

## Ombudsman's Determination

Applicant	Mr E
Scheme	Armed Forces Pension Scheme ( <b>the Scheme</b> )
Respondent	Ministry of Defence - Veterans UK ( <b>Veterans UK</b> )

## Outcome

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

## Complaint summary

3. Mr E has disputed the level of ill health retirement benefits awarded to him from the Scheme.

## Background information, including submissions from the parties

4. Mr E joined the Armed Forces in 2008, at which time he also joined the Scheme. He was medically discharged in 2015 due to, 'Ceasing to fulfil Army Medical Requirements'.
5. A medical board considered Mr E for ill health retirement in June 2015. Mr E was present for this meeting. The medical board had access to Mr E's Defence Medical Information Capability Programme (**DMICP**) medical record.
6. The medical board report can be summarised as: -
  - Mr E had tolerable back pain during phases 1 and 2 of training, associated with prolonged standing.
  - During phase 3 of training, the pain become more significant and led to sickness absences and physiotherapy treatment.
  - Following this, his role involved standing for lengthy periods of time in full body armour and with the weight of a rifle, which aggravated Mr E's pain.
  - Mr E had further physiotherapy in 2013, and he also attended a three week Regional Rehabilitation Unit (**RRU**) course.

- He had an MRI scan that showed normal disc height and a spinal cyst, but a surgeon advised that there was no benefit in operating on the cyst.
  - He was seen by a pain management team who advised that there was no advantage in having injections in the area of pain.
  - Analgesics continued to only be partially successful.
  - He was moved to employment in a gym, which was to his liking as he could control his activity and stretch and change position.
  - Having been moved location again, to a role involving a lot of sitting down, his back pain worsened throughout each day.
  - Each morning he had pain and stiffness in his back, which took around 20-30 minutes of stretching to loosen.
  - Mr E had been seen by the military mental health department regarding the frustration and anger he felt in the workplace about his situation.
  - Mr E was only able to sit for 10-15 minutes during the medical board meeting before fidgeting, and after 25 minutes he had to stretch his lower back.
  - Physiotherapy and RRU assessments had commented on curvature of the spine, but Mr E was not physically assessed during the medical board meeting.
7. Mr E was medically discharged from the Armed Forces in December 2015. In January 2016, Veterans UK wrote to him to tell him he had been awarded Tier 1 ill health retirement benefits. This award was made up of a lump sum, payable upon discharge from the Army, and a deferred pension, payable from age 65.
8. Mr E appealed the decision to award Tier 1 benefits, citing that his ability to perform any civilian job roles had been reduced, and that he required a higher level of benefits to fund the treatments needed to manage his condition. Mr E said that he was healthy before joining the Army, and that his Army experience attributed to his condition. He went on to explain in detail how he felt his activities had caused his condition. He also said that to sit at a desk or computer on a daily basis would be very uncomfortable for his condition.
9. In February 2016, the medical adviser (**MA**) reviewed the award. The MA acknowledged that Mr E had chronic pain that limited his Army activities, but said this did not mean he was unfit for work. The MA also said that all treatment options had not been considered at that time, so it was not possible to say that Mr E had a permanent and limiting decrease in his mobility. The MA considered that the Tier 1 recommendation was appropriate. It said that as the majority of civilian roles would not include heavy manual work or prolonged standing, which was the initial cause of Mr E's condition, his ability to obtain gainful civilian employment was not deemed to be significantly impaired.

10. Mr E challenged the appeal outcome and an Internal Dispute Resolution Procedure (IDRP) was invoked. The stage one IDRP and stage two IDRP appeals were both rejected. A summary of the findings is below: -
- The rules of the Scheme had been correctly applied.
  - It was confirmed that Mr E had not exhausted all treatment options.
  - No specific incident preceding the onset of his pain had been identified.
  - The MA said that back pain was common in young people but unlikely to lead to permanent disability.
  - It could not be concluded that the symptoms were likely to be permanent or incompatible with full time employment until retirement.
11. In writing to this Office, Mr E stated that he is in constant pain, which prevents him from working. He has said that he has not been awarded an appropriate tier level, and as a result he is in debt and cannot maintain the expenditure needed for his treatments.

### **Adjudicator's Opinion**

12. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Veterans UK. The Adjudicator's findings are summarised briefly below: -
- The MA said that it was not possible to say that Mr E, aged 25 at the time of the consideration, would be permanently affected until normal retirement age.
  - Mr E believes he should be awarded a higher tier because his monthly expenditure for manual therapies to treat his condition requires a higher income, however this is not how ill health retirement is assessed.
  - There was sufficient evidence to show that the decision was made based on information presented to Veterans UK at the time.
13. 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 and I will therefore only respond to the key points made by Mr E for completeness.

