
REQUIRING FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE BOARD OF VETERANS' APPEALS

JUNE 29, 1961.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

R E P O R T

[To accompany H.R. 866]

The Committee on Finance, to whom was referred the bill (H.R. 866) to amend section 4004 of title 38, United States Code, to require that the Board of Veterans' Appeals render finding of fact and conclusions of law in the opinions setting forth its decisions on appeals, having considered the same, report favorably thereon without amendment, and recommend that the bill do pass.

PRINCIPAL PURPOSE OF THE BILL

The bill requires that decisions of the Board of Veterans' Appeals shall be in writing and shall contain findings of fact and conclusions of law separately stated.

The following excerpt from the report by the House Committee on Veterans' Affairs, giving the background of the bill, is reprinted for the information of the Senate:

"A special subcommittee composed of experienced lawyers held hearings from April 5 to May 3, 1960, on various bills to provide for judicial review of decisions of the Administrator of Veterans' Affairs. During the course of these hearings it was established that opinions of the Board of Veterans' Appeals did not contain findings of fact and conclusions of law and that it was not possible to tell from the opinion of the Board what basic facts were found to exist or what conclusions of the law the Board considered applicable. All the opinions at that

time were merely narrative recitations of a portion of the evidence with generalized statements of law so that it was impossible to tell from decisions of the Board why a particular claim was either allowed or denied. Following these hearings the Board has experimented with a revised format for its decisions to more clearly set forth its findings and conclusions. While recent examples of Board decisions which have been made available to the committee represent an improvement, the committee believes that this requirement is one of fundamental importance and should be a matter of law rather than administrative practice.

"The committee believes that careful consideration of any claim requires analysis of all of the evidence with a determination of all the material facts which are found to have been proven. It is only when a determination of the material facts has been made that it is possible to decide the rules of law which must be applied. In the view of the committee a principal reason for requiring the Board to make findings of fact and conclusions of law is that it requires the members of the Board to use more care in the analysis and decision of each case that comes before it.

"The hearings in the 86th Congress of the special subcommittee resulted in the reporting of H.R. 12653, a bill to establish a special court with exclusive appellate jurisdiction over decisions of the Administrator. The question of requiring the Board to make findings of fact and conclusions of law was extensively considered during the course of the hearings but was not included in H.R. 12653, as the committee believes that this matter should more appropriately be considered in a separate bill. If a separate appellate court is established as provided by H.R. 12653, this bill will have another important purpose which was expressed by the Supreme Court of the United States as follows: 'the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained (*SEC v. Chenery Corp.*, 318 U.S. 80, 93, 63, S. Ct. 454, 462, 87 L. Ed. 626-1943).'

"H.R. 849, 87th Congress, and other bills provide for the creation of such a court.

"The committee feels that the importance of requiring findings of fact and conclusions of law by the Board cannot be overemphasized and that it is fundamental to the successful exercise of appellate review. Since it also has an important function entirely unrelated to the review process, that is, the improvement of administrative adjudication, it should be considered in a separate bill. While, as recognized above, the Board of Veterans' Appeals has made changes in the format of its decisions along the lines contemplated by this bill, the committee believes it well to have such a provision written into the law.

"An independent tribunal with appellate jurisdiction of veterans' claims was established in England more than 40 years ago. A typical example of the "statement of case for hearing" in connection with an appeal from the Ministry of Pensions to the Pension Appeal Tribunal appears hereafter in this report.

"The committee does not consider it proper to direct that this particular form shall be used by the Administrator as a statement of findings of fact and conclusions of law. Examples are included for purposes of information and to show the contrast with the format

employed until very recently for opinions of the Board of Veterans' Appeals—two examples of which appear thereafter. There are also included examples of recent board opinions in the new format which shows that improvement can result from more clearly stating the findings and conclusions underlying a decision. However, while the committee believes an improvement has been made by the new format, material facts have been omitted in some cases and so-called conclusions of law have failed to cite the applicable section of the appropriate law."

COST

The bill does not increase or create any new benefits. It does not create any new positions, so it does not result in any estimable increased cost. It is expected the bill will ultimately result in savings in administrative costs by reducing the number of claims and the re- by the numbers of persons employed in administrative adjudication.

The report of the Veterans' Administration follows:

HON. OLIN E. TEAGUE,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, D.C.

DEAR MR. TEAGUE: We are pleased to furnish the following comments in response to your request for a report by the Veterans' Administration on H.R. 866, 87th Congress

This bill would amend the existing provisions of title 38, United States Code, pertaining to the Board of Veterans' Appeals in the Veterans' Administration to require that the decisions of the Board shall be in writing and shall contain findings of fact and conclusions of law separately stated. This bill is identical to H.R. 12566, 86th Congress, which your committee favorably reported on June 29, 1960, and which was passed by the House of Representatives on August 23, 1960.

In our report to your committee on the prior bill we advised you that the Board was then engaged in a study designed to improve the format of its decisions. This study has progressed considerably, and the Board has arrived at a format which we believe fully complies with both the spirit and letter of this bill. We are enclosing with this report a skeletal outline of the new format as distributed to Board sections. You will note that it provides for separate findings of fact and conclusions of law.

The revised format is currently in effect on a limited scale and a progressive conversion is underway timed so as to maintain an effective balance between timeliness of decisions and quality goals. Examples of Board decisions prepared in the revised format have been informally furnished to the committee staff.

You will realize, of course, that the format described and utilized in the sample decisions which have been furnished to your committee may undergo evolutionary change as experience dictates but, whatever refinements are found necessary, no change is contemplated in the setting out of specific findings of fact and conclusions of law. For example, it now appears from the Board's experience that certain cases in which the facts are clear and uncontroverted may be handled by proceedings from the issue directly to findings of fact and conclusions of law. Your committee will, of course, be kept informed of any sub-

4 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

stantive progress in the Board's efforts to find the most effective format.

Although there is certainly no objection to the substance of this bill it appears to us that the administrative steps already undertaken will achieve the desired results without the potential rigidity which might be created by enacting these requirements into the law.

Should your committee conclude, however, that enactment of this legislation would serve a useful purpose, we suggest that it be amended to provide a deferred effective date, or some flexibility in making the transition, to avoid serious disruption of orderly work output and an adverse effect on the disposition of an already heavy workload.

We are advised by the Bureau of the Budget that there would be no objection from the standpoint of the Administration's program to the presentation of this report to the committee.

Sincerely,

J. S. GLEASON, Jr., *Administrator.*

[Proposed format]

In the appeal of: _____ Docket No. _____
Mary Jones _____ C. _____
In the Case of:
John Jones
Appellant represented by: _____
Witnesses at hearing on appeal: _____

THE ISSUE

(Discuss issue(s), contentions, and the determination of the agency of original jurisdiction.)

THE EVIDENCE

(Outline clearly, objectively, and completely the evidence of record having a bearing on the issue(s).)

THE LAW AND REGULATIONS

(This should never be more than a statement, preferably citations and extracts, of the applicable provisions of law and regulations. Explain or elaborate, when necessary, in "Discussion and Evaluation.")

DISCUSSION AND EVALUATION

(Expression of your analytical reasoning in evaluating the evidence of record and the application of law and regulations to the evidence.)

FINDINGS OF FACT

(Succinct numbered statements in logical sequence of the necessary ultimate factual findings.)

CONCLUSIONS OF LAW

(Conclusions, in numbered sequence, which are reached by the application of the artificial rules of law to the facts stated.)

DECISION

(A statement as to whether the appeal is allowed or denied.)

Pensions Appeal Tribunal (Entitlement)

Ministry of Pensions and
PH/DT/N National Insurance Act.

Date of Hearing

Date of Appeal 10. 3. 59

P.A.T. Case No.

War Pensions Office Address :-
'C' Block,
Brooklands Avenue,
Cambridge.

Decision of Tribunal

STATEMENT OF CASE FOR HEARING

The Appellant appeals against the decision of the Minister of Pensions and National Insurance that his disability INJURY TO RIGHT LEG WITH OSTEO-ARTHRITIS KNEE AND ANKLE -

- (a) is not attributable to service, and
- (b) does not fulfill the following conditions, namely, that it existed before or arose during service and has been and remains aggravated thereby.

Name of Appellant (Surname) (Christian Names)
Address

Unit, Rank or Rating and No. R.A., Major,
Occupation: Before Service Solicitor's Articled After Service Civil Servant,
Present Age: 40 years Clerk

SERVICE AFTER 2nd SEPTEMBER, 1939

SERVICE BEFORE 3rd SEPTEMBER, 1939

Unit	Yrs.	Mths.	Dates		Unit	Yrs.	Mths.	Dates	
			From	To				From	To
R.A. (Commissioned Service)	19	1	3. 9. 39	28. 9. 58	R.A. (Commissioned Service)	10 days		24. 8. 39	2. 9. 39
Reserve					Reserve				
					Territorial Force	1	-	10. 8. 38	23. 8. 39

SERVICE ABROAD

CAUSE OF DISCHARGE

Country	Yrs.	Mths.	Dates	
			From	To
N.W.E.F.	-	1	12. 5. 40	13. 6. 40
ICELAND	1	7	12. 7. 40	27. 1. 42
B.L.A.	2	1	1. 6. 44	3. 7. 46
B.A.O.R.	-	10	3. 7. 47	13. 5. 48

Premature Retirement

Particulars of Pension None.

