

Ombudsman's Determination

Applicant	Mr N
Scheme	Armed Forces Pension Scheme 2015 (the Scheme)
Respondents	Veterans UK

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Veterans UK .

Complaint summary

2. Mr N has disputed the level of ill health retirement benefits awarded to him under the Scheme.

Background information, including submissions from the parties

3. The sequence of events is not in dispute. I have set out the main points below.
4. On 14 March 2016, Mr N was medically discharged from the Army and was awarded Tier 1 benefits. The Principal Invaliding Condition (**PIC**) was recorded as "left sided low back pain".
5. Mr N appealed the decision to award Tier 1 benefits, stating that the information on his Medical Board report was not a true reflection of his medical condition and there was no civilian employment he would be able to undertake.
6. On 15 March 2016, Veterans UK issued its stage one internal dispute resolution procedure (**IDRP**) response to Mr N. It referred the matter back to a medical adviser (**MA**) to review the award. The MA noted that the result of the MRI scan demonstrated minor changes in the spine, but spinal therapy was not indicated. It was the MA's view that Mr N's condition had not been fully treated. He said that Cognitive Behavioural Therapy (**CBT**) should result in an improvement of Mr N's symptoms and therefore it was too early in his treatment to state he had a permanent and limiting decrease in his mobility and that further improvement would not occur. The MA concluded that the Tier 1 award remained appropriate and there was no increase in award.

7. The Deciding Officer (**DO**) for Veterans UK turned down Mr N's stage one appeal and said that Tier 1 ill health early retirement (**IHER**) remained appropriate. After considering the available evidence including the MA's comments, the DO concluded that Veterans UK had administered Mr N's case properly in line with the Scheme Rules and no maladministration had occurred.
8. On 6 July 2016, Mr N appealed under stage two of the IDRPs.
9. On 28 November 2016, Veterans UK issued its stage two response to Mr N. It had referred his case to a Senior Medical Advisor (**SMA**) who noted that there was no new medical evidence since the stage one DO's decision on 15 March 2016, and so it maintained the decision at IDRPs stage one. The SMA said "there is no evidence that Mr N has yet had a full assessment or commenced treatment for his non-specific symptoms and problems which physically do not include any serious underlying operable pathology." He said a review could be advised following CBT.
10. Following the SMA's opinion, Veterans UK held that the original decision to award Mr N Tier 1 benefits was appropriate, as Mr N was not yet in a steady state and a review on his case would be needed once all treatment had been completed. Veterans UK advised Mr N he could submit another application in the future.
11. In October 2017, Mr N submitted another letter of appeal regarding his Tier 1 benefits. He requested a further review stating that he had been unable to seek employment since his medical discharge due to very significant physical and mental health problems.
12. On 8 March 2018, Veterans UK issued its stage one IDRPs response to Mr N. It referred his case to a new MA to review. The MA noted the PIC and said that although no other conditions were specified, low mood and anxiety were present. He also noted the previous MA's opinion at the first IDRPs stage one. The MA felt that treatment by clinical psychologist would be appropriate and since this had not occurred, Mr N's condition has not been not fully treated and was not in a steady state. The MA referred to a letter, dated 22 September 2017, from Dr Halligan who confirmed a diagnosis of moderate depressive episode and that treatment was continuing but did not specify what treatment was being undertaken. The MA concluded that as treatment was still on-going a Tier 1 award remained appropriate.
13. As a result of the MA's comments and further medical evidence Veterans UK said that on the balance of probability, successful treatment would enable Mr N to undertake gainful employment. Therefore, it turned down Mr N's appeal.
14. On 3 April 2018, Mr N appealed Veterans UK's decision and provided further evidence of his physical and mental health restrictions. He said, "all his symptoms have significantly deteriorated since discharge; furthermore, that it is impossible for him to seek any form of employment as his health issues are life changing; he is heavily disabled with significant limitations."

15. On 12 June 2018, Veterans UK issued its stage two IDRPs response to Mr N. Mr N's case was sent to a SMA who took into account the following evidence including; Mr N's appeal letter, service medical records and all letters submitted by him. The SMA noted that Mr N's PIC dated back to 1999 and associated mental health symptoms of anxiety and low mood were recorded. The SMA noted that Mr N had been recently referred to a number of specialist clinics and the MRI of the spine was described as "within normal limits" showing non-specific degenerative changes. Mr N's specialist was of the opinion that surgery was not appropriate as lesions visible on his MRI imaging may not be the source of his pain.
16. The SMA said given the history so far and owing to the nature of Mr N's disorder he did consider a definitive decision could be made as he was not yet in a steady state following assessment, a treatment plan and an adequate trial of best practice treatment. Therefore, he agreed with the IDRPs stage one decision that Tier 1 remained appropriate and suggested that Mr N's case be reviewed in 18 months.
17. The DO agreed with the SMA, that there had been no recent clinical evidence to show that Mr N had undergone an adequate course of best practice management. She further agreed it was too early to confirm that there would be no further improvement to Mr N's condition. The DO was satisfied that Mr N's case had been assessed correctly and Tier 1 remained appropriate. The DO agreed that Mr N's case should be reviewed in 18 months' time once all treatment options have been exhausted.

