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2011-574

Representative: Marilyn MacKinnon, BPA
Decision No: 100001639574
Decision Type: Entitlement Appeal
Location of Hearing: Charlottetown, Prince Edward Island
Date of Decision: 8 August 2011

The Entitlement Appeal Panel decides:

CHRONIC FATIGUE SYNDROME FIBROMYALGIA

Amount of entitlements as previously awarded. Two-fifths pension awarded pursuant to 21 (2.1) of the *Pension Act* is continued. Effective date of 3 April 2006 is maintained.

The Entitlement Review Decisions dated 24 April 2008 and 13 July 2010 are both varied. The legislative provision under which the two-fifths award is granted is changed from subsection 21(2) to 21(5) of the *Pension Act*.

Before:	Brent Taylor	Presiding and Writing Member
	Richard E. Woodfield	Member
	Roger B. Langille	Member

Original signed by:

Reasons
delivered by:

Brent Taylor

INTRODUCTION

This claim comes forward in respect of the Appellant's application for entitlement to increased pension for chronic fatigue syndrome and fibromyalgia.

PRELIMINARY MATTERS

The Appeal Panel is sitting on appeal of two Review level decisions, one of 24 April 2008, and one of 13 July 2010.

ISSUES

The Appeal Panel must determine, from the evidence before it and the application of subsection 21(2) of the *Pension Act*, whether the Appellant's two disabilities arose out of or are directly connected with the performance of her RCMP service duties. The Panel has also been asked by the Appeal Advocate to consider whether some or all of the Appellant's pension claim should be determined based on a possible

consequential relationship between her two claimed disabilities and her already-pensioned post traumatic stress disorder (PTSD), which would fall under 21(5) of the *Pension Act*.

Chronic Fatigue Syndrome Fibromyalgia

EVIDENCE AND ARGUMENT

This case has some unusual twists and turns, and the Appeal Panel will try to cogently summarize how it has wound its way through the Veterans Affairs Canada pension system.

The Appellant, now 51, has served in the RCMP for the last 16 years. Prior to her RCMP service she served in the Reserve Force for over 13 years. On 3 April 2006 the Appellant applied to the Department for three disabilities, post traumatic stress disorder, fibromyalgia, and chronic fatigue syndrome. In a decision dated 29 November 2006 the Department considered all three conditions under subsection 21(2) of the *Pension Act*. The Department awarded full pension entitlement for PTSD, but declined entitlement for the other two claimed disabilities under subsection 21(2) of the *Pension Act*. In its decision the Department wrote in part [P330]:

Fibromyalgia is a chronic condition that causes pain in the soft tissue and muscles of the body. There are many theories regarding the cause of fibromyalgia but there is not yet enough information to point to a single cause.

Chronic Fatigue Syndrome (severe fatigue that last at least six months and is not relieved with rest) also has no known cause - although numerous factors are felt to influence it's development and course.

The most recent medical evidence indicates that your diagnoses of fibromyalgia is not confirmed and the above noted diagnosis of chronic fatigue syndrome is almost five years old. Additionally, although there is medical evidence that you experienced musculoskeletal complaints related to the use of your service belt, the medical evidence does not establish that this, or any other service factors, were responsible for the development of your claimed conditions.

With regards to the claim regarding stress, the Department acknowledges that you may have experienced work related stress which may have caused a temporary worsening of your symptomology. There is, however, no available medical evidence to establish that such factors resulted in a permanent worsening of either your claimed chronic fatigue syndrome or fibromyalgia.

For these reasons, the Department cannot grant disability pension entitlement under Section 32 of the *R.C.M.P. Superannuation Act*, in accordance with subsection 21(2) of the *Pension Act*.
[As transcribed]

The Appellant took the above decision to a Review Panel of this Board on 24 April 2008. In its decision of the same date, the Review Panel determined that a partial pension award of two-fifths for chronic fatigue syndrome and fibromyalgia was warranted under subsection 21(2) of the *Pension Act*. The Panel wrote, in part, as follows [P339-340]:

The Panel recognizes that the medical evidence does in fact confirm the current diagnoses for the Applicant's conditions of chronic fatigue syndrome and fibromyalgia.

The Panel appreciates that *The Merck Manual*, Eighteenth edition, lists chronic fatigue syndrome under the heading of "Syndromes of Uncertain Origin", stating that:

. . . Chronic fatigue syndrome is defined a long-standing, severe, disabling fatigue without demonstrable muscle weakness. Underlying disorders that could explain the fatigue are absent. Depression, anxiety, and other psychologic diagnoses are typically absent. Treatment is rest and psychologic support, often including antidepressants. . . .