6 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

W/MT/N

MEDICAL HISTORY FROM COMMISSION TO RETIREMENT

07. 5.38 Brief report of medical examination prior to Commission (T.A.): Fit.
10. 8.38 Commissioned (T.A.)
24. 8.39 Embodied (T.A.)
- HOSPITAL ENTRIES ETC.
12. 5.40 Embarked United Kingdom.
11. 6.40 Disembarked United Kingdom.
12. 7.40 Embarked United Kingdom.
27. 1.42 Disembarked United Kingdom.
- 29.12.43 Report by Dental Officer, 137 Army Dental Centre, Ipswich.
? condition of /8
- East Suffolk and Ipswich Hospital (Out-patient Department)
10. 1.44 X-ray Report:
An unerupted lower left 8 is shown. This is included as fully as possible in the Skiagram. (Film available).
1. 6.44 Embarked United Kingdom.
3. 7.46 Disembarked United Kingdom.
3. 7.47 Embarked United Kingdom.
13. 5.48 Disembarked United Kingdom.
- Report on Injury.
- 27.10.48 Appellant's statement:
I, Capt. R.A., hereby declare that an injury was sustained by me on 23rd October 1948 in the following circumstances: In a Rugby Football match, Felixstowe v Colchester Garrison in which I was playing for Felixstowe one of the opposing side tackled me heavily and I sustained a compound fracture of my right leg.
- Signed:
- Report by Medical Officer.
Nature, site and severity of injury: Compound fracture lower third right tibia and fibula. Wound toilet and open reduction and immobilization in long leg plaster cast. Post reduction X-ray satisfactory.
- Short Statement of the circumstances by an officer who has knowledge of the case.
Capt. was playing in an organized Rugby Football match between Felixstowe R.F.C. and Colchester Garrison at Walton, Suffolk on 23.10.48. He was selected to play as an individual and notice of his selection was published in Unit Part I Order Serial 19 published 22.10.48.
- 2.11.48 Commanding Officer's Opinion:
Was the individual performing a military duty? Yes, recreational training.
Was the injury due to his negligence - No. Was it due to his misconduct? - No.
Was anyone else to blame? - No. Is the injury suspected of being self-inflicted? No. Did the injury occur on military premises? - No.
Court of inquiry (i) Has any been held - No. (ii) Will any be held - No.
- 20.12.48 Proceedings of a Court of Inquiry.
Assembled at Territorial Army Centre Felixstowe for the purpose of inquiring in the circumstances under which Capt. R.A. 419 Coast Regt. R.A. (T.A.) sustained injuries at Felixstowe on Saturday 23rd October 1948. The Court having assembled pursuant to order, proceed to take evidence.
1st Witness No. Capt. R.A. states:- I am Adjutant to 419 Coast Regt. R.A. (Suffolk) T.A. and in order to obtain Recreational Training I asked my Commanding Officer at the beginning of the season if I could play Rugby Football for Felixstowe as my Regiment being composed of Territorial Army personnel do not run a Rugby Football team. The Commanding Officer gave his permission and on the 23rd October 1948 I was selected to play for Felixstowe against Colchester Garrison this was published in Part I Orders No.19 dated 22nd October 1948. During the second half of the game I was tackled heavily by one of the opposing side, and in falling sustained a compound fracture of my right leg.

PH/ET/N

10. 12.48
Cont'd.

I was taken to East Suffolk and Ipswich Hospital on the advice of the Civilian Practitioner.
Question 1 by Captain 'A': "Was the tackle justified?"
Answer by Capt. : Yes, I was in possession of the ball.
2nd Witness Mr. States:- I am Captain of the Felixstowe Rugby Union Football Club. I was watching the game on the 23rd October 1948 in which Captain was playing. During the game at approx 4.15 p.m. Captain Goodbody was tackled, and in falling broke his leg.
Question 1 by the Court: "Was the tackle justified?"
Answer by Mr.: Yes, he was in possession of the ball.

Statement by Officer Commanding 419 Coast Regt., R.A. (T.A.)
It is the duty of every serving soldier to keep himself fit and as was unable to participate in recreational training with a service unit I gave him permission to play for a civilian rugby team each week - Felixstowe Rugby F.C.
Having considered the evidence I am of the opinion Captain was on duty and not to blame.

Brigade Commander's Opinion:
I agree with the opinion of Officer Commanding 419 Coast Regt. R.A. (T.A.).

11. 1.49 Report by Major General Command East Anglian District.
Opinion: was on duty and not to blame for his injury.

6. 1.49 Medical Board.
Appellant's statement:
I was selected to play for Felixstowe Rugby Football Club against Colchester Garrison on Saturday 23rd October 1948 at Felixstowe. During the second half of the game, I was heavily tackled by a member of an opposing team and sustained a compound fracture of my right leg.

Signed:

Report by Medical Board.
Diagnosis: Compound fracture tibia and fibula right.
History: See statement by appellant.
Admitted to East Suffolk and Ipswich Hospital on 23rd October 1948. Fracture reduced and wound sutured and put up in plaster the same day.
Progressed satisfactorily and released on 18th November 1948 on sick leave.
Reported back as Out-patient on 9th December, when plaster removed: wound had healed but fracture showed little sign of union. Plaster then reapplied.
Present condition: General condition excellent.
Wearing plaster applied 9th December 1948 with which he ambulant on crutches but is not weight bearing. Reports for supervision as Out-patient at 6 weekly intervals. X-ray shows bones in good position.
Disability: Compound fracture right tibia and fibula.
The officer is receiving Out-patient Orthopaedic treatment at East Suffolk and Ipswich Hospital.
Is the officer in need of further out-patient treatment: Yes. Three months (1/12) Physiotherapy.
Orders given to the Officer by the President of the Medical Board: To return home and attend as Out-patient for physiotherapy as directed by Medical Officer in Charge of Case and await War Office instructions.

6. 1.49 Pulsecase Assessment - see Appendix.

17. 4.49 Medical board.
Appellant's statement:
Since 6th January 1949 I have been at home on sick leave attending hospital for x-ray etc. On 21st April 1949 the plaster on my leg was removed and a

8 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

FR/ST/M

22. 4.49 Cont'd. knee length plaster put on, and I was told I could start walking on it with a stick. I feel fit for light duty and would like to start as soon as possible.

Signed:

Report by Medical Board.

Diagnosis: Compound Fracture Tibia and Fibula (Right).

History: See previous medical board report.

Present condition: See foregoing statement by Appellant and Surgeon's report.

The right leg is in a knee length plaster with walking iron (at present still damp); he will be able to walk with stick and will then be fit to resume duties as T.A. Adjutant in a sedentary role at first, but in all probability he will be able to resume full duties in 3 months. No other disability claimed or discovered.

The officer is not in need of further out-patient treatment but requires renewal of plaster etc., from time to time.

Orders given to the Officer by the President of the Medical Board: To return to duty (light) for 3 months when he will be required for a Review Board.

22. 4.49 Pulheems Assessment - see Appendix.

25. 4.49 Report by Orthopaedic Registrar, East Suffolk and Ipswich Hospital to President Commander Standing Medical Board.

Capt. was admitted to this Hospital on 23.10.48 suffering from a compound fracture of the lower third of his right tibia and fibula. The wound was sutured, the fracture reduced and the limb encased in plaster. As is common with a fracture at this site, there has been delay in union. We saw him last on the 21st April when X-ray revealed scanty callus formation but clinically the fracture seemed fairly sound. Fixation in plaster is likely to continue for another two months.

I note that you have recommended light sedentary duty on home service, with a review Board in three months' time. I am entirely in agreement with this suggestion.

22. 7.49

Medical Board.

Appellant's statement:

Since my last Board I have attended regularly at Ipswich and East Suffolk Hospital. My leg plaster was removed on 30th June 1949 and I was told to put very little weight on my leg and to use crutches to start with. On July 14th 1949 I was told that union was progressing and to report back on 4th August 1949 and to start using sticks but to be careful not to put too much weight on my leg. I was posted to 419 Coast Regt. R.A. (T.A.) on 27th April 1949 and have been there since that date on light duty.

Signed:

Report by Medical Board.

Diagnosis: Compound Fracture Tibia and Fibula Right.

History of the disability: See previous Medical Board's reports.

Present condition: See foregoing statement by Appellant.

This officer is now walking with aid of 2 walking sticks and can get about for light duties all right. He states he gets occasional ache in leg in evening when also the low third of right leg is somewhat swollen and oedematous.

On examination: Sinus and other scars well healed; leg is wasted and lower third anteriorly is slight oedematous.

He is still under supervision of Orthopaedic Registrar Ipswich and East Suffolk General Hospital and his next visit is arranged for 4th August.

The officer is receiving out-patient Orthopaedic supervision at Ipswich and

Ph/ET/M

Cont'd. East Suffolk General Hospital.
Orders given to the Officer by the President of the Medical Board: To return to light duty for 3 months when he will be required for Review Board.

22. 7.49 Pulheems Assessment - see Appendix.

20.10.49 Medical Board.
Appellant's statement:
 Since my last Medical Board I have been attending the Ipswich and East Suffolk Hospital about once a month. Last time I attended 29th September 1949 I was told that I would be discharged. I have been carrying out duties as T.A. Adjutant on light duty since my last board.

Signed

Report by Medical Board.
Diagnosis: Compound Fracture Tibia and Fibula Right.
History: See previous Medical Boards Reports and Statement by Appellant.

