



Australian Government
Commonwealth Superannuation Corporation

Telephone: 1300 033 732

Reference: A2799329

8 October 2020

Mr Phillip Boobyer

Dear Mr Boobyer,

Thank you for your emails regarding the benefits available to you from Commonwealth Superannuation Corporation (CSC).

I appreciate your patience in awaiting my response.

We have thoroughly investigated the matters you have raised regarding your Defence Forces Retirement Benefits (DFRB) scheme and 1922 scheme benefits. Answers to each of your questions are outlined below.

- 1. Do you have a copy of the particular section of legislation that made my civilian employer responsible for my military injury and the section that dealt with how injured National Servicemen were informed of becoming eligible for some sort of benefit? The legislation that made my civilian employer superannuation was responsible for my military injury when did it cease?**

The legislation that may impact you would be the;

- *Superannuation Act 1922 (Superannuation Act)*
- *Defence Forces Retirement Benefits Act 1948 (DFRB Act)*
- *Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act)*

All the legislation that CSC administers is available on our website at <https://www.csc.gov.au/Members/About-CSC/Legislation/>.

Rule 36 of DFRDB Act is specific to your employment scenario at the time of your exit from the Australian Defence Force (ADF) on 10 April 1973. Although you were a member of the DFRB upon your discharge, when the DFRDB Act was introduced, Rule 36 was considered to be effective retrospectively. An excerpt of this rule has been included in Appendix A.

As you were still employed by the Australian Postal Commission and had been since 20 July 1967, your contributions to the 1922 scheme were deferred, whilst serving in the ADF. Subsequently, when you were medically discharged from the ADF, we assessed your entitlement to invalidity benefits from the DFRB and you were deemed Class C.



**Commonwealth
Superannuation
Corporation**

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Rule 36 of the DFRDB Act is non-discretionary, in that CSC has no ability to treat your entitlement to invalidity benefits otherwise (and classify you Class B or A), due to you having been an employee for the purposes of the Superannuation Act. Upon review of your records, you were notified of this requirement following a request to reconsider the invalidity decision, please see enclosed letter dated 7 December 1973.

CSC is not advising that your civilian employer was responsible for the injuries you obtained in the ADF. Rather, due to the above rule we do not have the ability to change your classification to Class A or B for DFRB purposes. The Australian Postal Commission *may* have been able to retire you due to invalidity grounds if they had deemed it appropriate, upon your exit on 5 October 1973. If this had occurred, you would have been entitled to receive invalidity benefits from the 1922 scheme.

2. How were injured soldiers informed their civilian employer superannuation was responsible for military injuries?

CSC would be unable to comment on how your previous employer informed its employees, of the ability to claim their superannuation. Generally, an employer and employee would discuss whether invalidity retirement would be considered. As an example, I have attached a fact sheet outlining the current process for a member of the Commonwealth Superannuation Scheme (CSS), which is the superannuation fund that came directly after the 1922 scheme.

3. What was this superannuation benefit called?

A member of the 1922 scheme, who is retired on the grounds of invalidity or of physical or mental incapacity to perform his duties, would be considered to be invalidity retired.

4. What did this benefit consist of in 1973?

An excerpt of the Superannuation Act has been enclosed in Appendix B and Appendix C, which outlines the benefits payable from the 1922 scheme upon invalidity retirement.

5. What was the criteria to become eligible for this?

An employer would retire an employee under invalidity grounds because they weren't able to work due to their ill health, either a physical or mental incapacity.

6. What could I have expected in remuneration in 1973 if I got this benefit? Can I have the details of what this benefit was called, what it consisted of and what I would have expected if I had gotten this benefit in 1973. What conditions were placed on this benefit in 1973?

We cannot estimate what type of benefit you would have been entitled to, had you been invalidity retired due to its hypothetical nature. Please refer to the answer provided to question 4.

7. What was in the determination sent to CSC by the Army as a result of my 1973 medical classification change?

Please see attached application received on 7 May 1973 from Department of Defence, following your discharge, as well as the Advice letter sent to you regarding the Delegates Decision on 29 May 1973.

8. I found out about this benefit by sheer accident, what about all the other injured National Servicemen who also paid for this benefit and will never know anything about it?

As stated, an invalidity retirement benefit is available if your employer retires you under these grounds, due to this, CSC relies on an employer to have these discussions with their employees. Although comprehensive training is provided by CSC to employers currently regarding invalidity retirement, we cannot assume the same level of training was provided in 1973. You may wish to contact your previous employer directly, to discuss the processes or functions from 1973 regarding invalidity retirement.

