



Procedure

Team: Casework Services

Title: MSBS and DFRDB and DFRB - How to process a claim for retrospective invalidity.

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Approved by: Manager, Casework Services

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PURPOSE

Members of the military superannuation schemes - MSBS, DFRDB and DFRB – may request retrospective invalidity. There is no special application form. There is no time limit for such applications.

DFRB and DFRDB

The DFRB Act [sub section 51(6)] and DFRDB Act (section 37) contain provisions for a person who was a member of one of the relevant schemes, and who ceased to be a member of the ADF on grounds other than invalidity, to apply to CSC to be treated for the purposes of the Acts, as if they had been retired on the ground of invalidity.

Under both Acts it is necessary for the relevant Directorate of Military Medicine, Navy, Army or Air Force, to inform CSC that grounds did exist upon which the person could have been discharged on the ground of physical or mental incapacity.


CSC must then treat the member as if he or she had been retired on those grounds and pay a benefit accordingly.

CSC has delegated its power to make decisions under subsection 51(6) or section 37 to the occupants of certain positions within ComSuper.

MSBS

Under Rule 30 of the MSB Rules, a person who ceased to be a member of the ADF on grounds other than invalidity, and who has a preserved benefit in the MSB Scheme, may apply to CSC to be treated for the purposes of the Rules as if they had been retired on the ground of invalidity.

If the CSC is satisfied that, at the time the person was retired, grounds existed on which he or she could have been retired on the ground of invalidity, CSC may, for the purposes of these Rules, treat the person as if he or she had been retired on the ground of invalidity.

Note		This is a discretionary power
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Rule 30 cannot apply to a member who does not have a preserved employer benefit applicable to them.

CSC has delegated its power to make decisions under Rule 30 to the occupants of certain positions within ComSuper.

This procedure describes the method and processes to be followed when a claim for retrospective invalidity is received in ComSuper.

NOTE - Before you start processing any application ensure that it is from the member.

SCOPE

This procedure will apply to the processing of retrospective invalidity claims within Casework Services, Member and Employer Access and Support.

ROLES & RESPONSIBILITIES

It is assumed that the person processing has a working knowledge of TRIM, CAPITAL and the relevant legislation.

AREA/OFFICER RESPONSIBLE	ROLE/RESPONSIBILITY
Manager Casework Services	Process Owner
APS 5 – Case Officer	Actioning Officer
APS 6 - Team Leader	Allocating Officer / Approval Officer
APS 5 or 6 – Delegate	Approval Officer

REFERENCES

Legislation:

Defence Force Retirement and Death Benefits Act 1973 - the DFRDB - [Section 37](#) - Appendix A

Defence Force Retirement Benefits Act 1948 - the DFRB - Subsection 51(6) - Appendix A

The Military and Superannuation Benefits Act 1991 – the MSBS - [Rule 30](#)- Appendix B

DEFINITIONS

Acronyms	Details
CSC	Commonwealth Superannuation Corporation
DFRDB	Defence Force Retirement & Death Benefits
MSBS	Military and Superannuation Benefits Scheme
APS	Australian Public Service
ADF	Australian Defence Force
TRIM	Total Records Information Management (record management system)
JHC	Joint Health Command (Dept of Defence)
DMM	Directorate of Military Medicine
CSQA	Casework Services Quality Assurance

ACTIONS

Procedure DFRDB retrospectively

ComSuper may receive a query from a member claiming that he/she could have been discharged as medically unfit. The member will be advised that Defence has responsibility for investigating all matters relating to subsection 51 (6) and Section 37. The member must be directed to make contact with Defence.

Alternatively, ComSuper may receive a courtesy notification from the Department of Defence advising that they are investigating a claim for retrospective invalidity.

Initiating a decision under subsection 51 (6) and Section 37 is dependant on ComSuper (on behalf of CSC) receiving positive advice from the relevant DMM (or its delegates) before it can consider the merits of the case. Once this is received;

Step 1

- The first step is to ascertain whether there is a contributor case file in existence. (Occasionally, particularly in the older cases, a member may have been discharged as medically unfit in the first place and has simply forgotten that fact)

- Write to the member to explain the process with referral details for Defence – Template letter can be found at L:\Military Casework\CASEWORK PACKS\Invalidity\DFRDB Section 37\Letters. There is no further action or follow up required.

Step 2

- ComSuper awaits a response from JHC.
- ComSuper will only ever receive positive determinations from JHC.
- Many of the cases result in negative determinations from the DMM and Defence will inform the applicant accordingly. There is no action required from ComSuper in such cases.

Step 3

- Positive determinations are notified to ComSuper by way of a formal instrument signed by the DMM.