Board deferred.

Report dated 21.10.49 by Surgical Specialist, Colchester Military Hospital.
Examination: Old compound fracture right tibia and fibula (23.10.48) with delayed union due to infection. Union has now occurred (has been walking without plaster for four months) and sinus has been healed for six months. X-ray 20.10.49 shows bony union but still rarefaction in region of old osteomyelitis i.e., consolidation still not complete.
Clinically: Position good. No shortening. Adherent scar over tibia but no evidence of any infection.
Walks with right limp and still requires a stick.
Recommend: To continue in present category. P.7. for another three months.

Board report continued.
Present condition: See Surgical Specialist's report.
Patient gets about fairly well and uses one stick. He is able to perform his duties as T.A. Adjutant. He has oedema somewhat in the evening if he has stood or walked much during the day.
The officer is receiving physiotherapy treatment Ipswich and East Suffolk Hospital.
Orders given to the Officer by the President of the Medical Board: To return to light duty and will be reviewed in three months.

20.10.49 Pulheems Assessment - see Appendix.

7. 2.50 Medical Board.
Appellant's statement:
 Since my last Medical Board I have been carrying out duty as T.A. Adjutant at Dovercourt and my disability has not been aggravated.

Signed:

Report by Medical Board.
Diagnosis: Compound Fracture Tibia and Fibula (Right).
History: See previous Medical Boards Reports and Statement by Appellant.

7. 2.50 Report by Civilian Specialist.
No pain at fracture site. Only weakness of leg.
On examination: Good alignment. Firm classical union. Full range of movement in knee and right ankle, but some grating.
Wasting of right quadriceps and calf. X-ray taken. Union progressing satisfactorily. For quadriceps and calf muscle exercises and massage, after which I consider he will be fit for full duty in about four weeks.

10 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

Ph/ET/N

7. 2.50 Board report continued:
Cont'd. Present condition: See Surgeon's report. Patient states that he can walk 3 miles without ache or pain. Does not use stick now. Definite grating in right knee and right ankle. It is the ankle which causes pain on such walking.
The Board does not agree with the Surgeon that he will be fit for full duty in 4 weeks.
The officer is receiving physiotherapy treatment Ipswich and East Suffolk Hospital.
Orders given to the Officer by the President of the Medical Board: To return to his unit for duty as at present.

7. 2.50 Pulheems Assessment - see Appendix.

11. 5.50 Medical Board.
Appellant's statement:
Since my last board I have been carrying out my duties of J.A. Adjutant. My disability has improved considerably but I am still not able to run without straining my leg.

Signed:

Report by Medical Board.

Diagnosis: Compound Fracture Tibia and Fibula (right).
History: See statement by Appellant and previous Medical Board's Reports.

Board deferred.

Report dated 12.5.50 by Civilian Surgeon Specialist, Colchester Military Hospital.

History: Capt. states that he is still improving. He only feels pain in right ankle after such walking, or running.
Examination: Grating in knee and ankle is, if anything, more marked. Right quadriceps still grossly wasted.
X-ray: Right knee and Right Ankle - Bones rarified and signs of early Osteoarthritis.
Recommendations: To continue quadriceps exercises.
Opinion: It is doubtful if the arthritis in right knee and ankle will improve, in fact they may become gradually worse.
P.S. In my previous report "full duty" was, I am afraid an incorrect term. I meant his usual duties, which I understood to be administrative.

Board Report continued.

Present condition: See Surgical Specialist's report with which the Board agrees.
The patient feels fit for ordinary walking but gets a pain in right ankle after a long distance or on running.
Treatment: Muscle exercises, Ipswich and East Suffolk Hospital.
Orders given to the Officer by the President of the Medical Board: To return to duty.

11. 5.50 Pulheems Assessment - see Appendix.

8. 8.50 Medical Progress Report.
Disability: Compound Fracture Tibia and Fibula (Right).
Progress since last Medical Board (11.5.50) See Surgeon's report attached. There is considerable grating present in knee and ankle.
Report by Clinical Officer in Surgery, Colchester Military Hospital.
Examination: Has now no complaints about his leg, and is quite able to perform his administrative duties without symptoms.
On examination: The degree of arthritis is static, and beyond persistent

PH/ET/N

8. 8.50
Cont'd. wasting of quadriceps is satisfactory.
Recommended to remain in Category P3 L3 for the remainder of his service.
Further treatment: Supervision only.
Instructions given to Officer by the President of the Medical Board: To remain at duty.
8. 8.50 Pulheens Assessment - see Appendix.
8. 2.51 Medical Progress Report.
Disability: Compound fracture tibia and fibula.
Progress since last Medical Board: Can walk three miles before the knee and ankle begin to hurt him slightly. See Surgeon's report with which the Board agrees.
Report by Surgical Specialist, Colchester Military Hospital dated 6.2.51.
Examination: Condition is unchanged.
I agree with the Report by Clinical Officer in Surgery (see last report) that the Category should be P.3 L.3 permanently.
(There seems no reason why he should be boarded again in less than 12 months).
The Officer is not in need of further treatment.
Instructions given to Officer by the President of the Medical Board: Remain at Duty.
8. 2.51 Pulheens Assessment - see Appendix.
15. 2.52 Medical Board.
Disability: Fracture Tibia and Fibula.
Date and place of origin: 23rd October 1948 at Felixstowe, United Kingdom.
For history see previous board reports.
The condition has not really changed in the last year. Quadriceps muscles at thigh are still wasted.
There is crepitus felt over patella on movement of knee joint and ankle.
The leg and ankle become painful and a little swollen on walking over about 3 miles, he is definitely impeded if he tries to run.

Findings of the Board.
Employment standard: L.E.
Further treatment: Nil.
Instructions given: Return to Unit in same Category.
15. 2.52 Pulheens Assessment - see Appendix.
14. 5.53 Appellant signed the following questionnaire.
Date of birth: 17th December 1918.
Family history: Father - Cause of Death Tuberculosis. Aged 50.
Mother aged 69 health good. Brothers, 40, 36 and 25 health good. Sister - Cause of Death Meningitis. Aged 26. Sister - Cause of Death Anaemia. Aged 25.
Personal history:
Q. Have you ever suffered from any of the following - Bronchitis, Asthma, Tuberculosis, Fits, Gastric Disorders, Rheumatism, Nervous breakdown, Mental illness.
A. No. Bronchitis - aged 10.
Q. Have you ever had a discharge or running from the ears?
A. Yes.
Q. Has your chest ever been X-rayed?
A. No.
Q. Have you ever been discharged as medically unfit from any branch of H.M. Forces?
A. No.
Q. Have you ever been rejected as medically unfit for any branch of H.M. Forces?
A. No.

12 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

PL/ET/N

14. 5.53
Cont'd.
- A. No.
Q. Are you, or have you been, in receipt of a Disability Pension?
A. No.
Q. Treatment at a Hospital.
A. Appendicitis, Portobello, Dublin, In-patient for 3 weeks, age 9.
Ear Perforation, Nursing Home Worthing, In-patient for 2 weeks, age 10.
Compound fracture leg, East Suffolk and Ipswich, In-patient and Out-patient 23rd October 1948 for 4 weeks and 9 months.
Tonsillitis, Ipswich, In-patient for 2 weeks age 12.
Q. Other Medical Treatment at Home or in a Nursing Home.
A. -
Q. Have you suffered from any diseases or injuries other than those mentioned above?
A. Measles, Mumps, Whooping Cough, Chicken-pox, Fracture left leg age 3.
I certify that I have answered as fully as possible all the questions about my family and personal health, and that the information given is true to the best of my knowledge.
- 6.10.54 Pulheens Assessment - see Appendix.
3.12.56 Pulheens Assessment - see Appendix.
5.12.57 Pulheens Assessment - see Appendix.
1. 9.58 Terminal leave commenced.

PROCEEDINGS ON RETIREMENT

10. 9.58 Appellant's statement:
Q. In what countries/naval stations have you served and for what periods?
A. Norway - 1 month. Iceland - 2 years. France-Belgium-Holland-Germany 3 years.
Q. Give particulars of any previous service in the R.N., Army or R.A.F. and state whether you received a disability pension in respect of such service.
A. None.
Q. If you are suffering from any diseases, wounds or injuries state what they are, also when and where they first started.
A. Osteoarthritis in right knee and ankle joint due to fracture of tibia and fibula. First started 23rd October 1948 at Felixstowe. Treated at East Suffolk and Ipswich Hospital and Colchester Military. From 23rd October 1948 to 17th November 1948 as In-patient and Out-patient for nearly 9 months.
Q. Did you suffer from any disability mentioned above or anything like it before joining the Forces?
A. No.
Q. Has your chest ever been X-rayed?
A. No.
Q. Have you suffered from any diseases or injuries other than those mentioned above? If so give particulars.
A. No.
I certify that I have answered as fully as possible all the questions about my Service and personal history and that the information given is true to the best of my knowledge.

Signed:

Medical Examiner's Summary of important points above.

Fracture right tibia and fibula October 1948. Site of fracture painless, but still has pain in right ankle and right knee after exertion. Right ankle occasionally swells.

CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS 13

PH/ET/M

Medical Report.

