AUSTRALIA / JUDGMENT

Ryde v Repatriation Commission [2004] FCA 1281

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FEDERAL COURT OF AUSTRALIA
Ryde v Repatriation Commission [2004] FCA 1281
DEFENCE and WAR – veterans' entitlements – successive claims for war widow's pension – whether the Repatriation Commission, on accepting a claim, can backdate the payments to the date a previous unsuccessful claim was made – Veterans' Entitlements Act 1986 (Cth), s 20
Administrative Appeals Tribunal Act 1975 (Cth) s 44
Veterans' Entitlements Act 1986 (Cth) ss 11, 13, 13A, 14, 17, 18, 19, 20, 31, 120, 120B, 135, 157, 175, 177, 196B
Acts Interpretation Act 1901 (Cth) s 15AB
Repatriation Commission v Gorton (2001) 110 FCR 321 cited
Repatriation Commission v Keeley (2000) 98 FCR 108 cited
Saraswati v The Queen (1991) 172 CLR 1 referred to
Morrow v Repatriation Commission (1997) 72 FCR 400 cited
Ward v Repatriation Commission [2004] FCA 796 cited
Federal Court Rules O 80
ELNA PEREZ RYDE v REPATRIATION COMMISSION
NSD 482 of 2004
SACKVILLE J
SYDNEY
6 OCTOBER 2004
IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY NSD 482 of 2004
BETWEEN: ELNA PEREZ RYDE
APPLICANT
AND: REPATRIATION COMMISSION
RESPONDENT
JUDGE: SACKVILLE J
DATE OF ORDER: 6 OCTOBER 2004
WHERE MADE: SYDNEY

THE COURT ORDERS THAT:

The application be dismissed.
Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.
IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY NSD 482 of 2004
BETWEEN: ELNA PEREZ RYDE
APPLICANT
AND: REPATRIATION COMMISSION
RESPONDENT
JUDGE: SACKVILLE J
DATE: 6 OCTOBER 2004
PLACE: SYDNEY

REASONS FOR JUDGMENT

THE PROCEEDINGS

1 The issue in this 'appeal' on a question of law is whether the Repatriation Commission, when it grants the last of a series of claims for a war widow's pension, is required to specify a date for the commencement of the pension which is no earlier than three months before the date on which the last claim was made; or whether the Commission can grant the pension with effect from a date three months before the claimant made her original (unsuccessful) claim for a pension. The respondent ('the Commission') urges the Court to adopt the first interpretation of the relevant provision, s 20 of the Veterans' Entitlements Act 1986 (Cth) ('VE Act'). The applicant argues for the second interpretation. If the applicant is right, she will be able to apply to the Commission to backdate her pension, which was in fact granted so as to take effect on 7 February 2001, to the date of her husband's death, namely 7 September 1991.

2 The applicant has appealed on a question of law under s 44 of the Administrative Appeals Tribunal Act 1975 (Cth) from a decision of the Administrative Appeals Tribunal ('AAT') made on 16 March 2004. The AAT affirmed a decision of the Veterans' Review Board granting the applicant a war widow's pension and determining that the pension would be paid as and from 7 February 2001, a date three months before the lodging of the applicant's most recent claim for the pension. The AAT decided that s 20 of the VE Act does not permit a pension to be backdated to a date earlier than three months before the date of lodgement of the successful claim for the pension. In particular, it decided that s 20 of the VE Act does not permit the Commission, or the AAT on review, to backdate a pension to a date three months before the lodgement of an earlier unsuccessful claim. The question of law is whether the AAT correctly construed s 20 of the VE Act.

THE LEGISLATION

3 The VE Act provides for the payment of pensions to the dependants of a deceased veteran whose death was war-caused: s 13(1). There is no dispute in the present case that the applicant is a 'dependant' of the Veteran, within the meaning of s 11 of the VE Act.

