bilateral ankle instability was caused or aggravated by ankle injuries, which arose from her Reserve Force service. The Panel also finds Dr. Cronin's attempt to explain why there is an absence of medical documentation concerning the two significant ankle

injuries, that reportedly occurred during her Reserve Force training, is not credible. It appears that he is suggesting that the Appellant may have suffered two serious or significant ankle injuries, but was discouraged from seeking medical attention or was rebuffed when she sought medical attention for these injuries by the CAF medical establishment. The Panel does not find it credible that the Appellant could have sustained a serious injury of the type which is known to cause chronic ankle instability – i.e. a tear to the lateral ligament, by way of an inversion sprain – that would have been undocumented. It is not plausible that a significant injury such as a tear of the ankle ligaments, which would result in pain and swelling, could simply be ignored, or that the Appellant had sought medical attention, but found that medical professionals in the CAF would have refused to acknowledge or document her injury. This would be a dereliction of duty and inconsistent with the duty of care to provide medical attention and to record the patient's condition and findings for purposes of providing appropriate ongoing care.

Furthermore, because the Appellant was a Reservist, she would not be restricted by the Canadian Armed Forces from seeking any medical treatment for any ankle injury through the civilian system. The file shows that the Appellant was able to access medical care for her ankle while she was still in the Reserve Force, when she sustained her serious left ankle lateral ligament sprain in 1982.

For the foregoing reasons, the Panel cannot find that Dr. Cronin's theory that the Appellant had two significant, but undocumented, ankle injuries during military training to be credibly supported by the facts established in the contemporaneous medical reports. The evidence in the file confirms that there were two significant ankle injuries, but that these injuries did not arise during military training. There is insufficient credible evidence to establish that the Appellant sustained one or more significant ankle injuries as a result of, or during training in, her Reserve Force service.

It is the Advocate's argument that greater weight should be placed on the Appellant's more recent statements and testimony, subsequent to her release from the military, than on her declaration at the time of her release in 1984. The Panel notes that according to the *Hall*[2] decision, the Panel is entitled to place greater weight on evidence which precedes the Appellant's disability award application, at which time the Appellant stated on her release medical that she was fine and had not sustained any injuries related to her service, than on subsequent statements, that her claimed conditions are attributable to injuries sustained in the context of military service. Additionally, the Panel places greater weight on the more objective evidence and statements that were made contemporaneously with the events in question, rather than those made subsequently, many years after the fact.

The Panel accepts that the Appellant may have had "undocumented" ankle injuries during her Reserve Force service, such as the injury, which she described to her left ankle in 1973, when she stepped into the gopher hole, and the injury to her right ankle, which she recently recalled as having happened in 1977. However, the Panel does not have any evidence to support the proposition that there was a significant injury in 1973 or 1977, that could plausibly be the cause or a factor which caused a permanent

worsening of her underlying ankle instability. For example, by her own account, the injury described by the Appellant in 1973 did not result in immobilization, and healed without medical intervention. This would not be consistent with the type of serious ligament injury described in *The Merck Manual*, which may have caused ongoing instability.

The Panel also notes that a tear or rupture of the supporting ligaments/tendons of the ankle joint could aggravate chronic ankle instability, but the EEGs indicate that an acute traumatic injury would be accompanied by symptoms, which include swelling, significant pain, and would require medical treatment.

The Panel, therefore, concludes that the Appellant may well have sustained an injury to her left ankle in 1973 in Wainwright, and may have suffered a sprain in 1977. However, there is no evidence that the ankle injuries described by the Appellant, which occurred in 1977, when running on a balcony, and in 1973, when she stepped into a hole, would have involved a ligament tear or sprain, that could meet the definition of a traumatic injury, which is known to be capable of aggravating underlying instability and causing OA, in *The Merck Manual* and the Entitlement Eligibility Guidelines. The Panel also does not accept that there was a significant, acute traumatic injury to the ligaments of the left ankle in1973 or the right ankle in 1977, as a result of Reserve Forces service, that would be completely undocumented or ignored in medical records.