Eyes: Visual acuity without glasses: Right 6/5; Left 6/5. Diseases none.
 Ears, Nose and Throat: Right hears forced whisper at 10ft. Left hears forced whisper at 10 ft. Both ears hears forced whisper at 16 ft. Both ears hears conversational voice at 20 ft.
 Diseases nil abnormal detected. Tympanic membranes normal and intact.
 Upper limbs and locomotor system: Upper limbs nil abnormal detected.
 Locomotion: Site of fracture right leg - satisfactory. Wasting of right quadriceps. Crepitus over patella on movement of right knee. No swelling of right knee or ankle. Slight loss of power of right leg.
 Physical capacity: Identification (additional scars etc., since enlistment): Scar lower right leg.
 Height 72½". Weight 151 lbs.
 Urine: Appearance clear. Albumen nil. Sugar nil. Specific gravity -. Physique average.
 Genito-urinary and perinaeum nil abnormal detected.
 Skin clear. Endocrine conditions nil abnormal detected.
 Cardiovascular system: Heart sounds normal. Pulse Rate 72. Blood Pressure 140/80. Respiratory system: No murmur. Chest clear. Chest measurements: Full expiration 36". Range of expansion 2".
 Central nervous system nil abnormal detected.
 Abdomen: Hernial orifice clear. No masses felt.
 Any abnormalities or conditions not already noted affecting physical capacity nil.
 Mental capacity and emotional stability: Normal.

10. 9.58 Pulheems Assessment - see Appendix.

Retired with effect from 28.9.58.

EVIDENCE IN CONNECTION WITH CLAIM (WHILST ON TERMINAL LEAVE)

10. 9.58 The following replies were given by the Appellant on a form signed by him when applying for Disability Retired Pay.

Q. What is the nature of the wound, injury or disease for which you claim?
 A. Osteo-Arthritis in right knee and ankle due to injury below.

Q. If a wound or injury, where and when did it occur?
 A. 28th October 1948 Felixstowe.

Q. If an injury, give a brief account of the accident.
 A. Whilst carrying out authorized recreational training, I sustained a compound fracture of the tibia and fibula of my right leg.

Q. If a disease, when and where did you first begin to suffer from it?
 A. None.

Q. Do you claim that your disability is attributable to your service in the Forces after the 2nd September 1939.
 A. Yes.

Q. If not, do you claim that it was aggravated by your service in the Forces after the 2nd September 1939, and remains aggravated thereby?
 A. No.

Q. Give an account of the conditions of your service which you consider caused or aggravated the disability in respect of which you have made your claim.
 A. Carrying out recreational training whereby the above named compound fracture was sustained. Owing to length of healing time, osteo-arthritis set up in knee and ankle joint.

Q. Give the full name and address of your present doctor (private or National Health Service).
 A. Medical Officer, War Office Main Building, Whitehall.

Q. Give particulars of any medical treatment you have obtained (1) Doctors. (2) (a) Hospitals before your service (b) during your service and (c) since your service.

14 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

Fr/ET/M

10. 9.58
Cont'd.
- A. (1) Doctors - None. (2) (a) - (b) East Suffolk and Ipswich for Accident (see above) from 23rd October 1948 (In-patient) to 17th November 1948, and Out-patient for nearly 9 months. Colchester Military for treatment for above accident, dates unknown.
(c) Nil.

- 20.10.58
- Ministry Medical Board.
Appellant's statement:
- Q. What is the injury, ailment, or disease from which you claim to be disabled?
A. Osteo-arthritis of right knee and ankle.
Q. What are the symptoms?
A. Pain in right knee and ankle after walking or exertion. Can walk about 3 miles at his own pace. Cannot run.
Q. When did you first notice these symptoms?
A. 1948.
Q. Did you suffer from the condition or any similar condition before joining the Forces?
A. No.
Q. What are the particular conditions during your service which you consider caused or aggravated the disability?
A. Playing an organised game of Rugby Football in October 1948, which was part of the recreational training.
Q. Give particulars of employment, sick absences and any medical treatment since your discharge from the Forces.
A. Released 28.9.58. Employment: Civil Servant from 1.10.58.
Treatment: None since release. Panel Doctor Dr. Elder, Little Hadham, Hants.
- The above statement has been read over to me; I agree to it and have nothing to add.

Signed:

Finding of Board.

Clinical examination:
Declared age 39. Height 6' 2" (with boots). Weight 11st. 3½lbs (indoor clothes).
Urine - none.
Physical examination: General condition satisfactory. Tall, spare build. Part upper denture. Tongue clean. Pharynx normal. Normal demeanour.
Heart and Lungs: nil abnormal detected.
Abdomen: Scar of appendectomy right paramedian featureless.
Gait: No limp. Can tip-toe and squat fully.
Right leg: Small round depressed scar on medial aspect at junction of middle and lower third - slight irregularity of tibia at this point.
General alignment is good.
Movements: Ankle full sub-taloid and mid-tarsal full. No crepitus detected.
Knee: Extension full. Flexion just short of full. No abnormal mobility.
Fine crepitus felt under the patella.
Wasting: calf less than ½". Thigh 1".
Left leg nil abnormal detected.

Board deferred.

Undated

X-ray Report.

Right knee and right ankle and left knee - ankle for comparison.
There are some osteophytic changes present affecting the right ankle joint which are consistent with post traumatic lesion. The anterior joint aspect of the tibia is very irregular and has united with osteophytic formation. There are some changes of an early arthritic nature in the right knee. I cannot see any definite changes in either of the left knee or left ankle. Films dated 29.10.58 available.

CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS 15

Ph/DT/W

4. 11. 58 Board report completed.
X-ray Report noted.
Diagnosis: Osteo-arthritis right knee and ankle, following fracture of right tibia and fibula. X-ray shows osteo-arthritic changes in these joints. Specify in what way the disablement interferes with the claimant's exercise of function and mode of life: Pain in right knee and ankle is troublesome. Can walk well at own pace but cannot run.

20. 1. 59 Claim rejected in respect of Injury to Right Leg with Osteo-Arthritis Knee and Ankle.

10. 3. 59 Entitlement Appeal lodged.

EVIDENCE IN CONNECTION WITH ENTITLEMENT APPEAL

10. 3. 59 Statement by Appellant.
Basis of Appeal.
State the disability in respect of which you appeal: Osteo-Arthritis in right ankle and knee.
State whether you claim that the disability is attributable to your service since 2nd September 1939 - Attributable.
Are there any facts or arguments upon which you particularly rely in support of your claim and which you think may not have been fully considered by the Ministry?
(1) During official services recreational training, my right leg suffered a compound fracture.
(2) Owing to the time taken to heal, osteo-arthritis developed in my right knee and ankle joints. This has restricted radically my ability to move freely.
(3) A court of enquiry convened following the injury found that I was "on duty" and that I was compelled to carry out recreational training.
(4) If I had not been compelled to carry out recreational training, this injury and subsequent after effects would not have arisen.
(5) It is therefore considered that my disability is in direct consequence of and attributable to my service since 2nd September 1939.

Extract from National Insurance Records dated 23. 2. 59.
Periods of certified incapacity since 5. 7. 48
From To Nature of Incapacity
31. 1. 59 5. 2. 59 Sinusitis

16 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

D/FE

OPINION OF MEDICAL SERVICES MINISTRY OF PENSIONS AND NATIONAL INSURANCE (WAR PENSIONS)

1. Major [redacted] who was serving on the 1st September, 1939, continued to serve until the 28th September, 1958, when he retired from the service. He now appeals against the decision of the Ministry that his disability, injury to right leg with osteo-arthritis knee and ankle is not attributable to and was not aggravated by his service after the 2nd September, 1939.
2. Major [redacted] was injured on the 23rd October, 1948, when he sustained a compound fracture of the lower third right tibia and fibula. The incident in which the injury occurred is not accepted as having any connection with service and the reasons for this are set out elsewhere. Beyond consideration of the nature of the injury sustained, no medical question enters into this but we are to consider if there was any aggravation of the injury or its sequela by Major [redacted] subsequent service.
3. According to the service records Major [redacted] was playing in a Rugby Football match when the injury was sustained. He was immediately taken to the East Suffolk and Ipswich Hospital where after wound toilet the fracture was reduced and the leg was immobilised in a plaster cast. Major [redacted] was discharged to sick leave in mid November, 1948, and he continued to attend the hospital as an out-patient.
4. In April, 1949, the long leg plaster was replaced by a knee length plaster with walking iron and a medical board considered that he would be able to walk with a stick and to be fit to resume his duties as a Territorial Army adjutant, in a sedentary role at first. He was accordingly placed in an appropriate medical category and his fitness was subsequently reviewed periodically by medical boards. He also remained under hospital supervision.
5. During one medical board (in February, 1950) it was noted that Major [redacted] said that he could walk three miles without ache or pain and that he had discarded his stick. The board found definite grating in the right knee and right ankle and on further examination in May, 1950, X-ray examination showed rarefaction of the bones and signs of osteo-arthritis. Major [redacted] remained fit for duty and in the following August a Clinical Officer in Surgery, Colchester Military Hospital reported that he had no complaints about his leg and was quite able to perform his administrative duties without symptoms. The degree of arthritis was described as static and beyond persistent wasting of the quadriceps was satisfactory. Major [redacted] then only required supervision and it was advised that he should remain in Category P.3 - L.3 for the remainder of his service.
6. The right leg was substantially unchanged at further examinations in February, 1951, and February, 1952, and Major [redacted] completed his service with no further significant reference to the disability. He was medically examined in September, 1958, in connection with the retirement proceedings when the site of the fracture was painless, but he still had pain in the right ankle and right knee after exertion and the right ankle swelled occasionally. The wasting of the right quadriceps was referred to and there was also slight loss of power of the right leg, crepitus over the patella also being noted on movement of the right knee.
7. After his service ended Major [redacted] was also examined by a Ministry medical board. X-ray examination then showed osteophytic changes affecting the right ankle joint consistent with a post traumatic lesion. The anterior joint aspect of the tibia was irregular with osteophytic formation and there were some changes of an early osteo-arthritic nature in the right knee.