4 Sections 13A of the VE Act provides that dependants of certain deceased veterans are automatically entitled to be paid a pension without the dependant having to make a claim and without the Commission having to make a determination. In such cases, the pension is payable from the date of the veteran's death: s 13A(2). It is common ground however, that the Veteran was not within the categories of veterans referred to in s 13A.

5 Section 14(1) of the VE Act provides, inter alia, that a dependant of a deceased veteran may make a claim for a pension in accordance with s 14(3). Section 14(3) states that a claim for a pension shall be in writing on an approved form, shall be accompanied by relevant evidence and shall be made by being forwarded or delivered to the Department.

6 Section 14 prohibits the making of multiple simultaneous claims, but does not prohibit the making of successive claims. Subsections 14(6) and (7) provide as follows:

'(6) Where:

(a) a person has made a claim for a pension under this section in respect of the death of a veteran; and

(b) the claim has not been finally determined;

the person is not empowered to make another claim for a pension under this section in respect of the death of that veteran.

(7) For the purposes of this section, a claim is finally determined when either:

(a) a decision that has been made in respect of the claim is not subject to any form of appeal or review; or

(b) a decision that has been made in respect of the claim was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.'

7 Section 17(1) of the VE Act requires the Secretary to the Department to investigate the matters to which a claim under s 14(1) relates. Upon completion of the investigation, the Secretary must cause the claim to be submitted to the Commission for its consideration: s 17(2).

8 It is the duty of the Commission, in considering a claim, to satisfy itself of all matters relevant to the determination of the claim: s 18(1). Section 19(3) requires the Commission to determine a claim for a war widow's pension by first determining whether the claimant is entitled to a pension in respect of the death of a veteran that was war-caused and, if the claimant is so entitled, determining the rate at which the pension is payable.

9 Section 20 of the VE Act provides as follows:

'(1) Where a claim in accordance with section 14 for a pension is granted, the Commission may, subject to this Act, specify as a date that a determination under subsection 19(3) takes effect in respect of the claim, a date not earlier than 3 months before the date on which the claim for a pension, in accordance with a form approved for the purposes of paragraph 14(3)(a) was received at an office of the Department in Australia.

...

(3) Nothing in this section empowers the Commission to specify as a date that a determination of a claim under subsection 19(3) takes effect in respect of a person who has made a claim for a pension under section 14, a date before the date that the person became eligible to be granted the pension.'

10 In a claim of the kind made by the applicant, the Commission must decide the matter to its reasonable satisfaction: s 120(4). However, the VE Act does not impose any onus of proof on a claimant: s 120(6).

11 Section 120B of the VE Act provides that in relation to claims for war service pensions made on or after 1 June 1994, the Commission is to be reasonably satisfied that the death of a person was war-caused only if (relevantly):

(a) the material before the Commission raises a connection between the death of the person and some particular service rendered by the person (s 120B(3)(a)); and

(b) a Statement of Principles determined under s 196B upholds the contention that the death of the person is, on the balance of probabilities, connected with that service (s 120B(3)(b)).

12 Section 196B(3) provides that if the Repatriation Medical Authority is of the view, inter alia, that there is sound medical-scientific evidence indicating that a particular kind of death can be related to eligible war service, it must determine a Statement of Principles in respect of that kind of death. The Statement of Principles must set out:

* the factors that must exist; and

* which of those factors must be related to the service rendered by a person,

before it can be said that, on the balance of probabilities, a death of a particular kind is connected with the circumstances of the eligible war service.

13 Section 135 provides for review of the Commission's decision by the Veterans' Review Board. An application to the Board for review must be made within 12 months after service of the Commission's decision: s 135(4). Where a decision made by the Commission has been reviewed by the Board and affirmed, varied or set aside, an application may be made to the AAT for review of the Commission's decision or of the decision made by the Board in substitution for the Commission's decision: s 175(1).

