



AAT Bulletin

ISSUE NO. 14/2015

7 APRIL 2015

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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

Contents

AAT Recent Decisions	2
Compensation.....	2
Immigration and Citizenship	2
Practice and Procedure	2
Social Security	3
Veterans' Affairs.....	5
Appeals	6
Appeals lodged	6
Appeals finalised.....	6

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.

Compensation

[Hryckiewicz and Military Rehabilitation and Compensation Commission](#) [2015] AATA 206; 2/4/2015; The Hon B Tamberlin QC, Deputy President

Volunteer national serviceman – Eyesight glare sensitivity and migraine attacks – Whether liable to pay compensation under the *Safety, Rehabilitation and Compensation Act 1988* – Whether military service contributed to condition – Ailment materially contributed to by service – Respondent liable to pay compensation for eyesight problems – Decision under review set aside and substituted

[Lim and Comcare](#) [2015] AATA 189; 27/3/2015; Dr J Popple, Senior Member

Commonwealth employees – Whether condition is an injury – Whether caused by reasonable administrative action – Multiple causes of condition – Whether condition suffered prior to reasonable administrative action – Decision under review affirmed

[Lopez-Avila and K & S Freighters Pty Ltd](#) [2015] AATA 197; 31/3/2015; Senior Member J Handley

Applicant suffered left-wrist injury in March 2008 – Pre-existing asymptomatic osteoarthritis aggravated – Short period of incapacity and return to work on full duties in November 2008 – Applicant met with manager in August 2012 concerning work performance which was found to be unsatisfactory – Proposal that performance improvement plan be devised – Applicant left workplace with belief his employment had been terminated – Has not returned to work – Incapacity by depression and anxiety subsequently certified by doctors – Not work-related – No incapacity from August 2012 by wrist injury – Decision under review affirmed

Immigration and Citizenship

[Thuraisamy and Minister for Immigration and Border Protection](#) [2015] AATA 202; 1/4/2015; Deputy President SE Frost

Whether applicant of good character – Previous traffic offences – Expired good behaviour bond – Decision under review set aside and remitted

Practice and Procedure

[Fiorentino and Members of the Companies Auditors and Liquidators Disciplinary Board and Australian Securities & Investments Commission \(ASIC\) \(Joined Party\)](#) [2015] AATA 151; 17/3/2015; Professor R Deutsch, Deputy President

Application for transfer of proceedings – Applicable principles – Balance of convenience – Interests of the parties – Interests of justice – Efficient administration of justice – Application to for transfer refused

[Roberts and Comcare](#) [2015] AATA 139; 12/3/2015; Professor R McCallum AO, Member

Application for extension of time to lodge application for review – Whether reasonable explanation for delay – Whether fair and equitable to grant extension – Merits of substantive application – Extension of time refused

Social Security

[Akter and Secretary, Department of Social Services](#) [2015] AATA 181; 27/3/2015; Senior Member JF Toohy

Pensions, benefits and allowances – Mobility allowance – Whether applicant unable to use public transport without substantial assistance – Whether applicant engaged in voluntary work for at least 32 hours in every 4 weeks on a continuing basis – No evidence that applicant satisfied either criterion – Tribunal not satisfied documents submitted in support of claim genuine – Decision under review affirmed

[Dowling and Secretary, Department of Social Services](#) [2015] AATA 196; 31/3/2015; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Whether 20 impairment points – Whether continuing inability to work – Decision under review affirmed

[Kalathas and Secretary, Department of Social Services](#) [2015] AATA 191; 30/3/2015; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability Support Pension – Spinal Condition – Depression – Ischaemic heart disease – Conditions not fully diagnosed, treated and stabilised – Shoulder condition fully treated, diagnosed and stabilised – Total impairment rating of 0 points – No active participation in program of support – Decision under review affirmed

[Latham and Secretary, Department of Social Services](#) [2015] AATA 188; 27/3/2015; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Whether 20 impairment points – Whether conditions fully diagnosed, treated and stabilised – Decision under review affirmed

[Mewton and Secretary, Department of Social Services](#) [2015] AATA 200; 31/3/2015; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability Support Pension – Whether applicant had relevant impairment – Whether impairment rating of at least 20 points – Whether applicant had continued inability to work – Where applicant could work 15 hours per week – Decision under review affirmed

[Mioceovich and Secretary, Department of Social Services](#) [2015] AATA 192; 27/3/2015; Senior Member CR Walsh