D/PB

8. Osteo-arthritis is a world-wide ailment affecting not only mankind but also vertebrate animals, and it occurs about equally in both sexes. Numerous theories have been advanced to explain the disease with little or no convincing evidence in support on critical analysis. It is, however, known that injuries to or in the neighbourhood of joints may initiate an osteo-arthritic process in, and limited to, the joint or joints directly affected by the injury. These cases can usually be differentiated from those due primarily to degenerative changes not only by the fact that they are most commonly unilateral and localised, but also because the osteo-arthritic changes in the affected joint or joints can frequently be seen to be related to faulty apposition of the articular surfaces which has resulted from the injury and is evidence of it.

9. It is clear from the history and the X-ray evidence in this case that the osteo-arthritis in the right knee and ankle is a direct result of the football injury. After careful perusal of all the records we consider that the degree of osteo-arthritis now present is wholly commensurate with the effects of that injury uninfluenced by Major _____ subsequent service.

10. In this connection the evidence shows that following his injury Major _____ was immediately admitted to hospital where the treatment given was appropriate and in accordance with current practice. His after care both at the hospital and by the service authorities was also satisfactory. His condition was frequently reviewed and his medical Category was adjusted to ensure that he was not exposed to the more arduous forms of service. For the whole period of his subsequent service he was employed in sedentary administrative duties suitable to his limitations. That he developed early signs of osteo-arthritis changes, therefore, was not the result of any aggravation by his subsequent service but was because of the nature of the fracture itself. This effect would have been precisely the same had Major _____ been discharged from the service immediately on sustaining his injury.

11. Accordingly nothing ascribable to service after the accident occurred can be regarded as having adversely affected the disability.

Date: 12th May, 1959.

Signed:
 Medical Officer authorised to sign for
 and on behalf of Chief Medical Officer.

MINISTRY'S REASONS FOR MAINTAINING REJECTION

1. When serving as adjutant to a Coast Regiment R.A. in October, 1948, Major _____ took part in a Rugby Football match during which he was tackled by an opposing player and fell suffering a compound fracture of the lower third right tibia and fibula. A Court of Inquiry into the cause of the injury was subsequently held and from the evidence then given it appears that at the commencement of the football season Major _____ had sought and obtained his Commanding Officer's permission to play rugby for the Felixstowe Rugby Football Club - a civilian football organisation. It was while representing that club in a match against the Colchester Garrison that Major _____ sustained his injury.

2. Major _____ has explained that he was "compelled to carry out recreational training" and that the Court of Inquiry found that he was "on duty" at the time of the accident. He also says that had he not been compelled to carry out recreational training the injury and its subsequent after effects would not have arisen.

18 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

D/73

3. It is agreed that, as is shown by the statement by the Officer Commanding the Field Regiment (R.A.) concerned, Major [redacted] was given permission to play Rugby Football for the civilian team and that following the holding of a Court of Inquiry the opinion was expressed by the District Commander that Major [redacted] was on duty. It falls to be considered, therefore, whether his participation in these games and particularly the one now under consideration constituted a service compulsion in which case the injury would be due to service. The expressed opinion that at the time of his injury Major [redacted] was "on duty", does not bring his football activities within the realm of duty and their consequences as due to service, if in fact he was at the time pursuing a course of action which although not contrary to the interests of the service was nevertheless one dictated primarily by his own personal inclination.

4. So far as the general considerations of this point are concerned, the Minister must point out that the words "due to service" and "attributable to service" do not embrace all acts performed and conditions and events undergone in the course of service irrespective of any special or general obligations peculiar to service as compared with civil life to perform or undergo them; whether a particular event is due to service is a question of fact to be determined in the light of the evidence (*HORSFALL v MINISTRY OF PENSIONS* - Reports of Selected War Pensions Appeals, Volume 1, page 7).

5. In *RIDLEY J. K. v MINISTRY OF PENSIONS* - Reports of Selected War Pensions Appeals, Volume 1, page 675, DENNING J. as he then was, stated "In my judgement where an accident or misadventure is one which occurs in a man's own personal sphere it is not attributable to service". In *RICHARDS v MINISTRY OF PENSIONS AND NATIONAL INSURANCE* - Reports of Selected War Pensions Appeals, Volume 5, page 631, ORMEROD J. held that the test to be applied in order to determine whether an accident which caused disablement is due to service or whether it is within the appellants personal sphere is whether on the whole of the facts the appellant was engaged on some personal enterprise unconnected with any duty or compulsion of service. The incident of which the accident forms part cannot be divided up into small compartments so as to dissociate the occurrence which gives rise to his disablement from other occurrences which form part of the same incident.

6. In the present case the Minister is unable to agree that the fact that Major [redacted] sought and obtained permission to play football for a civilian club as a form of recreational exercise can be held to constitute an implied obligation on the service authorities, nor did it constitute any authority to play or to convert Major [redacted] activities in this direction into a requirement or compulsion of service. Indeed the most that can be read into the granting of such permission is that when required Major Goodbody had permission to be absent from his normal duties for this purpose. Publication in Part 1 Orders of the fact that he would play in that civilian team on a particular day was clearly for information only and did not indicate that he was ordered or otherwise expected by the service authorities to take part in that game. Indeed the selection of those to represent the civilian team was beyond the control of the service authority. That the relevant game was against a service team was fortuitous and has no bearing on the question at issue.

7. That Major [redacted] elected to pursue his recreational training activities in the form of Rugby Football indicates his interest in that sport but this and his decision to play that game for a civilian team was entirely a question of his own personal choice freely determined, and was not instigated by the service authorities. Thus the injury he sustained did not result from any service compulsion. In other words the activity in which he was engaged was in no way determined by any special or general obligations

D/PE

peculiar to service but was solely referable to the exercise of his personal choice. It is the opinion of the Minister, therefore, that the injury to the right leg occurred within Major personal sphere and that service played no effective part in its causation.

8. Medical Services have advised that the treatment Major received during service was satisfactory and in accord with current practice and that there was nothing in his subsequent service which could be held to have worsened the disability or to have accentuated the development of osteo-arthritis in the right leg.

9. Accordingly on these grounds the Minister considers that it is clear that Major disability injury right leg with osteo-arthritis knee and ankle is neither attributable to nor aggravated by service.

The Tribunal is asked to decide -

- (a) whether the Appellant's disability injury right leg with osteo-arthritis knee and ankle, is attributable to service; and, if not,
- (b) whether it existed before or arose during service and has been and remains aggravated thereby.

20 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

APPENDIX SHOWING SERVICE MEDICAL ASSESSMENTS OF PHYSICAL AND MENTAL CAPACITY. (PULHEEMS)

Pt./Dt./Date

6. 1.49

Year of Birth	P	U	L	H	E		M	S
					1	1		
	0	2	0	1			2	2
Ht.	P COMPOUND FRACTURE RIGHT TIBIA AND FIBULA R 3/12.							
	U -							
C.P.	L See P above							
Wt.	5 -							

Date

22. 4.49

Year of Birth	P	U	L	H	E		M	S
					1	1		
	7R	2	7	1			2	2
Ht.	P COMPOUND FRACTURE RIGHT TIBIA AND FIBULA. REVIEW 3 MONTHS.							
	U							
C.P.	L See P above.							
Wt.	5							

Date

22. 7.49

Year of Birth	P	U	L	H	E		M	S
					1	1		
	7R	2	7	1			2	2
Ht.	P COMPOUND FRACTURE RIGHT TIBIA AND FIBULA - EFFECTS OF							
	U							
C.P.	L See P above. Review 3 months.							
Wt.	5							

Note :—The purpose of the Pulheems system is to assess the functional capacity in relation to certain qualities. These qualities are assessed under the seven letter headings PULHEEMS, i.e. :—

- P. Physical Capacity for muscular effort assessed on body build.
- U. Upper Limbs, i.e., ability to perform muscular work.
- L. Locomotion, i.e., ability to march, etc.
- H. Hearing acuity
- EE. Eyesight (visual acuity)
- M. Mental Capacity
- S. Stability (emotional)

The assessed degree of each quality will be found in the space under its appropriate letter. The degrees refer to functional ability :—

- Degrees 1 and 4 functional efficiency above the average
 - Degrees 2 and 5 average functional efficiency
 - Degrees 3, 6 and 7 diminishing functional efficiency
 - Degree 8 disability of an advanced degree precluding service employment.
- In general the degrees of P.U.L.M. and S. are to be interpreted as follows :—
- Degrees 1 and 2 Full combatant service in any part of the world.
 - Degree 3 Restricted service in any part of the world.
 - Degrees 4 and 5 Full combatant service in temperate climates.
 - Degree 6 Restricted service in temperate climates.
 - Degree 7 Service in the United Kingdom.
 - Degree 8 Permanently unfit for service.