The Merck Manual states that the etiology of chronic fatigue syndrome is controversial and the precise cause remains unknown, indicating that viral infections have been proposed, immunologic abnormalities reported, and neuroendocrine abnormalities, cerebral circulation and neurotransmitter abnormalities are also proposed. *The Merck Manual* indicates that onset is usually abrupt and many patients report a viral-like illness with swollen lymph nodes, extreme fatigue, fever, and upper respiratory symptoms.

With regard to fibromyalgia, *The Merck Manual*, Eighteenth edition, states that fibromyalgia is:

. . . a common nonarticular disorder of unknown cause characterized by aching pain, tenderness, and stiffness of muscles, areas of tendon insertions, and adjacent soft tissue. Diagnosis is clinical. Treatment includes exercise, local heat, and drugs for pain and sleep. . . .

It is identified in *The Merck Manual* that stiffness and pain in fibromyalgia sufferers usually begins gradually, diffusely, and with an aching quality. It is noted that:

. . . Symptoms can be exacerbated by environmental or emotional stress, poor sleep, trauma, exposure to dampness or cold, or by a physician who gives the patient the incorrect message that "it is all in the head". Patients tend to be stressed, tense, anxious, fatigued, striving, and sometimes depressed. . . .

Fibromyalgia may remit spontaneously if stress decreases but can recur at frequent intervals or become chronic. . . .

The Panel appreciates that the Applicant sought medical attention for fatigue symptoms within approximately the first year of her service and was ultimately diagnosed with the conditions of chronic fatigue syndrome and fibromyalgia.

The Panel appreciates that the medical information on file, as argued and advanced by the Advocate, supports a contributory factor in the Applicant's RCMP service exacerbating her symptoms and from this information, with particular reliance on the medical information by Dr. Louis van Wyk (ER-M4), the Panel concludes that the Applicant has established pension entitlement in the amount of two-fifths for chronic fatigue syndrome and pension entitlement of two-fifths for fibromyalgia.

The Panel chooses to withhold three-fifths pension entitlement in appreciation of Dr. Keli Furman's indication in her letter dated 19 November 2007 (ER-M2) that:

. . . triggering of her PTSD clearly exacerbates her other ailments. . . . there has been primary effects on her PTSD, as well as secondary effects on her fibromyalgia and chronic fatigue

Subsequent to the above Review level decision, the Appellant initiated a second application for a pension for fibromyalgia and chronic fatigue syndrome on the basis that they were both a consequence of her now-entitled PTSD under subsection 21(5) of the *Pension Act*. This application was filed with the Department on 14 July 2009 [P202-210].

On 8 February 2010 the Department declined to make a determination on the Appellant's entitlement under subsection 21(5) of the *Pension Act*, concluding it had no jurisdiction to do so because the issue of entitlement to a pension for fibromyalgia and Chronic Fatigue Syndrome had already been determined in the decision of the Veterans Review and Appeal Board Review Panel dated 24 April 2008. The Department explained the basis for its conclusion that it lacked jurisdiction, as follows [P423]:

Reasons for Decision

- Disability entitlement is granted in fifths (1/5th to 5/5^{ths}).
- Your Departmental file shows that your chronic fatigue syndrome and fibromyalgia were fully addressed in the Veterans Review and Appeal Board (VRAB) Entitlement Review Decision, dated 24 April 2008. In that decision, the VRAB has dealt with all possible fifths (5/5^{ths}) for chronic fatigue syndrome and fibromyalgia.

- When the VRAB has made a decision allocating all possible fifths (5/5^{ths}) for a specific condition, we are barred from reviewing or altering that decision. Even though the VRAB did not provide a formal ruling under subsection 21(5) of the *Pension Act*, because the VRAB already allocated all possible fifths (5/5^{ths}) in its decision, we do not have authority to render a favourable decision under subsection 21(5) of the *Pension Act*, or to alter the VRAB decision in any way.

Conclusion:

- Because the VRAB has made a decision allocating all possible fifths (5/5^{ths}), we cannot consider any entitlement for Chronic Fatigue Syndrome or Fibromyalgia.

