

Ombudsman's Determination

Applicant	Mr S
Scheme	Armed Forces Pension Scheme (the Scheme)
Respondent	Veterans UK

Outcome

1. Mr S' complaint is upheld and to put matters right Veterans UK should reconsider Mr S' 2012 application.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S' complaint is that he has been refused the early payment of his preserved pension on ill health grounds.

Background information, including submissions from the parties

4. Mr S was medically discharged from the Army in 2003.
5. In January 2012, Mr S applied for the early release of his preserved pension because of his right hip condition. In his application Mr S said that he was unable to stand for periods over five minutes and was only able to work part-time.
6. Service Personnel and Veterans Agency (**SPVA**) submitted a medical questionnaire to Dr Gregwolski (Mr S' then GP) together with Mr S' description of his duties in his most recent employment and details of the limitations he considered he suffered from. SPVA asked Dr Gregwolski to complete Sections 2 and 3 of the questionnaire and said they were particularly interested in any functional limitations or restrictions that would impact on Mr S' employability.
7. In section 2 Part (a) ('Past History') Dr Gregwolski wrote that under Mr Villar (Consultant Orthopaedic Surgeon) Mr S had undergone a right hip arthroscopy. In section 2 Part (b) ('Functional Capacity') Dr Gregwolski wrote that he had not seen Mr S for some time and never about his hip and so could not answer these questions. In Section 3 ('Declaration') Dr Gregwolski ticked the box for "Temporarily incapable of undertaking their usual occupation". Mr Villar was not approached by SPVA.

8. A Medical Adviser (**MA**) for SPVA reported:

“Mr [S] has a right hip condition which is longstanding and was the cause of his medical discharge from the army. It has been investigated by arthroscopy at which a partial labrectomy was carried out.

His GP has certified temporary incapacity from [Mr S'] usual occupation which falls well short of the criterion required. There is little reason to conclude that all suitable occupations are excluded for the next twenty years.

In my opinion, on the balance of probabilities, he is not permanently incapable of undertaking any form of suitable full time employment.”

9. In February 2012 the Deciding Officer (**DO**) rejected Mr S' application and SPVA notified Mr S of the decision and included the MA's comments.
10. Mr S' first appeal was considered by the Discretionary Awards Review (**DAR**). His appeal included a letter from Dr Perkins (Mr S' new GP) dated 21 January 2013 and Dr Lloyd (Consultant Hepatobiliary & Laparoscopic Surgeon at the same hospital as Mr Villar) dated 19 April 2012.
11. Dr Perkins said that Mr S was “permanently unable to work full time in any capacity” and “his health conditions will continue until preserved pension age”. He said that Mr S had continued pain and reduced mobility and function.
12. Dr Lloyd said Mr S had undergone bilateral groin surgery for groin pain on 5 April 2012. While he was improving he still had pain on increased flexion of his hip joints and on standing. He was sure that Mr S could gradually return to part-time work, albeit with some continuing disabilities. He recommended that Mr S undergo physiotherapy to improve the core strength in his abdomen and abductor and quadriceps group of muscles and improve the flexibility around his hip and groin region.
13. Another MA gave their opinion that Mr S was not permanently incapable of undertaking any form of suitable full-time employment to age 60:
- “Although Mr Perkins' letter states [Mr S] is unable to work full-time in any capacity until pension age I feel that in view of Mr Lloyd's generally positive report it is too early to reach this conclusion.”
14. In March 2013, the DO rejected Mr S' appeal and SPVA informed Mr S of the decision.
15. Mr S' second appeal was considered by the Discretionary Awards Appeal Review and comprised a letter from Mr S in which he said his “continuing disabilities” and “symptoms from hip and bilateral hernia repair” had not improved and that Dr Perkins' opinion “still stands”.

16. The Senior Medical Adviser (**SMA**) agreed that it was too soon to make an award. Commenting on Dr Perkins' January 2013 letter the SMA said:

"It is of note that the GP provides an opinion but no reasons for his decision in terms of functional limitation or restriction. He is in any event referring to his view that [Mr S] should refrain from **military** employment...and EPP is of course about civilian employability."

17. The SMA added:

"The letter from [Dr Lloyd] dated April 2012 soon after a groin procedure was at the early post operative point positive suggesting a prompt graduated return to work and in the full expectation of further improvement of symptoms and function over time.

I agree that it is yet too soon to award EPP."