As regards eyesight, EE is the assessment of visual acuity only, the first E referring to the right eye and the second E to the left eye. The unaided visual acuity of each eye is found in the upper half of each box and the corrected visual acuity of each eye, if known, in the lower half.

The further spaces are for the year of birth, height in inches, colour perception and weight in pounds and also for notes where necessary on the qualities P.U.L. and S.

CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS 21

APPENDIX SHOWING SERVICE MEDICAL ASSESSMENTS
OF PHYSICAL AND MENTAL CAPACITY. (PULHEEMS)

Pt/ET/N
Date

20. 10. 49

Year of Birth	P	U	L	H	E		M	S
					1	1		
1918	7	2	7	1			2	2
Ht.	P COMPOUND FRACTURE TIBIA AND FIBULA (RIGHT)							
	U							
C.P.	L Review in 3 months.							
Wt.	S							

Date

7. 2. 50

Year of Birth	P	U	L	H	E		M	S
					1	1		
1918	7	2	7	1			2	2
Ht.	P COMPOUND FRACTURE TIBIA AND FIBULA (RIGHT)							
	U							
C.P.	L Review in 3 months.							
Wt.	S							

Date

11. 5. 50

Year of Birth	P	U	L	H	E		M	S
					1	1		
1918	3	2	7	1			2	2
Ht.	P Compound Fracture Tibia and Fibula (right)							
	U							
C.P.	L Review in 3 months.							
Wt.	S							

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- P. Physical Capacity for muscular effort assessed on body build.
- U. Upper Limbs, i.e., ability to perform muscular work.
- L. Locomotion, i.e., ability to march, etc.
- H. Hearing acuity
- EE. Eyesight (visual acuity)
- M. Mental Capacity
- S. Stability (emotional)

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- Degrees 3, 6 and 7 diminishing functional efficiency
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- Degree 3 Restricted service in any part of the world.
- Degrees 4 and 5 Full combatant service in temperate climates.
- Degree 6 Restricted service in temperate climates.
- Degree 7 Service in the United Kingdom.
- Degree 8 Permanently unfit for service.

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The further spaces are for the year of birth, height in inches, colour perception and weight in pounds and also for notes where necessary on the qualities P.U.L. and S.

22 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

APPENDIX SHOWING SERVICE MEDICAL ASSESSMENTS OF PHYSICAL AND MENTAL CAPACITY. (PULHEEMS)

Pb/BT/M

Date

B. 8.50

Year of Birth	P	U	L	H	E		M	S	
					1	1			
1918	3	2	2	1			2	2	L.E.
Ht.	P								
	U								
C.P.	L Compound Fracture Tibia and Fibula (Right).								
Wt.	S. Review 6 months.								

Date

B. 2.51

Year of Birth	P	U	L	H	E		M	S	
					1	1			
1918	3	2	2	1			2	2	L.E.
Ht.	P								
	U								
C.P.	L Compound Fracture Tibia and Fibula (right)								
Wt.	S Review 12 months.								

Date

15. 2.52

Year of Birth	P	U	L	H	E		M	S	
					1	1			
18	3	2	3	1			2	2	L.E.
Ht.	P								
	U								
C.P.	L Fracture Tibia and Fibula Right								
Wt.	S								

Note :—The purpose of the Pulheems system is to assess the functional capacity in relation to certain qualities. These qualities are assessed under the seven letter headings PULHEEMS, i.e. :—

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- U. Upper Limbs, i.e., ability to perform muscular work.
- L. Locomotion, i.e., ability to march, etc.
- H. Hearing acuity
- EE. Eyesight (visual acuity)
- M. Mental Capacity
- S. Stability (emotional)

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 - Degrees 2 and 5 average functional efficiency
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 - Degree 8 disability of an advanced degree precluding service employment.
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The further spaces are for the year of birth, height in inches, colour perception and weight in pounds and also for notes where necessary on the qualities P.U.L. and S.

CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS 23

APPENDIX SHOWING SERVICE MEDICAL ASSESSMENTS
OF PHYSICAL AND MENTAL CAPACITY. (PULHEEMS)

Phy/DT/M
Date

6.10.54

Year of Birth	P	U	L	H	E		M	S
					1	1		
	3	2	3	1			2	2
Ht.	P							
	U							
C.P.	L							
Wt.	S							

L.R.

Date

3.12.56

Year of Birth	P	U	L	H	E		M	S
					1	1		
	3	2	3	1			2	2
Ht.	P							
	U							
C.P.	L							
Wt.	S							

L.R.

Date

5.12.57

Year of Birth	P	U	L	H	E		M	S
					1	1		
	3	2	3	1			2	2
Ht.	P							
	U							
C.P.	L							
Wt.	S							

L.R.

Notes :—The purpose of the Pulheems system is to assess the functional capacity in relation to certain qualities. These qualities are assessed under the seven letter headings PULHEEMS, i.e. :—

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- U. Upper Limbs, i.e., ability to perform muscular work.
- L. Locomotion, i.e., ability to march, etc.
- H. Hearing acuity
- EE. Eyesight (visual acuity)
- M. Mental Capacity
- S. Stability (emotional)

The assessed degree of each quality will be found in the space under its appropriate letter. The degrees refer to functional ability :—

- Degrees 1 and 4 functional efficiency above the average
 - Degrees 2 and 5 average functional efficiency
 - Degrees 3, 6 and 7 diminishing functional efficiency
 - Degree 8 disability of an advanced degree precluding service employment.
- In general the degrees of P,U,L,M. and S. are to be interpreted as follows :—
- Degrees 1 and 2 Full combatant service in any part of the world.
 - Degree 3 Restricted service in any part of the world.
 - Degrees 4 and 5 Full combatant service in temperate climates.
 - Degree 6 Restricted service in temperate climates.
 - Degree 7 Service in the United Kingdom.
 - Degree 8 Permanently unfit for service.

As regards eyesight, EE is the assessment of visual acuity only, the first E referring to the right eye and the second E to the left eye. The unaided visual acuity of each eye is found in the upper half of each box and the corrected visual acuity of each eye, if known, in the lower half.

The further spaces are for the year of birth, height in inches, colour perception and weight in pounds and also for notes where necessary on the qualities P,U,L. and S.

24 CERTAIN REQUIREMENTS BY BOARD OF VETERANS' APPEALS

APPENDIX SHOWING SERVICE MEDICAL ASSESSMENTS OF PHYSICAL AND MENTAL CAPACITY. (PULHEEMS)

Ph/DT/M
Date

10. 9.58

Year of Birth	P	U	L	H	E		M	S
					1	2		
1918	3	2	3	2	1	1	2	2
Ht. 72½"	P Old Fracture Right Tibia and Fibula							
	U							
C.P. 2+	L							
Wt. 151 lbs.	S							

Date

Year of Birth	P	U	L	H	E		M	S
Ht.	P							
	U							
C.P.	L							
Wt.	S							

Date

Year of Birth	P	U	L	H	E		M	S
Ht.	P							
	U							
C.P.	L							
Wt.	S							

Note :—The purpose of the Pulheems system is to assess the functional capacity in relation to certain qualities. These qualities are assessed under the seven letter headings PULHEEMS. I.e. :—

- P. Physical Capacity for muscular effort assessed on body build.
- U. Upper Limbs, i.e., ability to perform muscular work.
- L. Locomotion, i.e., ability to march, etc.
- H. Hearing acuity
- EE. Eyesight (visual acuity)
- M. Mental Capacity
- S. Stability (emotional)

The assessed degree of each quality will be found in the space under its appropriate letter. The degrees refer to functional ability :—

- Degrees 1 and 4 functional efficiency above the average
 - Degrees 2 and 5 average functional efficiency
 - Degrees 3, 6 and 7 diminishing functional efficiency
 - Degree 8 disability of an advanced degree precluding service employment.
- In general the degrees of P,U,L,M. and S. are to be interpreted as follows :—
- Degrees 1 and 2 Full combatant service in any part of the world.
 - Degree 3 Restricted service in any part of the world.
 - Degrees 4 and 5 Full combatant service in temperate climates.
 - Degree 6 Restricted service in temperate climates.
 - Degree 7 Service in the United Kingdom.
 - Degree 8 Permanently unfit for service.

As regards eyesight, EE is the assessment of visual acuity only, the first E referring to the right eye and the second E to the left eye. The unaided visual acuity of each eye is found in the upper half of each box and the corrected visual acuity of each eye, if known, in the lower half.

The further spaces are for the year of birth, height in inches, colour perception and weight in pounds and also for notes where necessary on the qualities P,U,L. and S.

(Decisions referred to are as follows:)

VETERANS' ADMINISTRATION,
BOARD OF VETERANS APPEALS,
April 12, 1960.

TITLE 38, UNITED STATES CODE; WORLD WAR II; SERVICE CONNECTED;
DENIED

QUESTION AT ISSUE

Service connection for dysidrotic eczema.

CONTENTIONS

The veteran contends she was treated for a skin condition while in service, that she has suffered recurrences intermittently since service and, accordingly, her appeal for service connection should be allowed.

OUTLINE OF MATERIAL EVIDENCE

The veteran had active duty from August 1943 through January 1946. Examination for appointment in the Army Nurse Corps and extended active duty reported the skin as normal. Service medical records show treatment for dermatitis, chronic, vesiculo, scaling, fingers of both hands, with duration of 2 years, in September 1945 and for eczematoid dermatitis, acute, of fingers and hands in November 1945. She was admitted to the hospital December 7, 1945, for dermatitis, eczematoid, acute, moderate, at which time treatment included X-ray therapy. She was discharged cured January 14, 1946. Examination for discharge done in October 1945 reported the skin as normal.