[Emphasis Added]

The Appellant then took the above decision to another Entitlement Review Panel of the Board and a hearing was held on 13 July 2010. Following the hearing that Panel upheld the Department's decision because it agreed that the VRAB Review Panel's earlier decision in 2008 created jurisdictional issues for the Appellant's subsection 21(5) claims for chronic fatigue syndrome and fibromyalgia. On the jurisdictional issues, the Review Panel wrote, in part, in its decision as follows [P436-437]:

The Panel takes considerable note that a previous VRAB Entitlement Review Panel determined that the Applicant's two claimed conditions were aggravated by her RCMP service to a moderate extent. In recognition of this moderate aggravation, the previous Entitlement Review Panel granted two-fifths partial pension entitlement. The Panel notes the previous Entitlement Review Panel withheld three-fifths entitlement and it indicated that the withholding of three-fifths entitlement was due to a consequential relationship with the Applicant's PTSD as identified within the medical opinions.

The Panel fully appreciates that the previous Entitlement Review Panel did not formally rule on the 21(5) consequential aspect of the claim. However, after careful consideration, the Panel is of the view that the previous Entitlement Review Panel did effectively conclude that some portion of the Applicant's claimed disabilities from chronic fatigue syndrome and fibromyalgia may have been or were consequential to the Applicant's pensioned PTSD.

After fully considering the evidence, arguments and issues raised in this consequential claim for chronic fatigue syndrome and fibromyalgia, along with the earlier Panel's reasons for granting two-fifths pension entitlement for these same disabilities under subsection 21(2) of the *Pension Act*, in the Entitlement Review decision of 24 April 2008, this Review Panel concludes that the subsection 21(2) and 21(5) aspects of the Applicant's disability claim are too closely related to be considered separately.

As a further complicating issue, the Panel notes that the Applicant, in her initial application for pension entitlement, clearly indicated that she was making a consequential claim. For some unexplained reason, the Department proceeded with a claim for direct attribution to RCMP service. This point was not addressed by the previous Entitlement Review Panel in its decision. This Panel does not have jurisdiction to deal with the decision of the other Review Panel. This issue could only be addressed by a VRAB Appeal Panel.

After careful consideration, the Panel concludes that the Department did not err by not considering the consequential claim. The Panel agrees that the wording of the previous Review Panel decision created a situation wherein the Department had no jurisdiction to proceed. It is unfortunate that both aspects of the Applicant's claim did not proceed in a consolidated manner from the outset when the claim was initiated with the Department of Veterans Affairs. However, this Review Panel does not have jurisdiction to now consolidate the claims or to take jurisdiction over the subsection 21(2) aspect of the claim. If the Applicant chose to exercise her right to an appeal from the VRAB's earlier Entitlement Review decision on chronic fatigue syndrome and fibromyalgia, then an Appeal Panel would have jurisdiction to fully hear and consider all of the issues arising from the Applicant's related claims under both subsection 21(5) and subsection 21(2) of the *Pension Act*. The Panel's conclusion in this regard thus prevents it from addressing the consequential claim.

The Panel therefore draws the Advocate's attention to its conclusion that the proper resolution of the present consequential claim requires that this Entitlement Review decision dated 24 April 2008 and the previous Entitlement Review decision be considered collectively by a VRAB Appeal Panel.

As recommended by the Review Panel in 2010, the Appellant, through her Pensions Advocate, then sought an appeal of both of the earlier Review decisions of 24 April 2008 and 13 July 2010. The appeal was heard before this Appeal Panel on 8 August 2011. At the appeal hearing, the Pensions Advocate reviewed the evidence and presented arguments on the Appellant's behalf concerning the Appellant's entitlement to a pension for fibromyalgia and chronic fatigue syndrome under both subsections 21(5) and 21(2) of the *Pension Act*. No new evidence was presented to the Appeal Panel.

At the beginning of the hearing the Appeal Panel advised the Advocate it would be welcoming her submissions on the issue of the propriety of entitlement, and on the implications of the fact that the Department's assessment instructions suggested that the claimed conditions are so closely related to PTSD that all should be combined for entitlement and assessment purposes.

On that point, the Advocate advised she was arguing entitlement only, and the assessment matter was not part of the two lower decisions before this Appeal Panel.

On the merits of the claim, the Advocate requested that the Appeal Panel provide the remaining three-fifths entitlement by awarding it under subsection 21(5). The Advocate submitted that three-fifths entitlement could be awarded under subsection 21(5), given the extensive commentary in the file that the two claimed disabilities are correlated with PTSD. In the alternative, it was argued that the Appeal Panel could vary the first review decision by increasing the degree of entitlement from the existing two-fifths to five-fifths under subsection 21(2).