There was also suggestion that the Appellant might have sustained another injury in 1972. However, the Panel notes that in the Appellant's declaration at page 67 (ER-J5), she failed to mention any injury that she might have sustained in 1972, and the record does not contain any reference to an injury which might have been sustained in 1972 either. The Panel concludes that even if the Appellant experienced ankle complaints or an injury in 1972, it would be plausible that it was a product or symptom of her underlying anatomical ankle instability, rather than the cause or an aggravating factor in worsening her anatomical ankle instability.

The Appeal Panel also notes that the available documented medical evidence, when reviewed in its entirety, shows a lengthy and well established history of ankle weakness and instability, with complaints in 1977, and with significant left ligament sprains in the 1980s. The current evidence shows that this pattern of ankle injury has continued with recurrent sprains or falling over on the ankle on a few occasions per year. The evidence in its totality shows that the Appellant's longstanding medical condition of bilateral ankle weakness and instability involves an anatomically abnormal ankle joint.

The Advocate relied on the EEGs in support of his argument, noting that the EEGs on Osteoarthritis indicate that an "anatomically abnormal" ankle joint is a predisposing factor for the development of osteoarthritis of the ankle. The Panel notes that the EEGs state that with respect to the ankle joint:

> *Anatomically abnormal ankle* means an ankle affected by underlying muscle weakness or imbalances, neurologic abnormalities, or anatomic

variations (such as valgus or varus deformity of the ankle, or a mild joint dysplasia).

The Panel agrees that the Appellant's underlying ankle condition did, in fact, involve an anatomically abnormal ankle. The Panel agrees with the Advocate's submission that the Appellant suffered a bilateral deformity or anatomical abnormality in her ankle, as described in the EEGS on Osteoarthritis. However, the Panel does not agree that her bilateral anatomical ankle instability was caused or precipitated by any injury or injuries arising during her Class A Reserve Force service.

The evidence in its totality, including the Medical Absentee Certificate in 1977 and medical evidence relating to the injuries in the 1980s and the more recent evidence, including the Appellant's testimony, supports the inference that the Appellant suffered from symptoms associated with her bilateral ankle instability during her Reserve Force service. However, there is no evidence to show that her bilateral anatomical ankle weakness or instability was caused by any specific injury or injuries, which arose from her Class A Reserve Force service.

The evidence can reasonably raise the inference that the Appellant experienced ankle weakness and complaints, some of which may have involved ankle sprains of a minor nature during her Reserve Force service. However, the evidence does not show that the Appellant had suffered ligament sprains, or other ankle injury that would be sufficiently significant to aggravate her underlying bilateral ankle instability and predispose her to recurrent ankle sprains, to her right or left ankle, as a result of her Reserve Force service.

The Advocate has not submitted any evidence, which would allow for the conclusion that a minor injury could cause chronic ankle instability. While it is reasonable to conclude that there may have been a pattern of recurrent ankle sprains as a result of her underlying ankle instability during Reserve Force service, the evidence does not show that the underlying instability was caused or aggravated by an injury or injuries which arose from Reserve Force service.

On the other hand, in 1982, the record shows that there was a significant left ankle ligament injury. The Panel has weighed the Appellant's more recent recollections in light of the available contemporaneous medical evidence, which shows that she did, in fact, suffer a significant left ankle ligament sprain in 1982. The medical opinions from Dr. Adam and medical information from *The Merck Manual* indicate that a lateral ligament sprain is the type of injury which is known to cause chronic ankle joint instability and predispose to recurrent strains.

Finally, the Advocate also submitted that cumulative joint trauma should apply in this case. In support of this argument, he highlighted the injury that was sustained by the Appellant in 1977. However, the Appeal Panel notes, once again, that the 1977 Medical Absentee Certificate, to which the Advocate referred, did not specify that the Appellant had suffered any ankle injury. It merely stated that the Appellant was suffering from ankle weakness. The Appellant also attested to the fact that she had not suffered any

injury during her military service, when she released in 1984. The medical information in the EEGs, as well as in *The Merck Manual,* which was relied on by the Advocate in arguments on the Appellant's case, do indicate that a traumatic injury to ankle ligaments may predispose to chronic recurrent ankle instability and would be a risk factor in the development of subsequent OA. However, there is insufficient evidence to show that the Appellant had an acute injury to the ligaments of her left or right ankle in 1977 or 1973, or any other date, as a result of military service in the Reserves. The diagnoses of OA in the left ankle in 2008 is not consistent with medical consensus, holding that the onset and diagnosis of OA would typically happen within 25 years of the claimed injury.

