[2014] AATA 48

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| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number | 2012/2170 |
| Re |  |
|  | APPLICANT |
| And |  |
|  | RESPONDENT |

# Decision

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| Tribunal | **Ms N Bell, Senior Member** |
| Date | **31 January 2014** |
| Place | **Sydney** |

The decision under review is affirmed.

..........[Sgd]..............................................................

**Ms N Bell, Senior Member**

# Catchwords

VETERANS ENTITLEMENTS – malignant neoplasm of the colorectum – whether reasonable hypothesis that Veteran's condition related to service – standard of reasonable satisfaction - decision under review affirmed

# Legislation

Veterans’ Entitlements Act 1986 (Cth) s 120

# Cases

East v Repatriation Commission (1987) 16 FCR 517, (1987) 12 ALD389

Kattenberg v Repatriation Commission (2002) 73 ALD 365

Repatriation Commission v Deledio (1998) 83 FCR 82

# Secondary Materials

Repatriation Medical Authority, Statement of Principles No 37 of 2013

Repatriation Medical Authority, Statement of Principles No 39 of 2011

Repatriation Medical Authority, Statement of Principles No 1 of 2004

I Boileau, J Assad et al, ‘Alcohol Promotes Dopamine Release in Human Nucleus Accumbens’ in Synapse (2003) 49, 226-231.

V Vengeliene et al, ‘Neuropharmacology of Alcohol Addiction’, British Journal of Pharmacology (2008) 154, 299-315.

J Nordqvist, 'Just the Taste of Alcohol Triggers Dopamine Release', Medical News Today, 16 April 2013.

# REASONS FOR DECISION

**Ms N Bell, Senior Member**

**31 January 2014**

1. Neil Allison served in the Royal Australian Air Force from 25 September 1943 to 20 December 1945. There is no dispute that the whole of his service was operational service.
2. Mr Allison died on 25 August 2010. Before his death, Mr Allison made a claim for pension in respect of the condition of malignant neoplasm of the colorectum. This claim was refused in July 2010. Mrs Allison, as her late husband’s legal representative, sought a review of the decision by the Veterans’ Review Board in January 2011. The decision was affirmed by the Board.

# issues

1. In considering the relationship to his operational service of Mr Allison’s malignant neoplasm of the colorectum, I must apply the standard of reasonable hypothesis, in this case, by identifying the applicable Statement of Principles (SoP) and considering whether any hypothesis raised by the material before me conforms with one of the factors in the SoP. If so, then I must consider whether I am satisfied, beyond reasonable doubt, that the condition is not war-caused.
2. In so doing I will follow the steps set out in *Repatriation Commission v Deledio* (1998)83 FCR 82.
3. Mrs Allison relied on factor 5(c) of Statement of Principles No. 1 of 2004 as amended by No 39 of 2011. That factor requires:

(c) drinking at least 250 kilograms of alcohol within a 25 year period within the 40 years immediately before the clinical onset of malignant neoplasm of the colorectum.

1. Clause 4 of the SoP provides that a factor set out in the SoP must be related to any relevant service rendered by the person.
2. There is no dispute that Mr Allison satisfied the requirements of factor 5(c) itself, in relation to amount and timing of alcohol consumption. However, the Commission contends that his alcohol consumption during the relevant period following his service was not related to his service.
3. It follows that the sole issue for me to consider is whether the material before me points to Mr Allison’s alcohol consumption during the 40 years immediately before the clinical onset of his colorectal cancer having been related to his service. The clinical onset of his cancer was, according to an ultrasound referred to in the Veterans’ Review Board decision, March 2010. The relevant 40 year period is therefore from 1970, some 25 years after Mr Allison’s service.