Step 4

- Team Leader allocates the case to a delegated APS 5 Case Officer in Serena prompting a needs action email to the case officer. [See Serena Procedures].
- The delegated, APS 5 Case Officer prepares a decision under subsection 51 (6) and section 37 for submission to the CSQA email proxy CSQA@comsuper.gov.au for review by the Delegate. Decision template can be found at L:\Military Casework\CASEWORK PACKS\Invalidity\DFRDB Section 37\Decision
- All documentation and evidence referred to the submission should be bookmarked as appropriate and saved to trim. [See Trim Procedures].

Step 5

- The Delegate approves, signs and dates the decision and saves it to Trim. They email the Case Officer to progress the case.

Step 6

- The Case Officer writes to the member providing them with a copy of the decision with the appeals rights. This should be sent registered mail. A copy of the Advice of Decision letter (to be modified as required) can be found at L:\Military Casework\CASEWORK PACKS\Invalidity\DFRDB Section 30\Letters. Appeals Rights can be found at www.dfrdb.gov.au - Forms & Publications - Fact Sheets - Other - Appeal rights factsheet.
- Once the decision is made a copy of the Application for Invalidity benefit and superannuation productivity (including Military Super ancillary benefit) form (D40) must also be sent to the member. Please see appropriate paragraph in the Advice of decision letter. Application forms can be found at www.dfrdb.gov.au - Forms & Publications - Forms.

Step 7

- The Case Officer completes the Retrospective Invalidity case in Serena and the Team Leader creates a new Invalidity Retirement case. [See Serena Procedures].

Procedure MSBS retrospectively

ComSuper may receive a query from a member claiming that he/she could have been discharged as medically unfit.

Step 1

- When a query is received the Team Leader allocates the case to a delegated, APS 5 Case Officer in Serena prompting a needs action email to the case officer. [See Serena Procedures].
- The Case Officer needs to ascertain whether the member has preserved employer benefits in the MSBS. This information can be found in Capital. [See Capital procedures].
- The Case Officer writes to the member outlining the process, approximate time frames and inviting them to submit any evidence in support of their case. Letter template can be found at L:\Military Casework\CASEWORK PACKS\Invalidity\MSBS Rule 30\Letters
- The Application for Invalidity benefits form (M40) can be forwarded to the member at this stage. Application form can be found at www.msbs.gov.au - Forms & Publications - Forms.

Step 2

- The member must respond with a covering letter and supporting medical documentation.

Step 3

- Once the member has responded, the Case Officer may write to JHC and request the member's medical records and a medical officer's opinion as to whether the member could have been retired on the grounds of invalidity. That is, the Department of Defence is requested to advise if they support the case for retrospective entitlements. The member's letter and any supporting medical evidence should be forwarded with the letter. Template letter can be found at L:\Military Casework\CASEWORK PACKS\Invalidity\MSBS Rule 30\Letters.

PLEASE NOTE: The Case Officer/Delegate can use their discretion to make a Rule 30 decision with or without carrying out 'step 3'.

Step 4

- ComSuper will receive a response from the DMM at approximately 6 - 8 weeks.
- The APS 5 case officer prepares a decision Rule 30 for submission to the CSQA email proxy CSQA@comsuper.gov.au for review by the Delegate. Template for Rule 30

decision can be found at L:\Military Casework\CASEWORK PACKS\Invalidity\MSBS Rule 30\Decision

- All documentation and evidence referred to in the submission should be bookmarked as appropriate and saved to trim.

Step 5

- The Delegate approves or declines, signs and dates the decision and saves it to Trim. They then email the Case Officer to progress the case.

Step 6

- The Case Officer writes to the member providing them with a copy of the decision, [positive or negative] and the appeals rights. The Advice of decision letter (to be modified as required) can be found at L:\Military Casework\CASEWORK PACKS\Invalidity\MSBS Rule 30\Letters
- If the decision is positive, a copy of the Application for Invalidity benefits form (M40) must also be sent to the member if not previously sent. Application forms can be found at www.msbs.gov.au - Forms & Publications - Forms.

Step 7

- The Case Officer completes Retrospective/Rule 30 case in Serena and the Team Leader creates a new Invalidity Retirement case. [See Serena procedures].

RELATED DOCUMENTS

Corporate Policy – Conflict of Interest Policy

Procedure – Casework Services - Initial Invalidity Classification – MSBS and DFRDB

Procedure – Military Benefits – Invalidity classification

Procedure – Using Serena Business Manager for Case Management

CUSTOMERS/USERS

Customer/User	Nature/Extent
Military Casework Team	To prepare submissions and makes decisions

CONTROL & MEASUREMENT

Regular audit of Casework retrospective invalidity cases.