14 Section 157(2) of the VE Act provides that where the Board substitutes its own decision for that of the Commission, or varies the Commission's decision, and the effect is to grant a pension to a person, the Board may fix the date from which the Board's decision is to operate, as follows:

'(i) if the person made application for the review within 3 months after service on the person of a copy of the Commission's decision – a date not earlier than the earliest date as from which the Commission could, if it had not refused to grant a pension ... to the person, have approved payment of a pension ... to the person; or

(ii) in any other case – a date not more than 6 months before the date on which the person's application for review of the Commission's decision was received at an office of the Department in Australia...'

Similar provision is made by s 177(2) of the VE Act with respect to a review by the AAT.

15 Where the time for making an application to the Board under s 135 has not expired, the Commission may, in its discretion, review the decision: s 31(1). If it varies the decision, the Commission may approve the date from which the variation is to operate, being a date

'not earlier than the earliest date as from which the decisions as so varied could have operated if it had been made by the Board, in substitution for the original decision' (s 31(1)).

16 The Commission also has power, where application is duly made to the AAT under s 175, to undertake of its own motion a review of a decision of the Commission or of the Board: s 31(2). Provision is made for any variation to operate from a date not earlier than the earliest date from which the decision would have operated had the variation been made by the AAT.

FACTS

17 The applicant was the de facto wife of Mr Raymond George Ryde ('the Veteran') who died on 7 September 1991 aged 79. The Veteran served in the Royal Australian Air Force from 1941 to 1954 when he was discharged as medically unfit. From 10 June 1941 until 18 August 1949, the Veteran was engaged in 'eligible war service', as defined in s 7 of the VE Act.

18 The applicant and the Veteran lived as de facto partners from February 1987 until the Veteran's death. During the Veteran's lifetime several medical conditions were accepted as war-related. These included 'anxiety state with depression' and 'peripheral vascular disease'. The causes of death were recorded in the death certificate as cerebrovascular accident, acute renal failure, pulmonary infection and hypernatraemia.

19 On 23 September 1991, the applicant lodged a claim for a war widow's pension. The application did not identify the causes of the Veteran's death, but an application lodged shortly afterwards (but not proceeded with) identified the causes of death as those recorded in the death certificate. The application noted that the Veteran had been bedridden for more than three years due to worsening vascular diseases which hampered his mobility.

20 The 1991 claim was rejected by the Commission's delegate on 24 January 1992. The delegate said that there was no connection between cerebral atherosclerosis and the disabilities that had been accepted as war-related during the Veteran's life time, namely anxiety and peripheral vascular disease. The delegate was satisfied that there was no sufficient ground for determining that the Veteran's death was related to his eligible war service.

21 The delegate's decision was affirmed by the Veterans' Review Board on 7 September 1992 and the Board's decision was in turn affirmed by the AAT on 16 September 1994. No application was made for judicial review of the AAT's decision.

22 In 1994, the VE Act was amended to provide for the determination of Statements of Principles by the Repatriation Medical Authority. A Statement of Principles concerning Cerebrovascular Accident was first determined in 1995. It was later revoked and another Statement of Principles concerning Cerebrovascular Accident was substituted. The parties agreed that the determination in effect at all material times from June 1999 was that contained in Instrument No 53 of 1999 ('the Determination').

23 Clause 3 of the Determination stated that on the sound medical-scientific evidence available, the Repatriation Medical Authority was of the view that it is more probable than not that death from cerebrovascular accident can be related to relevant service rendered by veterans. Clause 4 provided that at least one of the factors set out in cl 5 had to be related to the veteran's war service. Clause 5 relevantly provided as follows:

'The factors that must exist before it can be said that, on the balance of probabilities, cerebrovascular accident or death from cerebrovascular accident is connected with the circumstances of a person's relevant service are:

...

(d) an inability to undertake more than a mildly strenuous level of physical activity for at least the seven years immediately before the clinical onset of cerebrovascular accident; or

...'