At the hearing, the Appeal Panel discussed its concern with the Advocate that in the event of a decision not awarding the effect of full pension entitlement to the Appellant, the Appellant would have only the option of seeking a reconsideration on new evidence, or seeking further recourse through judicial review. In response, the Advocate advised that any award not amounting to full entitlement would be found unsatisfactory by the Appellant, and submitted in her arguments that there was ample evidence in the file supporting an award of five-fifths in any event.

On the specific issue of the effective date of any award of additional entitlement, the Advocate directed the Panel's attention to page 7 of the Statement of Case wherein the Appellant wrote in an appendix to her statutory declaration on application:

. . . PTSD aggravates the Chronic Fatigue and Fibromyalgia. They make each other worse. Unusual (chronic) stress/trauma. Lack of sleep irritates chronic fatigue & Fibromyalgia. . . .
[As transcribed]

The Advocate submitted the above statement, filed with the first application in April 2006, was a clear indication from the Appellant that she wished her claim to be adjudicated as a 21(5) consequential matter from the outset of her application in 2006. Therefore, if this Panel saw fit to grant all or part of any additional pension under 21(5), the effective date of the award should reflect the April 2006 application.

The Advocate also invoked subsection 39(2) of the Pension Act, which provides for an additional award of pension beyond the three years already possible under 39(1) when there have been administrative or other delays beyond the control of an Appellant. The Advocate submitted that in the Appellant's case, there was ample evidence of such delays – particularly given the fact her claim was never ruled on as intended from 2006.

ANALYSIS/REASONS

In making the decision below this Appeal Panel has fully applied itself to the rules of evidence as set forth in its enabling statute. Section 39 of the *Veterans Review and Appeal Board Act* reads as follows:

39. In all proceedings under this Act, the Board shall

- (a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of the applicant or appellant;
- (b) accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and

(c) resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.

As the Federal Court has noted in a number of cases (including recently in *Clarke v. Canada (Veterans Review and Appeal Board)*, 2009 FC 298, Dawson J.) the Appellant must do more than just raise a doubt. The Appellant bears the onus of establishing the proposition which she asks the Panel to adopt.

The Appeal Panel has carefully reviewed the historical and contemporary evidence in this case. Since the evidence on file indicates that the cause or causes of fibromyalgia and chronic fatigue syndrome are not yet clear, it cannot reasonably infer or conclude that entitlement to a five-fifths pension representing full causation by RCMP service under either subsection 21(2) or subsection 21(5) of the *Pension Act* has been established.

The first Review Panel in 2008 granted a two-fifths pension on the basis that RCMP service was a contributory factor in the exacerbated symptoms of the Appellant's chronic fatigue syndrome and fibromyalgia under subsection 21(2). However, this Appeal Panel finds that the evidence that was before the Review Panel in 2008, and which is now also before this Appeal Panel, does not establish that RCMP service caused or made any discernible, permanent, contribution to the development of, triggering of, or in the nature of the symptoms resulting from chronic fatigue syndrome and fibromyalgia.

Evidence of causal contribution to the permanent disability by RCMP service is required in order to establish full or partial pension entitlement on an aggravation basis under subsections 21(2) or (2.1) of the *Pension Act*. Entitlement to a partial pension on an aggravation basis will be established if there is evidence of an aggravation in the extent of the permanent disability because a contributing role in the permanent disability was played by service factors. If there is evidence that service caused some permanent impact on the extent or severity of the ultimate permanent disability, it could then be concluded that service was responsible for making a causal contribution to the claimed permanent disability. However, if there is no evidence that service, or a service disability, changed or permanently worsened the claimed disability, then no entitlement to a partial pension would be established under subsections 21(2), 21(5) or (2.1), of the legislation.

Here the evidence does not establish a permanent worsening of the claimed disabilities by service. The evidence on file indicates that factors such as RCMP shift work or work-related stressors may have exacerbated or worsened symptoms of chronic fatigue syndrome and fibromyalgia on a temporary basis while the Appellant was exposed to those factors or working conditions. However, there is no evidence establishing a permanent impact or discernible change in the nature or severity of her symptoms relating to the claimed conditions after the Appellant ceased to perform shift work, as required in order to grant a partial pension for a direct and permanent aggravation of a disability by service under subsection 21(2) and (2.1).