Monthly reporting to CSC captures information about retrospective invalidity cases.

Annual review of Procedure.

Appendix A - Section 37 DFRDB Act

Service Chief may inform Authority of grounds of retirement

37. Where a contributing member has been retired otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties but, after his retirement, the Chief of Navy, the Chief of Army or the Chief of Air Force or a person authorized in writing by the Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires, informs CSC that, at the time the member was retired, grounds existed on which he could have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he may, for the purposes of this Act, be treated as if he had been retired on that ground.

Note		subsection 51(6) of the DFRB Act is identical
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Purpose of Section 37/Sub-section 51(6)

The DFRDB Act received Royal Assent on 1 October 1972 but it was not until later in 1973 that Section 37 was added. DFRDB Act 1973 No. 81 of 1973 refers. Section 37 was inserted expressly as a >safety net= provision to cover National Servicemen, numbers of whom had been apparently discharged on non-medical grounds despite the existence of medical conditions which clearly could have led to an invalidity discharge. The same amending piece of legislation inserted sub-section 51(6) into the 1948 Act. It provided invalidity cover where it was clear that the ADF discharge process had broken down and where an invalidity discharge would have been the more appropriate course.

Appendix B – Rules 30 MSBS

Sub rule 30 states:

Rule 30:

(1) Where a person has been retired otherwise than on the ground of invalidity but, after his or her retirement, the Board is satisfied that, at the time the person was retired, grounds existed on which he or she could have been retired on the grounds of invalidity, the CSC may, for the purposes of these Rules, treat the person as if he or she had been retired on the last mentioned ground.

(2)

(3) This rule does not apply to a person to whom a preserved employer benefit is not applicable.

DOCUMENT AND FOI RELEASE ADMINISTRATION

Approvals – Document content and FOI Release

Date	Version	Name	Position
April 2015	7	[REDACTED]	Manager, Casework Services, MEAS
April 2012	6	[REDACTED]	Manager MIRR
July 2010	5	[REDACTED]	Manager, Military Invalidation, Reversionary and Release
December 2009	4	[REDACTED]	Manager, Military Casework
11 April 2008	3	[REDACTED]	Manager, Military Invalidation, Reversionary and Release
August 2007	2	[REDACTED]	Manager, Military Invalidation, Reversionary and Release
March 2007	1	[REDACTED]	Military, Administration & Relationship Manager

Revision History

Date	Version	Drafter's Name	Drafter's Position	Reason for Revision
April 2015	7	[REDACTED]	Senior Case Officer, Casework Services, MEAS	Review and update
April 2012	4	[REDACTED]	Military Casework	Review and update
July 2010	3	[REDACTED]	Reconsideration Case Officer	Annual Review
November 2009	4	[REDACTED]	Military Casework	Review & Update
11 April 2008	3	[REDACTED]	Procedures Officer	Formatting
August 2007	2	[REDACTED]	APS 6, MIRR Team	Minor Admin Changes
March 2007	1	[REDACTED]	Procedures Officer	Initial Draft

Document Owner

Date	Document Owner (i.e. section responsible for the procedure)
April 2015	Manager, Casework Services, MEAS
April 2012	Manager, Military Casework
November 2009	Manager, Military Casework
March 2007	Manager, Military Invalidation Reversionary and Release

FOI Document Release

All documents will be released unless a direction to exempt is provided by document owner. The list of exemptions is displaying in the table below. If you require advice regarding FOI or exemptions, please contact your scheme FOI/Legal team.

Exemption Number	Explanation	Only check if an Exemption applies
FOI- N/A	This document is not used to assist ComSuper to exercise its functions or powers in making decisions or recommendations that affect members of the public	
33	Documents affecting national security, defence or international relations	
34	Cabinet documents	
37	Documents affecting enforcement of law and protection of public safety	
38	Documents to which secrecy provisions of enactments apply	
42	Documents subject to legal professional privilege	
45	Documents containing material obtained in confidence	
46	Documents disclosure of which would be contempt of Parliament or contempt of court	
47	Documents disclosing trade secrets or commercially valuable information	
47A	Electoral rolls and related documents	
s 47B	Cause damage to Commonwealth-State relations *	
s 47C	Deliberative processes *	
s 47D	Substantial adverse effect on the financial or property interests of the Commonwealth *	
s 47E	Prejudice/substantial adverse effect on certain operations of agencies *	
s 47F	Unreasonable disclosure of personal information *	
s 47G	Unreasonably affect business *	
s 47H	Research (unreasonably expose agency/officer to disadvantage) *	
s 47J	Substantial adverse effect on the economy *	

* Public interest conditional exemption