24 On 15 October 1999, the applicant lodged a second claim for a war widow's pension. The application form made no reference to the Determination. Nor did it specifically refer to the Veteran's inability to undertake mildly strenuous activity for a period prior to his death, although it did say that the applicant had looked after him 'for many years'. There was nothing in the application form which linked any difficulty the Veteran had in undertaking physical activity to peripheral vascular disease.

25 A delegate rejected the applicant's second claim for a war widow's pension on 19 October 1999, on the ground that the cause of death was not related to war service. The delegate noted that the applicant had claimed that the Veteran's death was due to service-related barbiturate dependence that led to an anxiety state. These circumstances were said by the delegate not to satisfy the Determination. He made no reference to the possibility that the Veteran's apparent inability to

undertake mildly strenuous activity might have been due to peripheral vascular disease. It appears that the applicant did not seek review of the delegate's decision.

26 On 7 May 2001, the applicant lodged a third claim for a war widow's pension. The application form on this occasion closely (although not precisely) followed the relevant part of the Determination. The applicant said that:

'my husband's death was caused by ... the inability to undertake a mildly strenuous level of physical exercise for at least five years before his cerebral accident. This was due to his accepted disability of peripheral vascular disease.' (Emphasis added.)

27 On 17 May 2001, the delegate decided that the Veteran's death was related to service. In his Reasons for Decision, the delegate said that:

'[g]iven its severely incapacitating nature I am unable to dissociate the effects of the late veteran's previously accepted disability of Peripheral Vascular Disease from having played a significant part in the death. The death of the veteran has, therefore, been determined to have been related to his service.'

The reasons made no specific reference to the Determination. The delegate granted the pension with effect from 7 February 2001, being three months prior to the date on which the claim was lodged.

28 On 13 June 2001, the applicant sought review of the delegate's decision by the Veterans' Review Board. On 31 July 2003, the Board affirmed the delegate's decision. The Board did so on the ground that the earliest date that the war widow's pension could take effect was 7 February 2001, as provided by s 20 of the VE Act.

29 The applicant then sought review of the Board's decision in the AAT. On 16 March 2004, the AAT affirmed the decision of the Board. The AAT observed that the applicant had advanced no legal argument as to how the provisions of s 20 of the VE Act could be circumvented. The AAT acknowledged that if her first application had been successful, she would have been entitled to the pension as from the date of the Veteran's death in 1991. However, that claim and a second claim were unsuccessful. In the AAT's view, it was:

'quite clear that where section 20 of the Act refers to the date from which a grant of claim for pension can take effect, it refers to a successful claim. There is nothing in the Act which permits either the Repatriation Commission or this Tribunal upon review, to backdate a claim to an earlier unsuccessful application.'

SUBMISSIONS

Applicant's Contentions

30 The applicant submitted that the expression 'the claim for a pension, in accordance with a form approved for the purposes of [s] 14(3)(a)' in s 20 of the VE Act does not refer to a successful claim, as the AAT had held. The only requirement, so Ms Eastman argued, is that the claim be made in accordance with the approved form. All of the claims made by the applicant satisfied this description, including the original claim made on 23 September 1991. It follows, so Ms Eastman submitted, that s 20(1), on proper construction, permits the pension granted to the applicant to be backdated to the date of the Veteran's death, which occurred only 16 days before the applicant lodged her first claim.

31 The applicant further submitted that 'the date the person became eligible to be granted the pension', for the purposes of s 20(3) of the VE Act was the date of the Veteran's death. Nothing relevant had changed since that date. According to Ms Eastman, once it is established that a condition was war-caused, it must be assumed that the condition had always been war-caused. While the applicant had made successive claims, they all related to the Veteran's death, the cause of which had always been accepted to be a cerebrovascular accident.