The Pension Ombudsman's Position on Ill Health Benefits

18. When someone complains that they have not been awarded the ill health (or incapacity) pension they think they should get, the Ombudsman looks at the way the decision has been reached.
19. The Ombudsman will not look at the medical evidence and make his own decision based upon it, nor will he ask for more medical reports. The Ombudsman will consider whether the decision-maker has: (i) gone about making the decision in the right way; and (ii) made a decision that makes sense based on the evidence.
20. The Ombudsman does not have to agree with the decision. He will not intervene just because he thinks the decision-maker could have reached a different decision.
21. The Ombudsman will look at whether the decision-maker has followed the scheme's rules. Different pension arrangements have different rules about ill-health pensions. For example, sometimes the decision will be made by the employer, sometimes by the scheme's trustees or managers, or by a combination of all of them. The Ombudsman will look to see whether the right person has made the decision.

22. If the Ombudsman thinks that the decision-maker has reached their decision in the wrong way he will usually order them to make the decision again. For example, he may ask them to obtain more evidence.
23. The Ombudsman can also look at whether there was any maladministration, such as a delay. If he finds maladministration, he may also award compensation for non-financial injustice, such as distress or inconvenience.

Adjudicator's Opinion

24. Mr N'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 below:-

- A members' entitlements to benefits when taking early retirement due to ill-health are determined by the Scheme Regulations. The Scheme Regulations determine the circumstances in which members are eligible for ill-health benefits, the conditions which they must satisfy, and the way in which decisions about ill-health benefits must be taken.
- An explanation of the Scheme's criteria for ill health tiers that are relevant in Mr N's case is set out below:

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.

- The decision as to whether Mr N is entitled to receive payment of his benefits early on the grounds of ill health is for Veterans UK to make after obtaining the certified opinion of a MA or SMA.
- One of the specific obligations on trustees and decision-makers acting for trustees is to consider all relevant information which is available to them and ignore all irrelevant information.

- Mr N has argued that the Tier 1 award does not pay a sufficient amount to cover his living costs and that he has suffered severe financial loss. However, the assessment for an ill health retirement is not based on an individual member's monthly expenditure. Instead, it is based on whether the member's illness or injury is deemed permanent, which for the purpose of the Scheme, means unlikely to work until retirement age.
- Mr N did not agree with the MA and SMA's analysis of his employment capabilities. The Adjudicator did not, however, identify any factual errors in their reports, and their opinions do not appear to be wholly inconsistent with the medical evidence from Mr N's own doctors. She noted that Mr N's GP expressed the view that he was not in a position to work. The Adjudicator fully accepted that this may be the case; however, it is up to the decision maker to consider all the medical advice and then he or she is entitled to prefer the advice of one medical practitioner rather than another, in this case its MA and SMA.
- Mr N says that his employment opportunities and abilities are reduced and a Tier 1 award does not fairly reflect his current medical condition. However, under the Scheme Regulations it states that for him to be eligible for Tier 2 benefits, he must no longer be able to continue with his military career and it must be accepted that he has a significant disability which is likely to have an effect on his ability to work elsewhere. It is the Adjudicator's role to assess whether the decision made at the time of Mr N's discharge was a reasonable one to make based on the evidence available at that time. The Adjudicator considered that Veterans UK reviewed all the medical evidence presented to it, so was able to reach a reasonable decision that, based on the information presented, Mr N's condition was not permanent and further treatment was available.
- Mr N has said since leaving the Army, he has not been fit for full time employment and there has been no improvement in his medical condition. However, as the Adjudicator explained, the Ombudsman's role is not to review the medical evidence and come to a decision of his own but to consider the decision-making process. In this particular case, looking at the whole process from the time Mr N challenged the Tier 1 award to when Veterans UK issued its IDR stage two response, it was the Adjudicator's view that Veterans UK had considered all the relevant facts and followed the procedure correctly. She was of the view that there were no justifiable grounds for her to find that the Veterans UK's decision was not properly made or that the process it undertook, in reaching its decision, flawed.

25. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N 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 main points made by Mr N for completeness.

Ombudsman's decision

26. Mr N said that he has been unwell physically and mentally and unable to work since 2016. However, as has been explained by my Adjudicator, my role is not to review the medical evidence and come to a decision of my own but to consider the decision making process, as it was at the time the decision was made. In this particular case, looking at the whole process from the time Mr N first challenged Tier 1 award, to when Veterans UK issued its IDRPs stage 2 response, I find that it has considered all the relevant facts and followed the procedure correctly. I do not find that Veterans UK decision was perverse or that the process undertaken to reach its decision was flawed.
27. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
30 January 2020