THE FIVE STAGES OF CLAIMS CONSIDERATION

When considering claims under the Service Pensions Order the process can be broken down into 5 stages.

At each stage the Secretary of State (S of S) must consider the onus of proof and apply the correct 'test' to any evidence i.e. whether the S of S accepts any particular fact/contention on the balance of probabilities or on the basis of reasonable doubt.

Stage 1

- **Is there service?**

  For **any claim,** the claimant has to establish, that he/she has had military service (as defined in the SPO) on the **balance of probabilities**.

What this means for you:

If you have been unable to trace a service number or locate any service documents, or unable to trace any record of service with HMRC and we have asked them to provide any documents, we may be unable to show service. You will then need to decide on balance of probabilities if you accept that they served as member of the British Forces or not. Remember to accept on balance of probabilities you need to be 51% or more sure.

Stage 2

- **Is there disablement?**

  For **any claim,** the claimant must show that he suffers from some disablement on the **balance of probabilities, before the question of causation can be considered.**

What this means for you:

The claimant must specify what disablement he/she is claiming for. Claims where only 'exposure to radiation' are claimed are therefore unacceptable because that claim does not describe any disablement. However once a disablement is specified, Vets UK seeks to assist the claimant by obtaining the service documents to see if service disablement is confirmed.

Disablement can also be shown by describing a physical manifestation of what the disablement is/was. Eg a claimant who wishes to claim for a leg injury may simply state that their right leg is 2" shorter than their left leg. For the purposes of Article 5(1) disablement will have been shown. However, if he said he wished to claim for blow to the knee, without qualifying how this affects him, then he has not shown disablement at this point.

If at either Stage 1 or 2 the S of S is not satisfied on balance of probabilities, after reasonable enquiries have been made, that either service or disablement has not been shown, no further consideration is needed and the claim will fall for rejection.

Stage 3

- **What is the incident that led to the injury?**

  The S of S must first consider whether the claimed incident **occurred** on the **balance of probabilities**. eg the claimant may state they injured their knee falling down some steps – there may be no accident report detailing this incident, but if the SMDs show he had treatment for a knee injury around the time he claimed the incident occurred we would accept on the balance of probabilities.

  Other than the SMDs, there may be other evidence that supports the reliability of the claimant's statement such as their trade, rank, regiment dates and location – ie were they doing work of the type that could cause their claimed disablement and were they where they claimed to be?

  There is often more than one statement given by the claimant on the file – are the statements consistent or do they contradict each other?

  If there is no report of the injury in the SMDs or no accident report completed – was this reasonable? If it was a minor injury the answer may be yes, but there is no reason for you not to ask the claimant why they didn't?

  If there was no mention of any injury at release – was this reasonable?

  Do any official records contradict the account given by the claimant?

Stage 4

- **Did service cause the incident?**

  For **Article 40** cases the Secretary of State must show **beyond reasonable doubt** that service did not cause the incident. Eg claimant injured himself, whilst on holiday with his family, during a period of leave.

  For 40(4) where the injury that led to the claimants discharge or death was not noted on a medical report at the commencement of service, there is a compelling presumption in his favour, to which effect must be given unless the contrary is shown.

  What this means for you:

  As S of S you would need to present evidence of an alternative or non-service cause. You would need the evidence to be so strong that only the remotest possibility remains in his favour. If that remote possibility can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the S of S has proved beyond reasonable doubt that the claimed injury is not attributable to or aggravated by service.

  Remember, once a matter is established beyond reasonable doubt, it must be taken for all purposes of law to be a fact.

  Questions to ask:

  - What evidence is needed by the S of S to prove beyond reasonable doubt that the disablement is **not** due to an injury caused or aggravated by service?

- Does the S of S have this evidence or can it be obtained?

If the answer is ‘no’ then the claim will succeed.

For **Article 41** cases the onus is on the claimant to establish that the injury is attributable to or aggravated by service.

Once military service and disablement have been established on the balance of probabilities, the onus is on the claimant to produce reliable evidence sufficient to **raise a reasonable doubt** that the incident/accident was caused by service. In practice we assist the claimant to do this by obtaining service documents and making relevant enquiries on their behalf.

If the claimant does not produce reliable evidence which at least raises a reasonable doubt – the claim will fail.

However, if by reliable evidence he raises a reasonable doubt, then unless the evidence and other materials presented against him are sufficient to refute his claim and dispel the doubt – the claim will succeed.

Although the S of S requires reliable evidence, this is not the same as a requirement for corroborative evidence. The evidence does have to be consistent with the other facts and the claimed condition.
Mere assertion by the claimant is not the same as evidence and sometimes in the absence of any other evidence, advice from the medical advisor will be needed.
E.g. If the only evidence is the claimant’s uncorroborated account of an injury which occurred many years ago, you will need to consider

whether this is sufficient to raise a reasonable doubt that service was the cause. This would require evidence that the injury was the trigger for the claimed disablement and advice from the medical advisor will be required. The medical advisor establishes causation not the caseworker.
You would need to obtain the medical records for the intervening period to establish whether the claimant reported any symptoms consistent with the claimed injury or any other medical information showing a causal link.

If there is no such evidence, the claimant's uncorroborated account is unlikely to be sufficient to raise a reasonable doubt in their favour. However it would be for the MA to give advice on whether the claimed disablement could result from the service injury, despite the lack of symptoms in the intervening period.

It is open to the S of S to contradict or refute any of the material facts relied on by the claimant on the balance of probabilities. This could include contemporaneous evidence of the factual circumstances of the incident which led to the disablement, medical evidence, recent medical history, other claims made or employment history.

Remember – if these matters are not challenged at the initial decision stage, it is likely to be much harder for the appeals case worker to challenge them on appeal.

When considering claims you need to consider:

- what was the claimant doing at the time of the incident?

- did the incident occur pre or post service?

- What was the relationship between an incident and their service?

Also consider if there are any other factors you need to mention to the MA such as substance or alcohol abuse, marital difficulties etc.
You may also need to consider post service factors such as – a differing cause to an injury mentioned in HCNs eg my knee trouble started after I went skiing with my family.

You may need to point out post service occupations – such as working 20 years as a carpet fitter following his 2 years national service.

Don't forget - you may also need to consider if the claimant was in any way responsible for the incident? Eg were they negligent, acting against orders, put on a charge due to their involvement in the incident?

If there is evidence that the claimant's serious negligence or misconduct caused or contributed to the accident/incident, you need to consider Article 59. Remember if Article 59 is not considered and presented at appeal stage – it cannot be applied retrospectively once the PAT have given entitlement.

Stage 5

- **Did the accepted incident cause the disablement?**

Causation is the responsibility of the MA. **Article 43** provides that any matter involving a medical question shall be determined by a certificate provided by a medical officer appointed by the S of S.

In **Article 40** cases the MA will provide a certificate showing whether the claimed injury was attributable to or aggravated by service. In doing so the MA will take into account all the evidence and any decisions made by the S of S on that evidence.

If the MA is of the opinion that the injury is not attributable to or aggravated by service, he would have to demonstrate this, by means of reliable medical evidence, showing beyond reasonable doubt that there is an alternative medical cause for the injury.

In **Article 41** cases the MA will provide a certificate showing whether the claimed injury was attributable to or aggravated by service. In doing so the MA will take into account all the evidence and any decisions made by the S of S on that evidence and where a reasonable doubt has been raised by the claimant the benefit of that doubt will be afforded to him.