32 Ms Eastman accepted in argument that if the applicant had made a claim in 2001 that was in substance different from those made earlier, s 20(1) of the VE Act would prevent a pension being granted from a date earlier than three months before lodgement of the 2001 claim. If, for example, the 2001 claim had been based on new medical evidence or, perhaps, a reassessment of the cause of the Veteran's death, Ms Eastman acknowledged that the applicant could not succeed. But, she submitted, the 2001 claim was in essence the same as the two previous unsuccessful claims.

33 In the alternative, the applicant submitted that her pension should be backdated to the date when the relevant Statement of Principles was introduced (29 August 1995). This submission recognised the possibility that the introduction of the Statements of Principles by legislation enacted in 1994 may have meant that the 1999 and 2001 claims were materially different from the 1991 claim for a war widow's pension. However, Ms Eastman argued that even if that were so, there was no significant difference between the 1999 and 2001 claims and the pension should be backdated to the date when the applicant 'became eligible to be granted a pension' – that is, the date of determination of the Statement of Principles relevant to the applicant's claim.

Commission's Contentions

34 The Commission submitted that s 20 of the VE Act must be read in context and, so read, does not permit a pension to be granted from a date any earlier than 7 February 2001. Ms Henderson pointed out that the VE Act imposes limits on the capacity of a claimant to lodge fresh claims and of the Commission to reconsider a rejected claim. She argued that the legislative scheme makes it clear that, while the VE Act permits the determination of successive claims in respect of the

death of a veteran, each claim is spent once it is fully determined. The lodgement of a fresh claim commences the process afresh and does not re-enliven or restore a prior claim that has been determined and rejected.

35 According to Ms Henderson, the reference in s 20(1) of the VE Act to a 'claim [which] is granted' is to a claim actually before the Commission for determination and not to an earlier claim which has been finalised. The applicant's 1991 claim was not before the Commission when the delegate reached its decision on 17 May 2001. Similarly, the only decision the AAT was able to review was the delegate's determination of 17 May 2001. The AAT's powers in respect of the 1991 claim had been exhausted by its determination of 16 September 1994. Ms Henderson contended that, for similar reasons, the 'claim' referred to in s 20(3) is to be taken, in the present case, as the 2001 claim.

36 Ms Henderson also challenged the applicant's contentions that the 2001 claim was essentially the same as the previous two claims. She submitted that the 2001 claim rested on a quite different basis and invoked for the first time the Statement of Principles concerning Cerebrovascular Accident. It followed that on Ms Eastman's own analysis, there was no power to backdate the grant of the war widow's pension to a date earlier than 7 February 2001.

reasoning

37 Although Ms Eastman presented the applicant's argument attractively, the facts of the present case show the difficulty in maintaining the proposition that the 2001 claim for the war widow's pension was essentially the same as the 1991 and 1999 claims. Between 1991 and 1999, the VE Act was amended to provide for Statements of Principles. Section 120B(3) of the VE Act introduced in 1994, states that the Commission is to be reasonably satisfied that the death of a person was war-caused only if two conditions are complied with. One such condition is that a Statement of Principles is in force that upholds the contention that the death of the veteran was, on the balance of probabilities, connected with his or her service. (As to the nature of a Statement of Principles and the factors to be taken into account in making a determination, see Repatriation Commission v Gorton (2001) 110 FCR 321, at 323, per Heerey J; at 335, per Allsop J (with whom Emmett J agreed).)

38 There has been some disagreement in this Court as to whether Statements of Principles affect accrued rights of claimants, or whether they should be characterised as essentially procedural in character: see Repatriation Commission v Keeley (2000) 98 FCR 108, at 122-123, per Lee and Cooper JJ; at 130, per Kiefel J; Repatriation Commission v Gorton, at 330-331, per Heerey J; at 335, per Allsop J. It is, however, undeniable that the introduction of, or changes to, a Statement of Principles may make it easier or more difficult, depending on the circumstances, for a claimant to satisfy the Commission that a veteran's death was war-caused.

