



Date: 15 April 2020

AGENDA ITEM SUBMISSION

Title

DRCA determination (pre 1988 claims)

Purpose of Submission

To obtain confirmation of determination confirming with the intention of the 1930 and 1971 Acts to accept liability for treatment, etc, irrespective of compensation. This action also reflects on the intention of DRCA of looking after those Defence personnel who served between 3 January 1949 and 30 June 2004 and are not eligible under the VEA nor MRCA.

Background

Having dealt with a lot of Defence Fire Fighters and others who have had claims rejected because Compensation was not payable under the 1930 or 1971 Acts Schedule 3 (Table of Maims) it has been very frustrating trying to reason with the clients let alone pacifying the angst they feel against DVA.

Issues for consideration

Confirmation that the intimation of the attached DRCA Determination that explains very well that circumstances of DRCA 1988 prevent compensation payment and that liability for treatment, etc., will be accepted, a white card issued/amended, which will settle the many issues of the past.

Submitted by Graeme Bland

Are you making this submission on behalf of an organisation?

Yes – Air Force Association LTD



UIN:

Reference:



Australian Government
Department of Veterans' Affairs

25 August 2020

Dear Mr :

Determination of your claim for Permanent Impairment compensation and Reasons for Decision

I refer to your claim for Permanent Impairment compensation under the *Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA), received on 25 February 2020.

For the purposes of determining your entitlement to Permanent Impairment compensation, the following condition has been considered:

Perforated Jejunum Sustained in a M.V.A

Decision and reasons

To determine if you are eligible for Permanent Impairment compensation, DVA must consider whether:

- you have an impairment
- your impairment is permanent and stable
- you have an assessable impairment in accordance with the *Guide to the Assessment of the Degree of Permanent Impairment—Edition 2.1*
- the degree of your impairment meets the thresholds for compensation
- you have been paid a previous lump sum benefit for Permanent Impairment.

In assessing an entitlement to permanent impairment compensation under the *Safety Rehabilitation and Compensation Act 1988* (DRCA), Part 2 (Defence Related Claims) of the Guide to the Assessment of the Degree of Permanent Impairment, Edition 2.1 is used.

'Impairment' means the loss, loss of use, or the damage or malfunction of any part of the body or of any bodily system or function, or part of such system or function.

There are two reasons why your claimed condition is not eligible for lump sum compensation.

Firstly, based on evidence provided by Dr [redacted] dated 17th August 2020, the condition caused by the motor vehicle accident clinically resolved stating that the *condition is not permanent*.

Post-operative reports note the section of jejunum was resected successfully and subsequent scans indicate normal small bowel calibre, mucosal pattern and peristalsis.

Secondly, date of permanency is also important. Essentially, it is matter of fact and medical opinion when an impairment becomes permanent. In most cases, the date of permanence is the date of injury, or shortly thereafter (ie. there is a certain degree of medical inevitability that once the injury has been sustained, the impairment is present and will remain so even though the degree may vary).

In some cases it will not be clear whether the impairment will become permanent until medical treatment and rehabilitation has been completed. However, even in such cases, the date of permanence can often still be traced back to the date of injury.

Your condition has been accepted under the *1971 Act (1/9/1971 – 30/11/1988)* as the injury occurred in 1980, before the Act change on 1 December 1988. Therefore, the claimed condition is not covered under the assessable impairments list (table of maims) - see below.

As your claimed condition has clinically resolved, and the condition falls under the 1971 Act, I cannot consider lump sum compensation.

Please note this decision does not affect any of your other entitlements such as treatment, medical expenses, rehabilitation etc.

If you are suffering from further signs and symptoms from the claimed condition, please consult your specialist to determine what diagnoses or additional conditions that you may be suffering from.

If you consider that any of these reported may be connected to your service or accepted condition/s, you may want to consider lodging a liability claim for this, so that it can be investigated as to whether it can be considered a service related condition.

You can lodge a claim on-line through the DVA website- www.dva.gov.au

Further information

Information about Permanent Impairment compensation under the DRCA is available on the DVA website at: <https://www.dva.gov.au/financial-support/compensation-claims/claims-if-you-served-1-july-2004/drea/support-under-drea>

If you wish to obtain further information about how your Permanent Impairment compensation has been calculated, you may request access to documents held on your file. DVA's legislation allows claimants to access documents that relate to their claim. More information is available at: <https://www.dva.gov.au/factsheet-fip01-access-information>.

Your right of appeal

If you disagree with any aspect(s) of this determination, email a copy of this letter to appeals@dva.gov.au and explain what aspect(s) of the determination you wish to have reviewed. You can include any additional information to support your appeal by attaching a copy of that document and if you have an advocate, please provide their details.

Email: DRCAPI@dva.gov.au

Internet: www.dva.gov.au

Phone: 1800 555 254

GPO Box 9998 - Brisbane, QLD, 4001

You have 30 days from the date of this letter in which to apply for a review. We endeavour to complete reviews within 3 months. If the matter is complex, it may take longer. In such cases, we will keep you informed of progress and an expected completion date. Details of the appeal process, including timeframes for lodging an appeal, and how to provide feedback to DVA or an external organisation can be downloaded via: <https://www.dva.gov.au/financial-support/appeals>

Further assistance

For ease of access, you can manage DVA claims and services through the governments services online with one login and one password. To create an account, or to obtain more information about online services, please visit: <https://my.gov.au/>

You can now choose to receive your claim correspondence electronically by selecting your preferred correspondence method next time you log into *MyGov*.

If you have any questions you may email them with the above reference number to: DRCAPI@dva.gov.au. Additional information is also available on the DVA website. If you have any difficulties accessing or downloading any of the material mentioned in this letter, please contact DVA and a copy can be forwarded to your email or home address.

Yours Sincerely

Delegate- as Authorised by the Commission
Position:

TABLE OF MAIMS

A claimant may be entitled to lump-sum compensation under the 1971 Act if the claimed impairment is of a kind specified in section 39 - 42 of that Act:

S 39(2) - loss of sight of one or both eyes;

S 39(4) - specified losses set out in a Table (often referred to as a "Table of Maims"), including losses of hearing, speech, arms, legs, fingers, toes, etc;

S 40 - loss of genitals, breasts or the capacity to engage in sexual intercourse;

S 41 - facial disfigurement;

S 42 - total and permanent loss of the sense of taste or of smell.

The 1971 Act provided for the payment of lump sum compensation for a very limited number of injuries and conditions. These were listed on what was called "Table of Maims". Lump sum compensation was mainly restricted to the loss of (or loss of use of) limbs, digits, hearing, eye sight, speech.

| 1971 Act |
|--|
| Loss of, or total loss of sight of, an eye |
| Total loss of hearing |
| Total loss of power of speech |
| Loss of arm at or above elbow |
| Loss of arm below elbow, loss of hand or loss of thumb and four fingers of the one hand |
| Loss of thumb |
| Loss of forefinger |
| Loss of middle finger |
| Loss of ring finger |
| Loss of little finger |
| Total loss of movement of joint of thumb |
| Loss of distal phalanx or joint of thumb |
| Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx or joint |
| Loss of two phalanges or joints of forefinger |
| Loss of two phalanges or joints of middle or ring finger |
| Loss of two phalanges or joints of little finger |
| Loss of distal phalanx or joint of forefinger |
| Loss of distal phalanx or joint of other finger |
| Loss of leg at or above knee |
| Loss of leg below knee |
| Loss of foot |
| Loss of great toe |
| Loss of any other toe |
| Loss of two phalanges or joints of any other toe |
| Loss of phalanx or joint or great toe |
| Loss of phalanx or joint of any other toe |