Pensions, benefits and allowances – Age pension – Applicant sole trader carrying on business as a general medical practitioner – Applicant received lump sum General Practice Rural Incentives Program payment from Medicare – Whether lump sum payment should be treated as having been received by the applicant over 12 months or as the applicant's ordinary business income – Decision under review affirmed

[O'Connor and Anor and Secretary, Department of Social Services](#) [2015] AATA 187; 26/3/2015; Dr C Kendall, Member

Pensions, benefits and allowances – Age pension – Overpayment – Debt due to the Commonwealth – Whether recovery of debt should be written off or waived – Debt not attributable solely to error made by Centrelink – No “special circumstances” – SSAT decision under review affirmed

[Riera and Secretary, Department of Social Services](#) [2015] AATA 190; 30/3/2015; Dr M Denovan, Member

Pensions, benefits and allowances – Disability support pension – 20 points or more under the Impairment Tables – Alcoholism – Anxiety and depression – Decision under review affirmed

[Solaiman and Secretary, Department of Social Services](#) [2015] AATA 161; 19/3/2015; The Hon B Tamberlin QC, Deputy President

Pensions, benefits and allowances – Disability support pension – Whether conditions fully diagnosed, treated and stabilised – Whether conditions can be assigned a combined rating of 20 impairment points – Whether continuing inability to work – Decision under review affirmed

[Twentyman; Secretary, Department of Social Services](#) and [2015] AATA 198; 31/3/2015; Deputy President JW Constance

Pensions, benefits and allowances – Disability support pension – Bipolar disorder – Whether impairment fully diagnosed, treated and stabilised – Whether impairment could be rated twenty or more impairment points – Decision set aside and substituted

[Whittall and Secretary, Department of Social Services](#) [2015] AATA 129; 6/3/2015; Professor R McCallum AO, Member

Pensions, benefits and allowances – Disability support pension – Cancellation of payments – Compensation preclusion period – Whether special circumstances exist – Purchase of property – Property development business venture – Grossly dishonest treatment of Applicant by partners in business venture – Whether to treat whole or part of compensation payment as not having been made – Decision under review varied and remitted

[Wu and Secretary, Department of Social Services](#) [2015] AATA 204; 1/4/2015; Senior Member E Fice

Pensions, benefits and allowances – Rules for determining rates and payments – Income test – Newstart allowance – Widow allowance – Ordinary income – Undisclosed employment, gambling and rental income – Income exceeded limit – Assets test – Value of personal assets – Investment property exceeded asset limit – Decision under review affirmed

Overpayments and debt recovery – Waiver of debt – No administrative error or special circumstances – No waiver applied

Veterans' Affairs

[Kozakiewicz and Repatriation Commission](#) [2015] AATA 203; 1/4/2015; Deputy President FJ Alpins

Eligibility for age service pension and treatment for any injury or disease – Whether applicant “has rendered qualifying service” – Section 7A of *Veterans' Entitlements Act 1986* (Cth) – Whether applicant an allied veteran who rendered service during period of hostilities as member of defence force established by an allied country – Whether service in respect of which incurred danger from hostile forces of the enemy – Applicant claimed to have served during World War II in defence force of Polish government-in-exile under British command in Italian Campaign – Whether Tribunal reasonably satisfied applicant has rendered such service – Decision under review affirmed

[Pye and Repatriation Commission](#) [2015] AATA 201; 31/3/2015; Dr P McDermott RFD, Senior Member

War widow's pension – Whether death war-caused – Where no operational service – Whether alcohol and tobacco consumption related to service – Stress – Acute renal failure – Decision under review set aside and substituted

[Wheeler and Repatriation Commission](#) [2015] AATA 109; 27/2/2015; Senior Member N Isenberg

Service pension – Strict criteria – 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
Pattle v Secretary, Department of Social Services	[2014] AATA 683
Revulge v Secretary, Department of Education & AAT	[2015] AATA 70

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Walkerden & Sanghvi v Wodonga Pharmacy Pty Ltd & Australian Community Pharmacy Authority	[2014] AATA 496	[2015] FCA 273
Kentish v Commissioner of Taxation	[2013] AATA 58	[2015] FCA 247
Bond v Commissioner of Taxation	[2013] AATA 58	[2015] FCA 245
Purvis v Commissioner of Taxation	[2013] AATA 58	[2015] FCA 246
Contreras v Minister for Immigration and Border Protection & AAT	[2013] AATA 914	[2015] FCAFC 47 [2014] FCA 912

© Commonwealth of Australia 2015



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](https://creativecommons.org/licenses/by/3.0/au/). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#). Those terms provide that section 182A of the *Copyright Act 1968* applies.