39 The applicant's 1991 claim, for obvious reasons, made no reference to any Statement of Principles. More to the point, neither the application nor the medical evidence suggested that an inability to undertake mildly strenuous physical activity was a factor in the aetiology of cerebrovascular disease. This is not surprising since, as a Review Officer observed on 12 July 2001

(when deciding not to intervene in relation to the delegate's decision of 17 May 2001), medical authorities at the time apparently did not consider that such a link existed. The position apparently changed only with the introduction of Statements of Principles.

40 The applicant's 2001 claim was based on grounds different to those relied on in the 1991 claim. The 2001 claim was clearly drafted with the Determination in mind. The claim relied on:

* the link identified in the Determination between an inability to undertake physical activity and cerebrovascular disease; and

* what was said to be the link between that inability and the Veteran's accepted disability of peripheral vascular disease.

It is true that, as Ms Eastman pointed out, no suggestion was made in the 2001 claim that the cause of the Veteran's death was anything other than that identified in the 1991 claim, or, for that matter, the 1999 claim. But the fact remains that the 2001 claim was made on different grounds than those relied on in the 1991 claim.

41 Similarly, there are significant differences between the 1999 claim and the 2001 claim. By the time the 1999 claim was lodged, the Determination was in force. Nonetheless, the 1999 claim did not refer to cl 5(d) of the Determination or point to evidence that might persuade the delegate that cl 5(d) was satisfied. In consequence, the 1999 claim said nothing about the links between peripheral vascular disease and the Veteran's inability to undertake physical activity. The delegate interpreted the claim as resting on the contention that the Veteran's death was caused by service-related barbiturate dependence.

42 In these circumstances, I think that there is very considerable force in the Commission's submission that the 2001 claim was not in substance the same as either the 1991 or the 1999 claim. Although the 2001 claim, like the two earlier claims, sought to establish the applicant's entitlement to a war widow's pension, it was based on different grounds. Indeed, as I have pointed out, the 2001 claim had to satisfy criteria different to those in force when the 1991 claim was lodged. It would seem to follow that, even on the argument advanced on the applicant's behalf, s 20 of the VE Act would not permit the Commission to specify a date for the Determination to take effect any earlier than three months before the date of lodgement of the 2001 claim.

43 This analysis suggests that the approach contended for by the applicant would lead to difficulties in practice. When is a particular claim in substance the same as an earlier, rejected claim? If the claimant relies on fresh evidence, or advances a new theory as to the relationship between the veteran's war service and his or her death, does that amount to a new claim? Does it depend on the nature of the fresh evidence, or on the extent to which the new theory is linked to previous arguments put on behalf of the claimant?

44 The practical difficulties indicate that the applicant's submissions face a more fundamental obstacle. The critical issue is the construction of s 20 of the VE Act, in particular the meaning of the word 'claim' in s 20(1). That issue cannot be resolved by considering the language of s 20 in

isolation from the VE Act as a whole. It is trite law that in determining the ordinary meaning conveyed by the text of a statutory provision, it is necessary to have regard to the context and to the purpose of the legislation: Acts Interpretation Act 1901 (Cth) s 15AB(1)(a); Saraswati v The Queen (1991) 172 CLR 1, at 21, per McHugh J.

45 As both parties accepted, there is nothing in the VE Act to prevent a dependant of deceased veteran making successive claims in respect of the veteran's death. Indeed, s 14(6) of the VE Act implies that such claims may be brought. That provision prevents a claimant making 'another claim' for a pension in respect of the death of a veteran where an existing claim in respect of the veteran's death has not been 'finally determined'. The language of s 14(6) implies that when the existing claim has been 'finally determined' (as that expression is defined in s 14(7)), a further claim may be brought. The reference to 'another claim' in s 14(6) suggests that a claim made after the final determination of an earlier claim is, a fortiori, to be regarded as 'another claim'.

