



AAT Bulletin

ISSUE NO. 5/2013

4 FEBRUARY 2013

The *AAT Bulletin* is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. The Bulletin occasionally includes information on legislative changes that affect the AAT and other important developments.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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Enquiries regarding this publication may be directed to aatweb@aat.gov.au

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AAT Recent Decisions

This section of the Bulletin provides information about decisions recently published by the AAT. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Civil Aviation

[Gosman and Civil Aviation Safety Authority](#) [2013] AATA 48; 31/1/2013; Deputy President PE Hack SC

Medical certificate — Knowingly or recklessly made false or misleading statement in relation to application for medical certificate — Medical certificate refused — Applicant did not suffer from glaucoma at any time — Use of medication for longer than two consecutive weeks not demonstrated — Applicant failed to disclose sleep apnoea — Sleep apnoea treated successfully — Non-disclosure of sleep apnoea neither knowing nor reckless — Not satisfied applicant knowingly or recklessly made false or misleading statement in relation to application for medical certificate — Decision under review set aside and remitted

Compensation

[Freeman and Fleetmaster Services Pty Ltd](#) [2013] AATA 38; 25/1/2013; Deputy President PE Hack SC

Injury — Failure or refusal to undertake rehabilitation program — Right to compensation suspended — Reasonable excuse — Claimed allocated tasks unsuitable or caused pain — No particular skill required for allocated task — Unreasonable refusal to participate in explanation of allocated task — No contemporaneous complaint of pain — Not satisfied work undertaken caused pain — No explanation for subsequent failure to return to work — No reasonable excuse — Decision under review affirmed

[Stefanoski and Telstra Corporation Limited](#) [2013] AATA 50; 1/2/2013; Miss EA Shanahan, Member

Depressive disorder — Anxiety disorder — Panic — Attributed to workplace harassment and bullying — Back pain — Coexisting thyrotoxicosis — Disciplinary action — Reasonable administrative action undertaken in a reasonable manner — Decision under review affirmed

Practice and Procedure

[Heath and Commonwealth Superannuation Corporation](#) [2013] AATA 43; 31/1/2013; Senior Member N Isenberg

Jurisdiction — Defence force retirement benefits — Applicant resigned from Australian Army — Applicant requested assessment by Chief of Army that applicant could have been retired on grounds of invalidity or of physical or mental incapacity to perform his duties — Chief of Army delegate failed to inform respondent whether such grounds existed — No reviewable decision made by respondent — No jurisdiction

Social Security

[Diriye and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 53; 1/2/2013; Dr A Frazer, Member

Pensions, benefits and allowances — Disability support pension — Qualification requirements — Residency and medical requirements — Decision under review affirmed

[Dyer and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 51; 1/2/2013; Dr KS Levy RFD, Senior Member

Pensions, benefits and allowances — Disability support pension — Australian residency — Overseas portability — Legislative amendments to maximum periods of portability — Date of effect of amendments — Decision under review affirmed

[Egan and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 39; 29/1/2013; Senior Member JF Toohey

Pensions, benefits and allowances — Special Benefit — Applicant subject to newly arrived resident waiting period — Whether waiting period should be waived — Whether substantial change in applicant's circumstances beyond her control — Decision under review affirmed

[Philp and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 52; 1/2/2013; Dr KS Levy RFD, Senior Member

Pensions, benefits and allowances — Calculation of Newstart allowance — Calculation of Parenting Payment — Working credit balances — Calculation of income reduction — Calculations of working credit balanced based on average daily rate — Decision under review affirmed

Taxation

[Bayconnection Property Developments Pty Ltd and Ors and Commissioner of Taxation](#) [2013] AATA 40; 29/1/2013; Deputy President SE Frost and Senior Member G Lazanas

GST — Input tax credits — Creditable acquisitions — Enterprise — Carrying on an enterprise — Penalty — Intentional disregard of the law — Penalty uplifted by 20% — Objection decisions affirmed

[Dowling and Commissioner of Taxation](#) [2013] AATA 49; 1/2/2013; Dr KS Levy RFD, Senior Member

Superannuation — Excess Non-Concessional Contributions Tax — Special circumstances — Discretion under Div 292 — Decision under review set aside

[Herbert and Commissioner of Taxation](#) [2013] AATA 42; 31/1/2013; Senior Member AF Cunningham

Extension of time — Assessments for 1989 and 1995 income years — Notice of objections lodged over 22 years and 12 years late — No reasonable explanation for delay in lodging — Documents unavailable — Prejudice to respondent — No reasonable prospects of success — Decision under review affirmed

Veterans' Affairs

[Layton and Repatriation Commission](#) [2013] AATA 37; 25/1/2013; Dr P McDermott RFD, Senior Member

Pensions and benefits — Widow's pension — Death of veteran — Operational service — Ischaemic heart disease — Statement of Principles — Posttraumatic stress disorder factor — DSM-IV-TR Diagnostic Criteria — Four-step procedure for determining whether death was war caused — Reasonable hypothesis connecting death with circumstances of service — Not satisfied beyond reasonable doubt that death was not war caused — Decision under review set aside and substituted

[Ockwell and Repatriation Commission](#) [2013] AATA 44; 31/1/2013; Deputy President SD Hotop

Veterans' entitlements — Disability pension — Applicant rendered defence service in Royal Australian Navy from 1968 to 1988 — Applicant performed heavy marine engineering tasks in course of defence service in period 1973-1984 — Applicant suffered osteoarthritis in right wrist in 2008 — Statement of Principles concerning osteoarthritis — Statement of Principles does not uphold contention that applicant's osteoarthritis of right wrist on balance of probabilities connected with defence service — Applicant's osteoarthritis of right wrist not defence-caused — Decision under review affirmed

Appeals

This section of the Bulletin provides information about appeals against AAT decisions that have been lodged or finalised. Only appeals in relation to AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Teariki Tera v Minister for Immigration and Citizenship & AAT	[2012] AATA 906

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Weeks v Commissioner of Taxation	[2011] AATA 499	[2013] FCAFC 2 [2012] FCA 342
Lilley v Comcare	[2011] AATA 472	[2013] FCA 26
Telstra Corporation Ltd v Kotevski & AAT	[2012] AATA 136	[2013] FCA 27
Zhonghua Zhang v Minister for Immigration and Citizenship & AAT	[2012] AATA 475	MLG1079/2012
Carrigan v Secretary, Department of Education, Employment and Workplace Relations	[2012] AATA 253	BRG666/2012



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