### **Summary of Mr E's further comments**

14. Events that occurred during his time in the Army that have directly caused him chronic pain.

15. There is evidence that his condition has worsened, and that this has impacted his ability to work, making his ability for gainful employment outside of the Armed Forces impossible.
16. The decision made was not based on facts.
17. He has experienced nearly a decade of chronic back pain and disagrees with the 'balance of probability' claim that his condition would improve with age or by stretching and taking painkillers.
18. The military has said that physical activity could improve back pain, but this is not relevant to the high impact and abuse to his body that caused the pain.
19. Veterans UK has accepted that he has chronic pain that prevents him from undertaking manual work, and that his ability to sit or stand is impaired. This, in Mr E's opinion, automatically entitles him for Tier 2 or 3 benefits. He states that his condition is the single biggest cause of missed work days in civilian, sedentary, non-manual roles.
20. Veterans UK has used the fact that he tried to work against him. When he has tried to work he has been in constant pain.
21. If there was a cure for his condition then this should have been provided and he should not have been medically discharged from the Army.
22. If his condition worsened whilst still in the Army, with access to physio therapy and undertaking no manual labour, then there is nothing to say it would improve outside of the military with no regular income to support his necessary private treatment.
23. Research has shown that MRI scanning is a poor predictor of low back pain and chronic pain can occur without changes on an MRI scan.
24. To say that backpain is common in young people is a loose statement based on unknown statistics.
25. There is no evidence to suggest that his pain will improve to the point that he can function and work in a civilian role.
26. The IDRPCs said that there was no specific incidence preceding the onset of pain, which Mr E disagrees with. He says that there were many incidents that caused his pain, which were all documented in his medical records.
27. At the time of his medical discharge, he had been in pain for over seven years, which at that time would have supported the likelihood that the condition was permanent.
28. At the time of his discharge, he was not presented with any medical evidence to suggest his condition would improve.

## **Ombudsman's decision**

29. The Ombudsman's role is to consider whether the decision was reached in a proper manner. There are some well-established principles which a decision-maker is expected to follow in exercising its discretion. Briefly, the decision-maker must consider and weigh all the relevant matters and no irrelevant ones. But the weight to attach to any piece of evidence is for the decision maker to decide. A decision maker could, if it wished, attach no weight at all to a piece of evidence. The only requirement is that the evidence is considered. Further, the decision maker must not reach a decision which no reasonable decision maker, properly directing itself, could arrive at in the circumstances.
30. If the Ombudsman is not satisfied that the decision has been taken properly he can ask the decision maker to look at the matter again. However, the Ombudsman will not usually replace the decision maker's decision with a decision of his own, nor can he tell them what their subsequent decision should be.
31. The MA considered that Mr E had not had the opportunity to try all treatment options, so it was not possible to say that his condition was permanent.
32. The MA also said that the initial cause of Mr E's condition was manual work and prolonged standing, and as most civilian roles do not involve this, it did not consider Mr E's ability to gain civilian employment to be significantly impaired.
33. Mr E has commented on many medical areas. It is not for me to comment on the medical aspects, but to decide whether Veterans UK has appropriately reviewed the medical evidence in accordance with the rules of the Scheme.
34. In Mr E's case, I am confident that the MA had, when considering Mr E's ill health retirement application, been presented with up to date medical information. This included Mr E's full medical history from the Armed Forces medical team.
35. Mr E has said that his condition has worsened since his medical discharge from the Armed Forces. However, based on the evidence from the time of his application, I can see no flaw in the decision making process of Veterans UK.
36. Therefore, I do not uphold Mr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
23 March 2018

## **Appendix**

### **Summary of the Scheme's criteria for ill health retirement**

#### **Tier 1**

Awarded when we consider that although you are no longer able to continue with your military career because of illness or injury, we do not consider you to have a significant disability, which affects your ability to work elsewhere.

#### **Tier 2**

Awarded when we consider that although you are no longer able to continue with your military career because of illness or injury, we also accept that you have a significant disablement, which is likely to have an effect of your ability to work elsewhere.

#### **Tier 3**

Awarded when we consider that your level of illness/injury is very substantial and is likely to have a permanent and significant impact on your ability to work.