46 The structure of the VE Act is very difficult to reconcile with the proposition, inherent in the applicant's submissions, that a claim made after the final determination of an earlier claim somehow revives or constitutes part of the first claim. A claim must be made in accordance with the requirements of s 14(3). The claim must be on the approved form which requires, as one would expect, a statement of how the veteran's service caused or contributed to his or her death. Moreover, the claim must be accompanied by relevant evidence.

47 The making of a claim enlivens the obligation of the Secretary to investigate the matters to which the claim relates (s 17(1)). Upon completion of the investigation, the claim must be submitted to the Commission for determination (s 17(2)). The Commission is then obliged to consider all matters relevant to the claims and to determine the claim (ss 18(1), 19(1), (3)). It is also important to bear in mind that although the Commission has power to review its own decisions, it can do so only within the time limits and in the particular circumstances specified in s 31 of the VE Act.

48 The making of a claim is therefore central to the decision-making processes contemplated by the VE Act. Ms Eastman accepted, correctly in my view, that if a claimant wishes to make a further application (to use a neutral word) for a pension after the final determination of an earlier claim, it is necessary to lodge a fresh claim. It is the lodging of a claim in accordance with the formal requirements of s 14 that sets in train the elaborate decision-making processes provided by the VE Act.

49 Section 20(1) of the VE Act speaks of 'a claim in accordance with section 14 for a pension'. The provision fixes the date from which a pension can take effect by reference to the date on which 'the claim for a pension, in accordance with the form approved for the purposes of paragraph 14(3)(a) was received ...'. In my view, this language refers to a current claim requiring determination by the Commission (or, on review, by the Veteran's Review Board or the AAT). It does not refer to a claim which has been finally determined. I accept Ms Henderson's submission that the effect of the VE Act is that a claim for a pension, once finally determined, is spent. A claimant may lodge a fresh claim, but that commences the process afresh.

50 In my opinion, s 20(3) of the VE Act carries the matter no further. It merely says that nothing in s 20 empowers the Commission to specify a date from which a determination takes effect earlier than the date upon which a person became eligible to be granted the pension. It cannot authorise the Commission to specify a date earlier than that provided for in s 20(1).

51 This conclusion reflects an evident statutory purpose that claimants are permitted to make successive claims for a pension, but the success of a later claim is not to result in the backdating of the grant of a pension to the date of the first claim. If the applicant's argument were accepted, a change in the law, or the introduction of a new Statement of Principles might result in the grant of a pension backdated to a date when there had been no entitlement to a pension. Parliament might wish to bring about such a generous result, but the terms of the VE Act make it clear, in my view, that this is not in accordance with the objects of the legislation as currently framed.

52 I should add that although there is no authority precisely in point, the conclusion I have reached is consistent with cases that have raised similar issues. For example, in Morrow v Repatriation Commission (1997) 72 FCR 400, there would have been no need to rely on the arguments advanced in that case to backdate the award of the pension if the applicant's submissions in the present case were correct. See, too, Ward v Repatriation Commission [2004] FCA 796.

CONCLUSION

53 For these reasons, the application must be dismissed. As I understand it the Commission does not seek costs against the applicant. If my understanding is incorrect, the Commission may make written submissions on costs within seven days.

54 At the conclusion of the hearing I expressed my gratitude to both counsel for their helpful submissions. I particularly wish to express the gratitude of the Court to Ms Eastman for accepting a referral under the Federal Court Rules, O 80, and for her careful submissions on behalf of an applicant who otherwise would have been unrepresented.

I certify that the preceding fifty-four (54) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Sackville.

Associate:

Dated: 6 October 2004

Counsel for the Applicant: K Eastman

Counsel for the Respondent: RM Henderson

Solicitor for the Respondent: Australian Government Solicitor

Date of Hearing: 29 September 2004

Date of Judgment: 6 October 2004

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