The most favourable inference raised by all of the evidence now before the Appeal Panel, when considered in its totality, is that RCMP service may have temporarily exacerbated the Appellant's symptoms of chronic fatigue syndrome and fibromyalgia. However, the evidence does not establish that RCMP service was directly responsible for causing or triggering the disability or disabling symptoms from chronic fatigue syndrome and fibromyalgia. The evidence also fails to establish that RCMP service made a distinct or discernible permanent contribution to the extent of the Appellant's disability from chronic fatigue syndrome and fibromyalgia. As a result, this Appeal Panel must, therefore, conclude that an error was made in the 2008 Entitlement Review decision. The Appeal Panel cannot uphold the partial award that was granted under 21(2) of the *Pension Act* because there is no evidence that RCMP service was directly responsible for any permanent aggravation, or permanent worsening, of the disability or disabling symptoms from chronic fatigue syndrome and fibromyalgia.

However, the Appeal Panel does conclude that the evidence could reasonably support the inference that the Appellant's service-related disability of PTSD has permanently worsened and permanently contributed to the extent of the Appellant's disability from chronic fatigue syndrome and fibromyalgia by chronically impacting the frequency or severity of the Appellant's symptoms.

Although the 2008 Review Panel justified its withholding of three-fifths based on the report of psychologist, Dr. Keli Furman, dated 19 November 2007, this Appeal Panel concludes that Dr. Furman's evidence would more reasonably support the award of a two-fifths partial pension under subsection 21(5). This evidence

supports the conclusion that the permanent symptoms and effects of PTSD will have a permanent and chronic consequential impact on the Appellant's disabling symptoms from chronic fatigue syndrome and fibromyalgia. The Panel refers to Dr. Furman's report which states in part that:

. . . triggering of her PTSD clearly exacerbates her other ailments there has been primary effects on her PTSD, as well as secondary effects on her fibromyalgia and chronic fatigue

The Appeal Panel has carefully reviewed of all of the other evidence in the Appellant's file in determining the manner and extent to which RCMP service may have contributed to and permanently aggravated the Appellant's disability from chronic fatigue syndrome and fibromyalgia. The Panel refers to the evidence of Dr. Louis van Wyk, dated 23 October 2007, who stated as follows [P353]:

. . . The cause of her fibromyalgia and chronic fatigue syndrome is yet unknown. We do know that stress and certain types of physical activity will exacerbate the symptoms. . . .

The above letter, and all of the other medical evidence in the Statement of Case, was available to the July 2010 Review Panel, and was also considered by the first Review Panel in 2008. This Panel notes that Dr. van Wyk is the only physician who comments directly on the etiology of the Appellant's fibromyalgia and chronic fatigue syndrome.

Dr. Edguer, neurologist, simply remarks in a report dated 6 May 2005 [P347] that the Appellant's shift work "makes her chronic fatigue syndrome more prominent." This Appeal Panel finds Dr. Edguer's statement to be consistent with the other evidence on file that establishes that shift work exacerbated the Appellant's symptoms of fatigue. However, the doctor's evidence does not speak to the underlying causes of chronic fatigue syndrome and fibromyalgia. Nor does it establish that shift work caused an ongoing or permanent worsening which lasted beyond the actual shift work.

Dr. Khan, rheumatologist, confirms the diagnoses of fibromyalgia and chronic fatigue syndrome but does not speak to their underlying cause. Finally, the report of Dr. Patricia Stansberry dated 12 October 2007 quotes from Dr. Edguer's report but does not on its own enter into a discussion of causation or of the permanent worsening of the Appellant's two claimed conditions from either her RCMP service or her PTSD.

In conclusion, this Appeal Panel does not view Dr. van Wyk's evidence, or the other evidence on file, as did the first Review Panel who concluded that the disability from the Appellant's two claimed conditions could be connected to her RCMP service directly in the amount of two-fifths. In the interim time since the 2008 and 2010 Review Panel decisions, no new medical evidence has been brought forward to this Appeal Panel. Specifically, no new evidence has been led from a qualified practitioner to the effect that the Appellant's two claimed conditions are either directly or proximately related to her RCMP service, or that they would be related to RCMP service to a greater degree than two-fifths. The totality of the evidence on file can reasonably support the conclusion that shift work or other service stressors caused an aggravation or exacerbation of symptoms on a temporary or immediate basis. Again, however, the Appeal Panel observes that the evidence does not indicate that RCMP service has caused a permanent and ongoing impact on those symptoms after the Appellant was no longer exposed to shift work or other service stressors, as would be required in order to grant a partial pension for a direct or proximate and permanent aggravation of a disability by RCMP service under subsection 21(2) and (2.1).