She was hospitalized by this Administration in April 1955 for 3 days because of first- and second-degree burns of the face and forearms. With the exception of the burned areas, the skin was reported as normal at this time.

———, M.D., reported he treated her in August and October 1959 and that his diagnosis was dysidrotic eczema.

Statements of the veteran and her husband were received in November 1959. They reported that both being professional nurses they never sought medical or clinic treatment for recurrences of the rash of her hands until recently.

A photostat of a civil service medical examination dated November 21, 1945, does not report presence of any skin condition and the veteran stated she had no physical defects, disease, or disability at that time.

DISCUSSION AND DECISION

Consideration has been given to the service records, all other evidence, and the medical aspects of this case. It is the determination of the Board that any skin disorder treated in service was acute and transitory in nature with recovery during service being shown, and the skin condition reported by Dr. ——— in 1959 is not related to the condition in service and it is not shown that present skin

disease resulted in any way from service performed by the veteran. The Board finds the evidence available does not permit the grant of service connection for dysidrotic eczema and, accordingly, the appeal is denied.

L. E. IMHOFF,
FRED H. CLARK, M.D.,
D. E. SMITH,
Associate Members.

VETERANS' ADMINISTRATION,
BOARD OF VETERANS APPEALS,
April 14, 1960.

TITLE 38, UNITED STATES CODE; KOREAN CONFLICT; SERVICE CON-
NECTED; ALLOWED

Appellant represented by the American Legion.

QUESTION AT ISSUE

Service connection for residuals of injury to the left shoulder.

OUTLINE OF MATERIAL EVIDENCE

The veteran had active service from November 1951 to August 1953. Examinations for call to active duty and release therefrom made no report referable to the left shoulder. A report of the sick record of the U.S.S. *Deuel* (APA-160) shows an entry for April 29, 1952, of the stiff left shoulder. There is a photostat of a light duty slip dated July 28, 1952, due to injury of left shoulder. An official examination was carried out in February 1959 at which time the veteran stated he had pain in his shoulder since service and at times his hand "wouldn't operate." The diagnosis was history of left shoulder injury.

———, M.D., reported in November 1959 that after examining the veteran's left shoulder, including X-rays, while weight bearing, his diagnosis was acromioclavicular separation, old, unhealed.

DISCUSSION AND DECISION

The service medical records show a condition of the left shoulder in 1952. Evidence has also been considered of presently existing acromioclavicular separation. It is the determination of the Board that in view of the evidence and by the resolution of reasonable doubt in favor of the veteran, service connection is established for any condition of the left shoulder now present. Accordingly, the appeal is allowed.

L. E. IMHOFF,
FRED H. CLARK, M.D.,
D. E. SMITH,
Associate Members.

VETERANS' ADMINISTRATION,
BOARD OF VETERANS APPEALS,
January 10, 1960.

In the appeal of: [Deleted.]
In the case of: [Deleted.]
Claim No. [Deleted.]
Docket No. [Deleted.]

THE ISSUE

The Veterans' Administration regional office [deleted] determined that the proceeds of the deceased veteran's policy of national service life insurance are payable to his sister [deleted]. A claim submitted by his brother [deleted] was denied because he was not the designated beneficiary. Notice of the denial was directed to the brother under date of June 2, 1960. The brother appealed from the denial, his appeal being received July 25, 1960.

The brother contends to the effect the veteran changed the beneficiary designation for his insurance to him. [Deleted] has advised that she relies on the evidence of record and does not intend to submit an answer to the appellant's contentions.

THE EVIDENCE

National service life insurance in the amount of \$10,000 was in force when this veteran of World War II service died on September 30, 1959. By form dated April 30, 1952, the veteran had named his mother [deleted] as principal beneficiary for his national service life insurance and his sister [deleted] as contingent beneficiary. The mother predeceased the veteran. A thorough search of the records of this Administration did not disclose a beneficiary designation by the veteran for his insurance after the one dated April 30, 1952.

A field examination was made and the appellant deposed that the veteran filled out forms in the latter part of 1957 or early part of 1958 for the purpose of naming him as beneficiary for his insurance; that he saw the veteran fill out the forms; that the forms were filled out at [deleted]; that the veteran said he would get the form completed and mail it to the Veterans' Administration; and that his sister [deleted] knew he was to receive the veteran's insurance. The veteran's sister [deleted] deposed that in going through the veteran's personal effects they found nothing pertaining to his GI insurance other than a record of premium payments and a copy of the designation of the mother as primary beneficiary and [deleted] as contingent beneficiary; that the veteran never told her he had changed the beneficiary in favor of the appellant or anyone else; and that she feels sure the veteran would have told her if he had done so as he had her handle all his business affairs.

Another sister of the veteran [deleted] has written this Administration a letter in which she sets forth that the veteran said many times after their mother died that he had signed his GI insurance over to the appellant.

The records of this Administration pertaining to the veteran contain a number of communications received from him relative to his national service life insurance.

THE LAW AND REGULATIONS

The insured under a policy of national service life insurance has the right to designate the beneficiary for such insurance and, subject to regulations, at all times has the right to change the beneficiary of such insurance (38 U.S.C., sec. 717).

There is regulatory provision that a change of beneficiary for national service life insurance to be effective must be made by notice in writing, signed by the insured, and forwarded to this Administration and, whenever practicable, on blanks prescribed by the Veterans' Administration (38 C.F.R., sec. 8.47).

DISCUSSION AND EVALUATION

The proceeds of this veteran's policy of national service life insurance are payable in accordance with his last beneficiary designation. A complete search of indicated records of this Administration did not locate a change in beneficiary designation made by the veteran after his form, dated April 30, 1952, designated his mother as principal beneficiary and his sister [deleted] as contingent beneficiary. Accordingly, the insurance proceeds are payable in accordance with the designation of April 30, 1952. As the mother predeceased the veteran, the sister [deleted] is the person to receive the insurance proceeds as designated contingent beneficiary.

The appellant contends that the veteran completed change of beneficiary forms at [deleted]. If such forms had been forwarded by the veteran to this Administration in accordance with the contention, they would have been sent from within the continental limits of the United States during peacetime which is different from the situation where a request for change is made from a foreign country in an area where active warfare is going on. If a request for change had been sent by the veteran as contended, it is reasonable to assume it would have been associated with his records as were the other communications he sent relative to his national service life insurance.

Although technicalities will not be permitted to bar recognition of the insured's intent with reference to disposition of the proceeds of his policy of national service life insurance, it is well established by judicial determinations and by the practices of this Administration that an intent standing alone will not result in a change in the absence of affirmative action on the part of the insured evidencing an exercise of his right to make a change. The minimum requirement is something in writing from the insured. It follows, therefore, if the present record were to be accepted as reflecting a manifest intent on the part of the veteran to change the beneficiary designation for his insurance so that the appellant would be the primary beneficiary, the record would nevertheless fail to show he took any affirmative action to accomplish such a result. In this connection, it is noted the appellant does not contend he saw the forms mailed and if they were completed, they may have been retained by the veteran because he abandoned any intent he may have had to make a change in beneficiary designation. It is also in order to comment that possession of a national service life insurance policy does not control disposition of the proceeds thereof.

FINDINGS OF FACT

1. The appellant submitted his appeal within 60 days of the notice of denial of his claim for insurance benefits.
2. National service life insurance in the amount of \$10,000 was in force when the veteran died.
3. It is not shown the veteran took any affirmative action to change the beneficiary designation for his insurance after the form dated April 30, 1952.
4. The principal beneficiary designated on the form dated April 30 1952, predeceased the insured.

CONCLUSIONS OF LAW

1. There is a timely appeal in this case and the Board has jurisdiction under the provisions of 38 United States Code, section 4004.
2. The veteran did not exercise his right under 38 United States Code, section 717, to change the beneficiary designation for his national service life insurance after the designation of April 30, 1952.
3. The insurance proceeds are payable in accordance with the designation dated April 30, 1952.
4. As the principal beneficiary designated on the form dated April 30, 1952, predeceased the insured, the insurance proceeds are payable to the designated contingent beneficiary [deleted].
5. The appellant is not entitled to payment of the proceeds of the veteran's policy of national service life insurance because he was not the designated beneficiary when the policy matured.

DECISION

The appeal is denied and this decision constitutes final administrative denial of the claim for national service life insurance benefits presented by the appellant.

E. L. ARPIN,
Associate Member.
P. MONCURE,
Associate Member.
W. N. MORELL,
Associate Member.

VETERANS' ADMINISTRATION,
BOARD OF VETERANS' APPEALS,
December 23, 1960.

Reconsideration in the appeal of [deleted].
Claim No. [deleted].
Docket No. [deleted].
Appellant represented by Disabled American Veterans.

THE ISSUE

A decision was entered on July 27, 1960, by this Board, holding that the evidence did not warrant the grant of service connection for the veteran's carcinoma of the stomach, postoperative. The case is now before the Board for reconsideration of that decision at the request of the representative. Reference has been made by the repre-

sentative to the prisoner-of-war experience during service, the subsequent manifestation of gastrointestinal complaints, and the ultimate finding of carcinoma of the stomach. It is contended that these factors, considered under Public Law 361, 77th Congress, with resolution of reasonable doubt in the veteran's favor, would establish entitlement to service connection for the carcinoma.