With respect to the argument that the Appellant's ankle instability and OA in the left ankle were caused or aggravated by a cumulative injury, the Panel notes that the term cumulative injury would refer to or describe the etiology known as "cumulative joint trauma." The etiology of cumulative joint trauma, as outlined in the EEGs, is that cumulative joint trauma involves an injury process that evolves over a lengthy period of time, whereby joints in the human body may degenerate at an accelerated rate if the joints are subject to excessive physical loads or demands. In order to show that cumulative trauma is a factor in causing OA, it is necessary to show that a CF member contended with occupational demands which placed repetitive and excessive weight or physical loads on the joints, or that years of high intensity physical demands from training may have accelerated natural degenerative processes.

The evidence indicates that the Appellant was a Class A Reservist, who served part-time on particular evenings, except during the summer months, when she was full-time. Accordingly, although she served for 12 years, she did not perform service-related duties every day. There is also no evidence that she was subjected to the type of excessive physical demands or weight bearing and physical loading in her trade as an Administrative Clerk, that would meet the guidelines for excessive loading or weight-bearing on joints, that could cause trauma to the affected joints over time, in accordance with the medical consensus reflected in guidelines on causation, in the EEGs. The Panel also notes that it is unlikely that cumulative joint trauma would only affect one ankle as is the case of the Appellant. The Advocate was unable to supply a reasonable explanation for why cumulative joint trauma would be applicable to the Appellant's case, given the foregoing concerns, and the fact that she does not meet the requisite 25 year term criteria, as set forth in the Guidelines. The Panel concludes that the Advocate's reliance on cumulative joint trauma as the origin of the claimed conditions is unfounded, because no evidence was provided by the Appellant to show that she developed bilateral instability or weakness in her ankles as a result of excessive physical demands arising from Reserve Force service.

In conclusion, the evidence shows that the Appellant suffered and continues to suffer from an anatomical condition, which involved ankle instability and frequent recurrent sprains or ankle injuries. The Panel finds that it is reasonable to accept, based on the evidence as a whole, that the Appellant had symptoms associated with her underlying anatomical abnormality, and resulting ankle instability during her Class A Reserve Forces service. The Panel is also of the view that the symptoms of ankle instability must

be distinguished from the cause of ankle instability. The fact that she had symptoms related to her underlying medical problem does not mean that her ankle instability was caused by or attributable to her service. Complaints during service do not establish a causal link. The Panel notes that the injuries and complaints during the Appellant's service were a symptom of her underlying medical condition, rather than the cause of her claimed condition. As aforementioned, the Appellant sustained significant traumatic injuries to her ankles in 1982, and again in 1985, after her release from the military.

Although the Appellant clearly experienced symptoms of ankle instability during her Class A Reserve Force service, there is no evidence to indicate that the underlying bilateral condition was caused or aggravated by any significant injuries, such as an inversion sprain or lateral ligament injury, as a result of her service. As it has not been demonstrated that the underlying condition of ankle instability is attributable to or arose out of the Appellant's military service, consequently, it follows that her claimed conditions, including the OA of her left ankle, cannot be attributed to her military service.

The Panel is obliged to conclude that based on all of the available evidence, the Appellant has failed to demonstrate a sufficient causal connection between her claimed conditions and her military service.

DECISION

In light of the foregoing, the Appeal Panel affirms the Entitlement Review decision dated 19 August 2014.

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

Exhibits:

EA-J1: Email correspondence from Vibhu Raj Jhanji dated 7 July 2017, with attachments (13 pages)

EA-J2: Email correspondence from Vibhu Raj Jhanji dated 12 July 2017, with attachments (7 pages)

EA-J3: Email correspondence from Vibhu Raj Jhanji dated 14 July 2017, with attachments (16 pages)

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[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

[2] *Hall v Canada (Attorney General)*, 2011 FC 1431