# is it a reasonable hypothesis that Mr Allison’s alcohol consumption from 1970 related to his service?

1. The only direct evidence from Mr Allison was the Alcohol Questionnaire he completed on 2 July 2010. In that document he stated that he had commenced to drink alcohol in 1944; that it was beer; that he consumed 14 beers per week until he was diagnosed with cancer two months previously; that he drank *“largely due to encouragement from the older members of the group I was stationed with”* and that his consumption increased over time. I also note that, his answer in the Entry Examination for Flying Ranks in the Royal Australian Air Force dated 10 August 1943, was that he had no alcohol habit.
2. Mrs Allison made a statement and gave oral evidence to the Tribunal. She had also given evidence to the Veterans’ Review Board and been interviewed by Professor Richard Mattick, Professor of Drug and Alcohol Studies and Director of the National Drug and Alcohol Research Centre in the Faculty of Medicine at the University of New South Wales.
3. Mrs Allison’s statement was to the effect that she first met her husband when they were teenagers and in 1947 she married another man. She said she saw him infrequently while she was married. After her first marriage ended she and Mr Allison began to keep company in 1956 and married in 1960. She said that before Mr Allison’s service he never smoked or drank alcohol, but she noted that he did both after his return and recalls friends commenting on that. She said that her best recollection of her husband’s alcohol consumption is from the time they began to see each other in 1956. She said she recalls her husband telling her from time to time that he wished he had not started drinking and smoking on service and referred to it as a “habit” that was hard to break.
4. Mrs Allison also said she recalled her husband telling her that he had been disappointed that he was never chosen as a pilot, after failing twice, but did not mind being a navigator. She also said he told her about a voyage across the Pacific in an unescorted transport ship to and from Canada for training. She said he told her they all felt like sitting ducks. She noted he was just 18 or 19 at the time.
5. In her evidence to the Veterans’ Review Board, Mrs Allison said she thought that her husband had just gone with the flow of others he was with in Canada and if they had a drink then he would have a drink with them. She said she thought that was where “it” started.
6. In her evidence to the Tribunal Mrs Allison said she and Mr Allison had been friends in the same group of young people who used to go on picnics together. She said she would see Mr Allison about four or five times per month. She said no-one drank or smoked at those picnics. She was 14 at the time he went off to service.
7. Mrs Allison said that her husband had been greatly upset that he had not qualified as a pilot but that he had settled down to being a navigator and had quite enjoyed it. However, she agreed that she had told Professor Mattick, and agreed it was correct, that it did not play on his mind a lot and did not get him down. In relation to his voyage to Canada when he felt they were sitting ducks, she agreed that she had told Professor Mattick correctly that the experience affected him while he was on the ship but not for a long period after that.
8. With the exception of the matters noted above, Mrs Allison generally could not remember having given the answers recorded by Professor Mattick as having been given by her.
9. It was pointed out to Mrs Allison that, although it was her recollection that her husband had not smoked prior to service, he had stated in his smoking questionnaire that he had commenced to smoke in 1941. It was suggested to her that she may not have been aware of what he did when he was not with her in the group that picnicked together. She agreed with that proposition and also with the proposition that Mr Allison may have smoked and/ or drunk alcohol when not with the group and she may not have been aware of it. She agreed that was a possibility.
10. It was hypothesised on behalf of Mrs Allison that her husband had commenced to drink and continued to drink because of a combination of stressors on service (failure to qualify as a pilot and feeling vulnerable on voyages to Canada) and having been encouraged to commence drinking by older officers on service. It was also contended that, having commenced to drink on service, Mr Allison became addicted to alcohol and continued to drink because of that addiction.
11. Professor Mattick concluded there was no evidence of Mr Allison ever having met the diagnostic criteria for either substance abuse or substance dependence. He reported:

There is no evidence of him drinking in larger amounts or for longer than intended, no evidence of attempts to cut down drinking, no evidence of him foregoing social, occupational or other opportunities because he would rather drink, no drinking in the face of health problems, no withdrawal symptoms, and no evidence of dependence.

There is no evidence of alcohol abuse as he had no legal problems, no occupational problems, no drinking in hazardous circumstances, and no evidence of interpersonal problems being caused or worsened b drinking alcohol.

1. Professor Mattick considered that, given the information he obtained from Mrs Allison about Mr Allison’s minimal and short lived reactions to having failed pilot training and to his voyages to Canada, confirmed by Mrs Allison in her evidence to the Tribunal, there was no relationship between these events and his lifetime drinking behaviour. He considered there was no relationship between his service and his drinking behaviour except to the extent that he had been encouraged to drink while on service by older members of his group.
2. There was no material before me that pointed to Mr Allison having suffered any persistent or longstanding reaction to the stressors relied on. On the contrary, Mrs Allison said that while he was initially upset, that upset did not continue to affect him.
3. I note that Professor Mattick found none of the indicia or diagnostic criteria of either alcohol dependence or alcohol abuse. Nor is there any material before me that points to Mr Allison having been addicted to alcohol. In particular, Professor Mattick noted that Mrs Allison had told him that her husband made no attempts to cut down on alcohol because there was no need for him to do so; that he suffered no withdrawal symptoms if he ceased to drink for a period; and that he did not drink in larger amounts or for longer than intended.
4. I note the material provided on behalf of Mrs Allison following the hearing, some of which were descriptions of studies on the neuropharmacology of alcohol addiction. These were submitted in support of the assertion that alcohol is an addictive substance when consumed in the quantities consumed by Mr Allison and that, it follows, Mr Allison was addicted to alcohol.
5. To the extent that the article titled ‘Neuropharmacology of Alcohol Addiction’ in the *British Journal of Pharmacology* (2008) 154, argues that consumption of alcohol results in an increased release of dopamine, this is also said in the article to depend on the genetic composition of a particular individual. Not surprisingly, there is no material before me that points to Mr Allison’s genetic composition in this regard.
6. In addition, the article is far from unequivocal as to the neuropharmacology of alcohol addiction, as shown by the terms of the concluding paragraph:

Once alcohol drinking is initiated, alcohol affects virtually all brain neurotransmission. Therefore, it is difficult to define which of these systems contributes most to the transition from controlled to compulsive drug use. However, some of the counteradaptive changes within the brain reinforcement system including the modulatory input systems may become persistent and it is believed that those persistent changes constitute the ‘molecular and structural switch’ (Spanagel and Heilig, 2005) from controlled alcohol intake to compulsive alcohol abuse. However, those irreversible changes have so far not been clearly identified and it is suggested that in addition to the mesolimbic DA system, other brain systems, including the mesocortical and nigrostriatal pathways, as well as their non-DAergic feedback loops and glutamatergic inputs might be involved in alcohol addiction. Furthermore, a persistent recruitment of anti-reward/stress mechanisms such as hypertrophic CRF1 receptor signalling might come into place as well.

