

Ombudsman's Determination

Applicant	Mr E
Scheme	Royal Mail Statutory Pension Scheme (the Scheme)
Respondent	Royal Mail

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Royal Mail.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E has complained to his former employer, Royal Mail, that in April 2014 he became aware that when he retired in 2006 he could have been awarded ill-health retirement, which would have paid his pension immediately. In 2006, Mr E was awarded a lump sum of £11,728.42 on the grounds he may be able to resume some duties in the future. His pension was therefore deferred to his normal retirement date. Mr E has said that he was not aware of alternative options and, he believes, that to have been assessed properly a medical examination should have been undertaken, which it was not. Mr E has explained that he does not believe that all of his medical conditions could have been taken into consideration.
4. Mr E has also complained to Royal Mail that he has not received confirmation that an extra 2 years 349 days he purchased as a "service credit" has been included in the recent calculation of his benefits.
5. Mr E further complained that whilst The Pensions Advisory Service (**TPAS**) were dealing with his complaint he wrote a letter directly to Royal Mail, and this letter was not responded to.

Background information, including submissions from the parties

1. In 2006 Royal Mail's regulations (the **Regulations**) required the assessment of ill-health to be conducted by Royal Mail's Employee Health Service (**EHS**). The Regulations describe the criteria for qualification for "Early Retirement through Incapacity" which is the option where, subject to length of service criteria, it is possible to have the pension paid immediately as ill-health retirement. It states:

“Incapacity” means serious physical or mental ill-health (not simply a decline in energy or ability) such that, in the opinion of the employer, the member is permanently incapable of:

- a) carrying out his current duties
- b) carrying out such other duties for the Employer as the Employer might reasonably expect the Member to perform; and
- c) engaging in employment with any other employer of a type which, in the opinion of his present Employer, would be reasonable and appropriate for the Member

2. Joint guidelines were issued by The Communications Union and Royal Mail outlining the referral process for an assessment of ill-health, and what the EHS should take into consideration in coming to its conclusion. The guidelines outline the four different conclusions that it can reach; they are:

- a) *“Be able to undertake their normal duty or be able to work normally with modifications to their current duty.*
- b) *Be able to undertake suitable alternative work in Royal Mail Group following any necessary reasonable adjustments and or training.*
- c) *Be unable to work again for the foreseeable future but should recover and be able to be employed in some capacity at a later date. In this case the EHS would have concluded that whilst the individual may be able to resume some duties in the future, the time frame involved may be unacceptable to the Business. The recommendation would therefore be ill-health retirement with a lump sum payment.*
- d) *Be unable to work again. The recommendation would therefore be ill-health retirement with immediate enhanced pension”.*

3. Mr E was retired on ill-health grounds under option c) with a lump sum payment made in October 2006.

4. Mr E has complained that this was not assessed correctly as he did not have a medical examination. The guidelines describe how the referral for ill-health should be assessed. They describe the “practical stages of referral”:

- 1) *“EHS consultation with the individual to establish the individual’s personal circumstances. This may involve a medical examination.*
- 2) *EHS evaluation of information provided by line management regarding attendance and work performance, which is germane to the referral.*
- 3) *EHS evaluation of all other relevant information provided by specialists.*
- 4) *EHS evaluation of any medical evidence supplied by the GP or consultant, following disclosure authority from the individual concerned.”*

5. The guidelines indicate that the conclusions of the EHS should be discussed with the employee, making it clear which of the four options, as described in paragraph 2, was to be recommended. The guidelines state that the recommendation will be forwarded to the line manager for their agreement. Once this is obtained, the recommendation and offer (in Mr E's case to pay a lump sum) would be advised to the employee. Although the copy documents are not available, the guidelines and regulations confirm that if the recommendation was to be appealed, Mr E would have had five days to appeal.
6. Royal Mail confirmed that much of Mr E's employment records have now been destroyed to comply with Data Protection Act legislation. Because of this the records surrounding his retirement in 2006 are not available.
7. The Adjudicator spoke with Mr E on a number of occasions to clarify his position with regard to his complaint. Mr E has said that he does not believe that it would have been possible for Royal Mail to have made a decision on his health in 2006 without him undertaking a medical examination. Mr E has said that he believes that all ill-health employees would have had to undertake a medical.

Adjudicator's Opinion

8. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Royal Mail. The Adjudicator's findings are summarised briefly below:-
 - The Regulations and the guidelines do not outline that a medical examination is an integral part of the assessment process. Because of this the complaint could not be upheld based on a medical examination not taking place.
 - There was no evidence that the correct procedures were not followed in the assessment of Mr E's ill-health retirement assessment.
 - It has been confirmed that the 2 years 349 days service credit had been included in the recent retirement benefit calculations.
 - Royal Mail acknowledged that the letter sent to them in March 2015 was not responded to. However, it was considered in its responses to TPAS. Royal Mail have acknowledged that they could have confirmed receipt of the letter to Mr E.
9. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr E for completeness.
10. Mr E made the following comments which can be summarised below:-

- Even if his employment documents have been destroyed it should not disadvantage him.
- He confirmed a range of medical conditions that he was suffering at the time, and said those conditions were not taken into consideration. Mr E provided a copy of an interim report made by Royal Mail Occupational Health in May 2006. This report outlines in detail all of the medical conditions apart from the depression and anxiety issues.
- Mr E has included various letters for counselling appointments through the Primary Care Mental Health Team, and statutory sick notes which confirm the diagnosis of depression.

Ombudsman's decision

11. The event concerned took place in 2006 and as such it would be expected that much of the correspondence from the time will have been destroyed. Mr E is not being disadvantaged, it is simply that we can only determine a case based on the evidence that is available.
12. Unless I decide that the decision made by Royal Mail is perverse, which I do not, then I will not substitute its decision for one of my own. The question is whether Royal Mail applied the relevant regulations correctly and followed the correct process taking all relevant facts into account and ignoring irrelevant ones.
13. The interim report, issued in May 2006, summarised the medical conditions and made recommendations in respect of the environmental conditions Mr E should be working in and the adjustments to be made. The adjustments included not working in cold or drafty conditions, undertaking a specific job role, which was working on "flats" and ensuring that he is kept away from dusty areas. The report also outlined that if the adjustments were unable to be accommodated then Mr E should be referred back for an "opinion on ill health retirement". Letters from consultants and statutory sick pay forms dated prior to May 2006 confirm the medical conditions outlined in the interim report and the recommendations, as outlined by the specialists were included in the report findings.
14. The correspondence relating to the diagnosis of depression are all from March 2007 onwards, after the October 2006 ill-health lump sum payment. With the medical evidence that has been produced I can find no evidence to suggest that the decision was not one that a reasonable decision maker would not have arrived at. As such, I do not recommend that Mr E's health be reassessed.

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15. Mr E has said that Royal Mail did not follow the correct procedure regarding his ill-health retirement and he should have had a final medical examination to fully assess his health. The Regulations and Guidelines do not require a medical examination, they merely state that it may involve a medical examination, so, I do not agree that a medical examination was a necessary requisite.
16. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
19 May 2017