Veterans Affairs Canada | Anciens Combattants Canada

Dual Entitlement - Disability Benefits

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Purpose

The purpose of this policy is to provide direction with respect to whether an application should be adjudicated under either the *Pension Act* or the *Veterans Well-being Act* (VWA).

Policy

Interpretation of Term "injury or disease"

1. For the purposes of section 56.5 of the *Veterans Well-being Act*, the "injury or disease or the aggravation of an injury or a disease" is interpreted to mean "disability".

Adjudication

2. In specific circumstances, applications submitted for disability benefits after the coming into force of the *Veterans Well-being Act* must be re-directed to the *Pension Act*.
3. If after the coming into force of the *Veterans Well-being Act*, a new claim is submitted for the same disability (i.e., the same medical condition or a different medical condition resulting in the same disability) which has been the subject of an application for pension under the *Pension Act* and the Minister (or the Canadian Pension Commission) has rendered a decision in respect of that application, the Department will invoke the provisions of section 56.5 of the *Veterans Well-being Act* and the claim will be re-directed to the *Pension Act* for adjudication.

4. Once under the authority of the *Pension Act*, the specifics of the new claim will be reviewed and the case will be adjudicated as follows:
    a. If the evidence presented in the new claim supports a Departmental Review, the application will be dealt with as a Departmental Review and the effective date will be determined in accordance with Departmental Review provisions;
    b. If the evidence presented in the new claim does not support a Departmental Review, the claim will be adjudicated as a "first decision" and the effective date will be established in accordance with subsection 39(1) of the *Pension Act*; or
    c. If it is determined that the original application has been the subject of a decision of the Veterans Review and Appeal Board (VRAB), the Department will have no jurisdiction on the new application and as such, the claim will be referred to the VRAB for consideration.

Examples - Dual Entitlement Pension Act and VWA - Canadian Armed Forces (CAF) Service Only

5. The following examples are meant to demonstrate some circumstances that may present with respect to dual act entitlement claims.
    a. A CAF member applied for disability pension for Lumbar Disc Disease under the *Pension Act* claimed to be related to his service in a Special Duty Area. The member received an unfavourable decision as the service relationship was not established. Subsequent to the coming into force of the *Veterans Well-being Act*, the member applies for Lumbar Disc Disease claimed to Regular Force service. As this disability has been the subject of a decision under the *Pension Act*, subsection 56.5 (1) of the *Veterans Well-being Act* is invoked and the new claim for Lumbar Disc Disease is re-directed to the *Pension Act* for consideration. The evidence submitted with the new claim does not support a Departmental Review so the new claim will be adjudicated as a "first decision". If favourable, the effective date will be established in accordance with subsection 39(1) of the *Pension Act*.
    b. A CAF member applied for disability pension for Internal Derangement Left Knee under the *Pension Act* claimed to be related to Regular Force service. The member received an unfavourable decision as the service relationship was not established. Subsequent to the coming into force of the *Veterans Well-being Act*, the member applies for Osteoarthritis Left Knee claimed to Regular Force service. The effects of Internal Derangement Left Knee and Osteoarthritis Left Knee are inseparable (for assessment purposes), and as such are the same disability for the purposes of section 56. In accordance with subsection 56.5 (2) of the *Veterans Well-being Act*, the left knee disability has been the subject of a decision under the *Pension Act* and therefore not eligible for a decision under the *Veterans Well-being Act*. The new claim for Osteoarthritis Left Knee is re-directed to the *Pension Act* for consideration. The evidence submitted with the new claim does not support a Departmental Review so the new claim will be adjudicated as a "first decision". If favourable, the effective date will be established in accordance with subsection 39(1) of the *Pension Act*.

Disability Entitlement Related to Royal Canadian Mounted Police (RCMP) and CAF Service

6. If a person applies for disability entitlement related to both RCMP and CAF service, the claim will be adjudicated according to the service type. If both rulings are requested in the same application, the decisions will be provided in chronological order, based on whichever service came first.
    a. The claim related to RCMP service will be adjudicated under the *Royal Canadian Mounted Police Superannuation Act* in accordance with the *Pension Act*. The *Veterans Well-being Act* does not

apply to RCMP service.

b. The claim related to CAF service will be adjudicated under the *Pension Act* or the *Veterans Well-being Act* depending upon the chronological order of the service periods.

Examples - Dual Entitlement Pension Act and VWA - CAF and RCMP Service

7. The following examples are meant to demonstrate some circumstances that may present with respect to dual service entitlement claims.
    a. A CAF member applied for disability entitlement for Osteoarthritis Left Knee claimed to be related to RCMP service and Regular Force service. The applicant served with the RCMP prior to joining the Regular Force. The ruling for the applicant's RCMP service would be provided under the *Pension Act*. Subsequently, as per sections 42 and 56.5 of the *Veterans Well-being Act*, the ruling for the applicant's Regular Force service would also be provided under the *Pension Act*.
    b. A CAF member applied for disability entitlement for Osteoarthritis Right Ankle claimed to be related to RCMP service and Regular Force service. The applicant served with the Regular Force prior to joining the RCMP. As the applicant's Regular Force service comes first in the chronological order, the ruling for this period of service would be provided under the *Veterans Well-being Act*. The ruling for the applicant's RCMP service would be provided under the *Pension Act*.

Conversion of Disability Pension

8. A monthly disability pension that is being paid under the *Pension Act* cannot be converted into a disability award or pain and suffering compensation paid under the *Veterans Well-being Act*.

Disability Pension Ruling Prior to March 31, 1971

9. Subsection 85(2) of the *Pension Act* provides the authority for the Minister to consider any application that was the subject of a ruling before March 31, 1971.
10. An individual who received an unfavourable decision with respect to a condition claimed under the *Pension Act* prior to this date may only reapply under the *Pension Act* for that condition. In these cases, an application for disability benefits with respect to that condition cannot be considered under the *Veterans Well-being Act*.
11. Although Departmental practice is to treat these cases as though the first decision had not been made, it is subsection 85(2) of the *Pension Act* which provides the authority to re-consider the application. The decision therefore must be rendered under the *Pension Act.*

Fractional entitlement

12. In accordance with section 42 of the *Veterans Well-being Act* and subsection 3.1(1) of the *Pension Act*, in cases where fractional entitlement was awarded under the *Pension Act* for a condition, an application cannot be made under the *Veterans Well-being Act* for an increase in the entitlement of that condition.

Change or Expansion of Diagnosis

13. If an application for a condition is adjudicated under one act, any subsequent application submitted due to a change or expansion of diagnosis of that condition must be adjudicated under the same act.

References

Veterans Well-being Act, sections 42 and 56

Pension Act, subsections 3.1(1) and 85(2)

Royal Canadian Mounted Police Superannuation Act

Pain and Suffering Compensation Policy