9. Does CSC also run DFRB??

Yes, CSC currently administers the following schemes;

- Commonwealth Superannuation Scheme (CSS)
- Military Superannuation and Benefits Scheme (MilitarySuper)
- Public Sector Superannuation Scheme (PSS)
- Public Sector Superannuation Accumulation Plan (PSSap)
- 1922 scheme
- DFRB Scheme
- Defence Force Retirement and Death Benefits Scheme (DFRDB Scheme)
- Australian Defence Force Superannuation (ADF Super)
- Australian Defence Force Cover (ADF Cover)
- Papua New Guinea Scheme (PNG Scheme)
- DFSPB

In addition to the above questions, we have investigated the communication you have previously been provided in regards to your eligibility to apply for retrospective invalidity benefits. Regrettably, we have received a final confirmation that retrospective invalidity is not an option available to you. There are no provisions in the 1922 scheme, which would allow this type of request to be made by members or former members of the scheme, such as yourself.

I understand this is not the outcome you had hoped for, but due to historical nature and legislative requirements surrounding your enquiries, we have only recently received this final confirmation.

On behalf of CSC, I would like to thank you for your service, we do appreciate that there are many sacrifices that our ADF personnel make. I would also like to sincerely apologise, for the frustration and undue stress caused throughout this process. CSC is committed to providing high quality customer service and it is extremely regrettable that we have not fulfilled your expectations on these occasions.

Please do not hesitate to call 1300 033 732 or email customercare@csc.gov.au, if I can be of further assistance in this matter or you have any queries.

Yours sincerely

Rachael Knight
Customer Care Specialist
Customer Contact Centre | Commonwealth Superannuation Corporation

Any financial product advice in this letter is general advice only and has been prepared without taking account of your personal objectives, financial situation or needs. Before acting on any such general advice, you should consider the appropriateness of the advice, having regard to your own objectives, financial situation and needs. You may wish to consult a licensed financial advisor. You should obtain a copy of the Product Disclosure Statement and consider its contents before making any decision regarding your super.

Appendix A

36 Invalidation benefits payable to certain contributors under Superannuation Act or the *Superannuation Act 1990*

- (1) This section applies to a member of the scheme:
 - (a) who becomes entitled to invalidity benefit; and
 - (b) who, at the time he becomes so entitled:
 - (i) is an eligible employee for the purposes of the Superannuation Act whose liability to make contributions to CSC is deferred by virtue of section 54 of the Superannuation Act; or
 - (ii) is a person whose entitlement to pension under that Act is suspended by force of subsection 117(1) of that Act; or
 - (iii) is a member of the Superannuation (1990) Scheme whose liability to make contributions under that scheme has been deferred under Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme.
- (2) The invalidity benefit to which a member of the scheme to whom this section applies is entitled is benefit under subsection 32(2) as if he were a member of the scheme classified as Class C under section 30.

Appendix B

45 Retirement through invalidity—amount of pension

- (1) Where a contributor is retired on the ground of invalidity or physical or mental incapacity to perform his duties, he shall:
 - (a) if the invalidity or incapacity is not due to wilful action on his part for the purpose of obtaining pension—be entitled to the full pension for which he was contributing at the time of his retirement and to the pension (if any) that would have been payable to him in respect of non-contributory units of pension if he had attained the age of sixty-five years at that time; and
 - (b) if the invalidity or incapacity is due to wilful action on his part for the purpose of obtaining pension—be entitled to a refund of the contributions paid by him to the Fund.

Appendix C

Division 2—Grant of pensions and benefits

42 Value of units of pension

- (1) Subject to subsection (2), a unit of pension is \$91 per annum.
- (2) A non-contributory unit of pension is \$65 per annum.

43 Amount of pension on retirement in respect of units other than non-contributory units

- (1) Subject to this Act, a contributor shall, upon retirement, be entitled to receive a pension according to the number of units for which he was contributing at the time of his retirement:

Provided that any contributor:

- (a) who has attained the age of sixty years and elects, or is called upon to retire before attaining the maximum age for retirement; or
- (b) the age for whose retirement is fixed by law at an earlier age than sixty-five years, who retires on attaining the age so fixed;

shall as from the date of his retirement be entitled, in respect of units for which he was contributing at the time of his retirement, to a pension which is the actuarial equivalent of the contributions made or to be made by him and of the share of pension payable by the Commonwealth and accruing to him under this Act.

- (2) This section does not apply to a contributor who retires on or after 1 July 1976.

43A Additional pension in respect of non-contributory units

- (1) Where one or more non-contributory units of pension are applicable in relation to a contributor at the time of his retirement, the contributor is, subject to this Act, upon retirement, entitled to receive, in addition to a pension under section 43:
 - (a) if he retires on or after attaining the age of sixty-five years—a pension according to the number of non-contributory units of pension that were applicable in relation to him at the time of his retirement; or
 - (b) if he retires before attaining that age—a pension equal to five-sevenths of the pension that he would, upon retirement, have been entitled to receive in respect of the non-contributory units of pension that were applicable in relation to him at the time of his retirement if he had been a contributor for those units from the respective dates as from which those units became applicable in relation to him as non-contributory units and he had contributed at the appropriate rates based on a retiring age of sixty-five years.

- (2) This section does not apply to a contributor who retires on or after 1 July 1976.



