



Australian Government
Department of Veterans' Affairs

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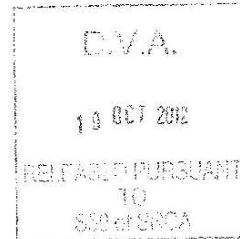
Department of Veterans' Affairs
GPO Box 9998
Melbourne Vic 3001

File Reference: JAM0090-04

Monday, 19 September 2011

Mr Daryl James
c/o: Mr Graham Castles
REDACTED
WEST VIC 3081

Mr Daryl James
REDACTED
REDACTED
VIC 3085



Dear Mr James

SAFETY, REHABILITATION & COMPENSATION ACT 1988 (SRCA)

I refer to your claim for compensation for post traumatic stress disorder condition.

Section 124 of the SRCA entitles a person to compensation under this Act for an injury suffered before the Act's commencing day (1 December 1988) if compensation was, or would have been, payable under the Act in force at the date of the injury.

In your case the appropriate Act under which to consider your claim is the *Compensation (Commonwealth Government Employees) Act 1971*.

Section 53 of the Act states the following:

"53.(1) This Act does not apply in relation to an injury caused to an employee unless notice in writing of the injury was served on the Commonwealth –

- (a) as soon as practicable after the occurrence of the injury;
- (4) Where –
 - (a) a notice purporting to be a notice referred to in a preceding sub-section of this section has been served on the Commonwealth;
 - (b) the notice, as regards the time of service or otherwise, failed to comply with the requirements of that sub-section; and

(c) the Commonwealth would not, by reason of the failure, be prejudiced if the notice were treated as a sufficient notice, or the failure resulted from the death, or absence from Australia, of a person, from ignorance, from a mistake or from any other reasonable cause,

the notice shall be deemed to have been served in accordance with that sub-section.”

In the *Commonwealth v. Connors* (1989), a decision of the High Court, it was noted that “mistake” includes a mistake of law or fact but ignorance of the law and a sense of failure to avert to the existence of the right to a claim does not constitute, by itself, a mistake, and cannot, by itself, constitute “other reasonable cause”.

In your claim, you contend you were sexually assaulted in 1972. You claim you did not become aware of this event until October 2008 when you were diagnosed with PTSD from repressed memory following attendance at the anniversary of the Australian Defence Band. I note that you lodged a police report for the incident on 25 June 2010. Victoria Police advised they terminated their investigation due to the historical nature of the allegations and the delay with reporting the matter as well as a lack of corroborating evidence. A search of the Defence records also failed to uncover any records of the alleged events occurring or being reported.

I consider that the Commonwealth has been prejudiced as a result of your failure to lodge a notice of injury at the time of the alleged events in 1972 or as soon as practicable after the alleged events.

DECISION

I determine that the claim is disallowed.

Enclosed is a brochure that explains your rights under the Act. Please read it carefully.

If there is anything you would like to discuss, please phone me on REDACTED.

Yours sincerely

Scott Farrell
Delegate of the Military Rehabilitation and Compensation Commission

Enclosures:

1 “Your right to have a decision reviewed”