1. Other material submitted for Mrs Allison included a two page report in *Medical News Today* of a study of 49 men that found that dopamine activity was “significantly greater” when men tasted beer as opposed to *Gatorade*. No figures were reported in the news report. One of the study researchers was reported as saying that *“the increased release of dopamine in response to beer consumption could be an inherited risk factor for alcoholism”.* Of course, there is no material on the extent to which release of dopamine was increased in Mr Allison on tasting beer.
2. Other material provided on behalf of Mrs Allison raises possibilities. For example, the concluding paragraph of Boileau, Assad et al, ‘Alcohol Promotes Dopamine Release in Human Nucleus Accumbens’ in *Synapse* (2003) 49, says:

[W]e showed that alcohol consumed by mouth in intoxicating doses promotes dopamine release in the ventral striatum. The observed relationship between the magnitude of change in [C]raclopride BP, personality and heart rate increase suggests that the paradigm we have developed could be used to investigate the factors that lead to vulnerability for alcohol dependence.

1. This falls short of establishing that alcohol consumption is, of itself, as a known medical fact, addictive. It falls short of pointing to alcohol consumption, of itself, having been addictive for Mr Allison. There is no material that points to Mr Allison having been addicted to alcohol in any event.
2. In addition, although not binding on the Tribunal, my attention was directed by the Commission to its current policy, informed by advice from the Repatriation Medical Authority, that “alcohol habituation” falls within the scope of normal human activity and is not itself a disease as opposed to alcohol abuse and alcohol dependence which are each a disease. In this regard I also note Professor Mattick’s report of Mrs Allison’s advice that at least two of Mr Allison’s doctors had advised him that there was no need to alter his level of alcohol consumption. He was not diagnosed as suffering from alcohol dependence or alcohol abuse.
3. For Mrs Allison, it was submitted that the Federal Court’s judgment in *Kattenberg v Repatriation Commission* (2002) 73 ALD 365 supports the conclusion that Mr Allison’s operational service made a material contribution to his alcohol consumption at the rate and for the period required by the SoP. It is clear from *Kattenberg* that the whole amount of SoP required consumption need not have taken place on operational service. However, that judgment also notes the requirement for operational service to have made a *material contribution* to the required alcohol consumption. Whether it can be reasonably hypothesised that operational service made a material contribution will depend on whether the material before the Tribunal points to that hypothesis. It also depends on whether the hypothesis is “more than a possibility, not fanciful or unreal, consistent with the known facts” (*East v Repatriation Commission* (1987) 16 FCR 517, (1987) 12 ALD389)). The hypothesis must not be too remote or tenuous.
4. I find that the hypothesis raised is too tenuous and remote. It points to a temporal rather than causative connection to operational service. Mrs Allison’s evidence to the Tribunal, if not her statements recorded by Professor Mattick, and the alcohol questionnaire completed by Mr Allison point to Mr Allison having commenced to drink on service after being encouraged to do so by older group members. Mrs Allison’s evidence also points to Mr Allison having experienced some stressors on service, but that their effects were short lived. Professor’s Mattick’s evidence points to Mr Allison not having suffered an addiction to alcohol and not having had alcohol dependence or alcohol abuse. The additional articles and other material provided for Mrs Allison point to the possibility, in some people, of alcohol producing increased levels of dopamine and suggest that this may give rise to addiction. They do not point to addiction in Mr Allison. The material does not point to Mr Allison’s persistent consumption of alcohol, throughout the period required by the SoP, having been materially contributed to by his service some 25 years earlier.
5. For these reasons I conclude that the hypothesis is not reasonable. It follows that Mr Allison’s malignant neoplasm of the colorectum was not related to his operational service.

# Decision

1. The decision under review is affirmed.

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| I certify that the preceding 33 (thirty -three) paragraphs are a true copy of the reasons for the decision herein of Ms N Bell, Senior Member. |

.......[Sgd].................................................................

Dated

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| Date of hearing | **5 November 2013** |
| Date final submissions received | **20 December 2013** |
| Counsel for the Applicant | **Mr T Saunders** |
| Solicitors for the Applicant | **Kemp & Co Lawyers** |
| Advocate for the Respondent | **Mr T O'Reilly** |