All correspondence
should be addressed
to The Secretary

DEFENCE FORCE RETIREMENT
AND DEATH BENEFITS AUTHORITY

P.O. Box 4015, Canberra, A.C.T. 2600

Telegrams: 'DFRB'
Telex: AA 62052
Telephone: 73 0413

Please quote: A2799329

7 December 1973

Dear Sir,

I refer to your letter of 9 November 1973, indicating that you wish the Authority to reconsider the decision to classify you Class "C" for invalidity benefit following your discharge on medical grounds from the Military Forces on 10 April 1973.

Although Section 100 of the Defence Force Retirement and Death Benefits Act provides for the Authority to reconsider a decision where a person is dissatisfied with that decision, such an avenue is not open to you as the legislation is quite specific in that Section 36 of the Act is applicable in your case. This section reads as follows:-

36 -(1) This section applies to a member of the Scheme -

- (a) who becomes entitled to invalidity benefit; and
- (b) who, at the time he becomes so entitled -

- (i) is an employee for the purposes of the Superannuation Act whose liability to make contributions to the Superannuation Fund is deferred by virtue of Section 35A of the Superannuation Act; or

- (ii) -----

- (2) The invalidity benefit to which a member of the Scheme to whom this Section applies is entitled to benefit under sub-Section 32(2) as if he were a member of the Scheme classified as Class "C" under Section 30".

At the time of your discharge your deferred contributions to the Superannuation Fund amounted to \$112.96 and this amount was deducted from your lump sum entitlement following your classification as Class "C" in accordance with the terms of Section 36 quoted above. You were informed accordingly on 29 May 1973.

Yours faithfully,

B.A. LORENZO
Secretary

Mr. P. Boobyer,

JS:ST

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A2799329

29 May 1973

Dear Sir,

The Board has determined your percentage of incapacity in relation to civil employment and has classified you as Class "C" invalidity which entitles you to a refund of contributions of \$204.29 plus a gratuity of \$100.00.

Under the provisions of Section 35A of the Superannuation Act and Section 60A of the Defence Forces Retirement Benefits Act your contributions to the Superannuation Fund were deferred from the date on which you became a contributor to the Defence Forces Retirement Benefits Fund.

The Acts also provide that the contributions so deferred ²by transferred from the Defence Forces Retirement Benefits Fund to the Superannuation Fund on termination of service in the Defence Forces.

In your case the amount of Superannuation contributions deferred was \$112.96 and this amount has been deducted from the benefits payable to you under the Defence Forces Retirement Benefits Act and a cheque for \$191.33 will be forwarded to you in the next few days.

No tax deduction has been made from the amount of the cheque. In accordance with Section 26(d) of the Income Tax Assessment Act, you should include 5 per centum of the gratuity in your income tax return for the current taxation year.

Yours faithfully,

(R. J. PERRIMAN)
Secretary

pen 29/5

Mr P. Boobyer,

Payment (Special Rate of Disability Per Submission 19 - Attachment 1



Australian Government
Department of Defence
Defence Personnel Executive

File: 2005/1649921/1
Quote in Reply: DGPP&EC 911(DE)/2005(AE1)

Mr P.K. Boobyer

Dear Mr Boobyer,

DFRDB ACT 1973: REQUEST FOR RECONSIDERATION OF INVALIDITY CONSIDERATIONS: FORMER ARMY MEMBER, 2799329 PRIVATE (RECRUIT) PHILLIP

Thank you for your undated and unsigned correspondence seeking an investigation by the Chief of Army into the circumstances of your discharge from the Australian Army on 10 April 1973.

As you were contributing to the Defence Force Retirement and Death Benefits [DFRDB] superannuation scheme there may have been a potential for the Chief of Army to notify the DFRDB Authority to consider treating you as if you had been discharged medically unfit from the Army in order to extend the provisions of DFRDB invalidity assessment to your circumstances. The correct provision is recorded in section 37 of the DFRDB Act 1973.

However, contained in the documentation you provided to this office, I note that you were in fact discharged medically unfit from the Army on 10 April 1973. Further, I note from the Ministerial representation contained in your documentation that the DFRDB Authority had, in fact, already considered your medical separation in terms of the DFRDB superannuation invalidity legislation and had granted you a Class C assessment. Further, it would appear that on 9 November 1973 you requested the DFRDB Authority to reconsider the granting of a Class C invalidity assessment. Based upon the letter from the DFRDB Authority dated 7 December 1971, contained in the material you forwarded to this office, it would appear that the DFRDB Authority carried out a reconsideration and advised you of the following outcome:

"...Although Section 100 of the Defence Force Retirement and Death Benefits Act provides for the Authority to reconsider a decision where a person is dissatisfied with that decision, such an avenue is not open to you as the legislation is quite specific in that Section 36 of the Act is applicable in your case..."

However, I have forwarded your request to the DFRDB Authority. It is possible that the Authority may provide you with further instructions; or you may care to correspond directly with Commonwealth Superannuation Administration over this matter. The address for future correspondence is:

**Commonwealth Superannuation Administration
PO Box 22
BELCONNEN ACT 2616
Attention: Manager Invalidity Assessments
Facsimile: 02 6272 9904**