Although the Appeal Panel finds that the evidence cannot support the conclusion that RCMP service was the direct, entire, primary or proximate cause of the Appellant's chronic fatigue syndrome and fibromyalgia, under subsections 21(2) and (2.1) of the *Pension Act*, it does find that the two-fifths pension which was previously awarded to the Appellant in 2008 can be supported on the basis of a consequential connection to service through the permanent and chronic worsening of her symptoms of chronic fatigue syndrome and fibromyalgia, as a result of her service-related disability of PTSD. The evidence does reasonably raise the inference that there may be a chronic and permanent aggravation of symptoms originating from her PTSD. Such a conclusion aligns with the medical consensus as it has been expressed in *The Merck Manual*. It is also consistent with the Department's rationale for assessing the claimed conditions separately from her PTSD.

This Appeal Panel notes that it considered how the two claimed conditions are currently being assessed by the Department in order to ensure that the Panel had as much information as possible on the interrelationship between the already pensioned condition of PTSD and the two claimed conditions, and in

order to facilitate its understanding of this complex set of issues. In its assessment worksheet and decision of 13 March 2009 (EA-Attach-B1), the Department determined that it would assess the Appellant's chronic fatigue syndrome and fibromyalgia separately from her PTSD. It appears that the Department departed from its own assessment instructions in Chapter 21 of the 2006 Veterans Affairs Canada Table of Disabilities, based on a recognition that although there is some relationship between the claimed conditions and PTSD, they do not involve the same symptoms and effects, and this dictated the need to perform a separate or non-bracketed assessment for chronic fatigue syndrome and fibromyalgia.

Based on all of the foregoing evidence and information, the Appeal Panel, therefore, concludes that the present partial pension of two-fifths is supportable under subsection 21(5) of the *Pension Act* on the basis of a consequential relationship to the Appellant's PTSD. No new medical evidence has been brought forward to this Appeal Panel that could establish that the PTSD has aggravated and permanently contributed to the ultimate disability from chronic fatigue syndrome and fibromyalgia, to a greater degree than two-fifths. Given that no new medical evidence has been led demonstrating the award of two-fifths to be erroneous or unreasonable, the Panel confirms that the Appellant is entitled to a two-fifths partial award under subsection 21(5) for aggravation of fibromyalgia and chronic fatigue syndrome.

In conclusion, this Appeal Panel will uphold the two-fifths partial award for fibromyalgia and chronic fatigue syndrome but will vary the legislative basis under which the partial pension was granted from subsections 21(2), to 21(5) and (2.1). The two-fifths pension will be continued under subsections 21(5) and (2.1) of the *Pension Act*. As this decision confirms the continuation of the two-fifths pension, it will have no effect on the retroactive or past payment of the pension. Since the Appellant has already been in receipt of the two-fifths pension with effect from 3 April 2006, she has effectively received payment of the two-fifths pension from the date of her first application. As a result, there is no further question of retroactivity under Section 39 of the *Pension Act* to be determined.

DECISION

The Entitlement Review decisions dated 24 April 2008 and 13 July 2010 are both varied. The Appeal Panel confirms the Appellant's entitlement to a two-fifths partial award for fibromyalgia and chronic fatigue syndrome. However, the Appeal Panel varies the legislative provision under which the partial award was made from subsection 21(2) of the *Pension Act* to subsection 21(5) of the *Pension Act*.

Applicable Statutes:

Pension Act, [R.S.C. 1970, c. P-7, s. 1; R.S.C. 1985, c. P-6, s. 1.]

Section 2
Subsection 21(2) and (2.1)
Subsection 21(5)
Section 39

Royal Canadian Mounted Police Superannuation Act, [R.S.C. 1970, c. R-11, s.1; R.S.C. 1985, c. R-11, s.1.]

Section 32

Veterans Review and Appeal Board Act, [S.C. 1987, c. 25, s. 1; R.S.C. 1985, c. 20 (3rd Supp.), s. 1; S.C. 1994-95, c. 18, s. 1; SI/95-108.]

Section 3
Section 25
Section 39

Attachments:

EA-Attach-B1: Disability Worksheet dated 21 May 2009 with attachments (28 pages)

Date Modified: 2012-05-17