THE EVIDENCE

The veteran's active service extended from March 1941 to January 1946 and included participation in the Rhineland campaign, with subsequent experience as a prisoner of war of the Germans. The service clinical records do not show a gastrointestinal disability at any time during service, and gastrointestinal disability was neither claimed by the veteran nor reported by the examiner on examination for separation from service. The abdominal wall and viscera were then recorded as normal. The veteran's weight was then reported as 160 pounds (as compared with 166 pounds noted on examination for enlistment in 1941).

On Administration examination, in February 1947, the veteran related that he was nauseated until about 11 o'clock in the mornings and could not eat breakfast. He also furnished information that if he drank two cups of coffee his back would hurt and drinking beer stimulated his kidneys. The digestive system was reported normal and psychoneurosis, anxiety type, was diagnosed. When he appeared informally before the originating agency's rating board the following month, the veteran reiterated his complaint of inability to eat breakfast but testified that he could eat his lunch "fairly well" and could eat dinner "all right." The records show that the veteran participated in Army Reserve activities subsequent to service, including brief periods of active duty in July 1951 and July 1952 for training.

When he was afforded further Administration examination, in April 1952, the veteran related that his appetite was "only fair" and he could not eat breakfast. His weight was recorded as 166 pounds, his state of nutrition was "normal" and the digestive system was reported normal. Mild anxiety reaction was diagnosed, as well as residuals of missile wounds in the left arm and face. During hospitalization from April to June 1958, the findings revealed adenocarcinoma of the stomach for which surgery, including gastric resection, was afforded. Clinical data recorded at hospital admission referred to the veteran's "usual state of good health" until April 1957, when sharp, intermittent epigastric pain developed, unrelated to meals or time of day. The episodes of pain had continued, despite treatment including an "ulcer diet" and he had lost 30 pounds in weight during the prior month. Subsequent hospitalization is of record.

Dr. [deleted], a former medical officer, testified in December 1946 that he treated the veteran (while they were both prisoners of war in November 1944 and later) for "superficial" lacerations which "healed without sequelae" and that the veteran had a Meniere's syndrome in February 1945, manifested by vomiting, dizziness, nystagmus, and tinnitus. "This episode lasted 1 week and spontaneously disappeared." The physician also related at that time that the veteran had complained of nocturia and frequency in prison camp. In his July 1959 statement, Dr. [deleted] referred to the "acute labyrinth-

itis" experienced by the veteran while a prisoner of war. He described the starvation, poor diet, and "vomiting with the labyrinthitis" then experienced as factors which, in his opinion, "may have a bearing" on the later development of the veteran's stomach cancer.

Dr. [deleted] stated that he treated the veteran for "stomach distress" in 1947 when the symptoms (not otherwise identified) were believed due to a postnasal discharge and were treated with antacids and antispasmodics. The symptoms were then relieved for a short period of time. The physician further referred to later recurrence of the symptoms, believed due to "nervous tension" when several X-ray examinations of the stomach were "negative for ulcer"; later on, the veteran had constant pain, unrelieved by (conservative) therapy, and additional X-rays were made which did not "reveal any evidence of any pathology in the stomach." Dr. [deleted] last treated the veteran 6 months prior to his stomach surgery.

The lay testimony of record includes, in addition to that of the veteran, information furnished by [deleted], whose November 1959 affidavit refers to stomach and chest pains of which the veteran complained since 1949. [Deleted], related her knowledge of the veteran's health since 1956.

THE LAW AND REGULATIONS

The law provides that service-connected disability compensation is authorized for "disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury * * * or disease * * * in the active military, naval, or air service * * *" (38 U.S.C., secs. 310 and 331). It is also provided that a malignant tumor, becoming manifest to a degree of 10 percent or more within 1 year from the date of separation from active wartime service "shall be considered to have been incurred in or aggravated by such service * * *" (38 U.S.C., sec. 312). The law also provides that in the case of any veteran "who engaged in combat with the enemy in active service * * * the Administrator shall accept as sufficient proof of service connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran * * *" (38 U.S.C., sec. 354(b) a reenactment of Public Law 361, 77th Cong.). With respect to reconsideration by this Board of its prior decision, the law provides, in pertinent part, that a decision entered by the Board, "shall be the final determination of the Board, except that the Board on its own motion may correct an obvious error in the record * * *" (38 U.S.C., sec. 4003).

DISCUSSION AND EVALUATION

The records furnished by the service department do not show complaints or findings of gastrointestinal disability during service. Dr. [deleted] who was a prisoner of war with the veteran, has furnished information regarding the privations suffered by the veteran during

his prisoner-of-war experience, and the vomiting which was, in part, a manifestation of an acute labyrinthitis of brief duration which subsided spontaneously. The evidence does not otherwise establish the manifestation of an organic stomach disability during service and gastrointestinal defects were neither claimed nor noted on subsequent examination for separation from service.

The veteran complained of morning anorexia and inability to eat breakfast on a number of postservice occasions, and a physician has testified regarding treatment for "stomach distress" on occasions since 1947. The physician, who treated the veteran during a period of about 10 years, apparently did not observe findings substantiative of an organic stomach disability and reported that X-ray examinations did not show any evidence of stomach pathology. Moreover, the digestive system was reported normal on Administration examinations in 1947 and 1952. The nature of the gastrointestinal complaints on those occasions does not suggest the existence at that time of the impaired nutritional function which might be expected in the presence of a symptomatic malignancy of the stomach. In this connection, the veteran's weight at separation from service and when he was examined in 1947 and 1952, was not so different from the weight recorded at induction as to suggest a continuing organic defect of the stomach. Furthermore, the recorded clinical data in 1958, when the veteran was afforded surgery for stomach cancer, described the pertinent symptoms as of 1 year's duration, prior to which time he had experienced his "usual state of good health."

The physician who described dietary privations in the prisoner-of-war camp which, from the standpoint of possibility, could result in permanent stomach disability of an organic nature, did not refer to symptoms or findings showing that such disability did, in fact, result in this case. That the veteran suffered hardships in combat and during his prisoner-of-war experience is demonstrated. Title 38, United States Code, section 354(b), referred to by the veteran's representative and cited in the foregoing, undertakes to recognize a governmental responsibility in such cases by expressly establishing a liberal concept of the evidentiary requirements for the establishment of service connection in those cases. This law does not abrogate the basic adjudicative requirement, however, that the grant of service connection be predicated on evidence showing the fact of service incurrence or aggravation. In other words, the cited provision of law does not substitute a showing of combat service for evidence of service origin or create a "presumption" of service origin for disability when it is shown that the disabled person performed combat service. What it does do is to provide, in effect, that in such cases, the testimony of former service associates and others will be taken at face value, when not inconsistent with other evidence of record, and will not be rebutted by the fact that official records do not show the service incurrence or aggravation of the pertinent disability.

Reference has also been made, in presenting the appeal, to the principle of resolution of reasonable doubt in favor of the veteran. When the issue is service connection for a disability demonstrated after service, reasonable doubt exists if the evidence tending to show the service origin or aggravation is equally balanced with the evidence supporting a contrary conclusion. Reasonable doubt is not created by a remote possibility that disability, demonstrated many years

after service, could have had its inception during service or could have been influenced in its development by circumstances of service. Neither is reasonable doubt established by the fact that the prior duration of disability, found many years after service, is then of unknown or uncertain duration.

FINDINGS OF FACT

The Board finds that the evidence establishes: (1) that the record does not show the existence of any malignant or premalignant disease of the stomach during service; (2) that the initially reported objective medical findings of an organic disease of the stomach were those elicited in 1958, more than 12 years after service; (3) that the "stomach distress" reported as the occasion for medical treatment for a number of years, beginning in 1947, is not shown to have been a manifestation of stomach cancer at that time; (4) that sound medical principles militate strongly against a conclusion that privations and hardships experienced in service, which terminated in 1946, were a causative factor in the production of the veteran's malignant tumor initially demonstrated in 1958, or that the malignancy was manifested to a degree of 10 percent or more within 1 year following separation from such service; (5) that the evidence does not include unexplained symptoms, pertinent undiagnosed findings, unsupported diagnoses, or other questionable or equivocal data requiring clarification, from the purely medical standpoint, material to the issues presented in this appeal.

CONCLUSIONS OF LAW

In view of the foregoing, the Board concludes: (1) that reversible error is not shown in the prior decision entered on July 27, 1960, holding that the evidence does not establish entitlement to service connection for the veteran's carcinoma of the stomach, postoperative; (2) that, accordingly, modification of the prior appellate determination is not warranted; (3) that referral of the evidence to the Chief Medical Director for an advisory opinion in connection with the appeal, as requested by the representative, is not required for a proper adjudicative determination of the issue presented.

DECISION

The July 27, 1960, decision of the Board denying service connection for carcinoma of the stomach, postoperative, is affirmed.

GEORGE SCHATZ, M.D.,
Associate Member.
 J. B. DAVIS,
Associate Member.
 WALTER T. NEVILLE,
Associate Member.
 ROGER S. COHEN, M.D.,
Associate Member.
 L. E. IMHOFF,
Associate Member.
 L. N. RYAN,
Associate Member.