18. The DO rejected Mr S' final appeal:

"[Mr S'] appeal is based on the fact that he perceives that his continuing medical difficulties preclude him from work and has provided additional medical evidence. However, the SMA believes that this treatment for his hip and other joint disorders should continue to deliver improvement as confirmed by Dr Lloyd and this coupled with his age means that she considers EPP a premature action. I agree."

19. In December 2013 SPVA notified Mr S that his final appeal had been rejected.

20. SPVA became part of Veterans UK in April 2014.

Adjudicator's Opinion

21. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by Veterans UK. The Adjudicator's findings are summarised briefly below:

- SPVA first rejected Mr S's application on the basis that his GP (Dr Gregwolski at that time) had in Section 3 of the SPVA's medical questionnaire ticked the box for "Temporarily incapable of undertaking their usual occupation". But in Section 2 Dr Gregwolski had said that he was unable to answer questions on Mr S' functionality because he had never seen him about his right hip. Dr Gregwolski gave Mr Villar's contact details (Mr Villar had carried out the right hip arthroscopy), but it did not appear that SPVA had asked Mr Villar for his opinion. Dr Gregwolski had given no reason for his declaration in Section 3 and was not asked.
- On appeal the SMA discounted Dr Perkins' opinion on the grounds that he had provided no reasons for his view and had been referring to Mr S' military, rather than his civilian, employability. However civilian employability was not the test. The test was Mr S' capability for suitable full-time work before age 60.

- While Dr Perkins had opened his letter by saying he supported Mr S' medical discharge from the Armed Forces (Mr S had been medically discharged in 2003 and shortly before Dr Perkins' letter his War Pension had been increased from 20 to 30 per cent disabled, which Mr S was contesting – Dr Perkins' letter might have been obtained in support of that) he then went on to say that in his opinion Mr S was permanently unable to work full-time in any capacity through ill health and his health conditions would continue until preserved pension age. It was therefore not clear that Dr Perkins' opinion was restricted to Mr S' capability for military work as the SMA had inferred. Dr Perkins was not asked to clarify his opinion and give his reason(s) for it.
- The SMA had said that Dr Lloyd's letter suggested a prompt graduated return to work and in the full expectation of further improvement of symptoms and function over time. That was not accurate. Dr Lloyd had not commented on Mr S' capacity for full-time suitable employment. He had only gone as far as saying that it would be reasonable for Mr S to return to work on a part time basis (and he had not given a timescale for this). He acknowledged that Mr S had some continuing disabilities and had recommended physiotherapy and had added that Mr S would require continuing physiotherapy to improve the flexibility around his hip and groin. Arguably, the fact that Dr Lloyd specified part-time employment could be taken to mean that he did not think that full-time employment was likely.
- Therefore, Veterans UK had failed to review Mr S' case in a proper manner.

22. Veterans UK accepted the Adjudicator's Opinion.

23. Mr S accepted that his complaint should be upheld against Veterans UK, but asked that the Opinion include medical evidence pertaining to his condition in 2015 and 2016 and referenced his ongoing appeal of his War Pension disablement award.

24. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

25. Mr S' appeal of his War Pension award is not part of the complaint that the Pensions Ombudsman Service (**the Service**) accepted for investigation. Consequently I have not considered Mr S' comments and the information he has provided on it.

26. The medical evidence that Mr S has submitted pertaining to his recent/current condition is not relevant. The relevant medical evidence in this matter is that which was available around the time of his 2012 application plus any later medical opinion on his condition in 2012.

27. Mr S says the MA and SMA's opinions were paper based assessments and therefore of much less weight compared the medical evidence from his doctors. It is a matter for the MA and the SMA to decide whether they require seeing/examining an

applicant before giving their respective opinion. The weight attached to the relevant medical evidence (including none) is a matter for Veterans UK to decide.

28. Mr S says he should be awarded ill health retirement. That is not for me to decide. That decision rests with Veterans UK.
29. I uphold Mr S' complaint and my directions to put matters right are unchanged from that suggested in the Adjudicator's Opinion.

Directions

30. To put matters right Veterans UK should reconsider Mr S' application, having first sought the opinion of Dr Perkins and Dr Lloyd on the matters noted above. Within 21 days of receipt of both opinions, Veterans UK are to inform Mr S of their decision, together with their reasons.
31. If the decision is that Mr S' benefits are payable under rule D.18, he is to receive arrears (from the date his application was received by Veterans UK) together with simple interest at the rate quoted by the reference banks at the time from the due date to the date of payment.

Anthony Arter

Pensions Ombudsman
24 June 2016