

ANNUAL REPORT

2002 – 2003

SERVICE PENSION BOARD

1. The Service Pension Board (SPB) issues an annual report on the operations of the SPB. This fifth report covers the period 1 April 2002 to 31 March 2003.

GENERAL

2. The SPB is created under section 49 of the *Canadian Forces Superannuation Act* (CFSA), which constitutes the Board and determines its duties in the following terms:

"49. (1) The Minister shall appoint a board, to be known as the Service Pension Board, consisting of a chairman and two other members, one to represent the Canadian Forces and one to represent the Minister.

(2) It is the duty of the Service Pension Board to determine, in the case of any contributor who is retired from the regular force, the reason for the retirement, and the Board shall, on the making of the determination, certify in writing the reason for that retirement as determined by the Board.

(3) No payment shall be made of any annuity or other benefit under this Act to a contributor who is retired from the regular force except on certification in writing by the Service Pension Board of the reason for the retirement as determined by the Board, and on the certification thereof the contributor shall be presumed, in the absence of evidence to the contrary, to have been retired from the regular force for that reason.

(4) Subsections (2) and (3) do not apply to any case or class of cases specified by the Treasury Board."

3. To understand the purpose of the SPB, one must understand the difference between release and retirement. Authorities within the Canadian Forces (CF) decide on all aspects of the release of a CF member, including the item of release as set out in the table to Queen's Regulations and Orders (QR&O) article 15.01. The release involves the severing of the member from the institution (the regular force), and requires that a determination be made of the legal obligations of each, the member and the CF as an institution and organization.

4. After a member has been released, the retirement benefit to which the member is entitled must be ascertained. The CFSA determines various benefits not only on the basis of years of service, but also most importantly on the basis of the reason for retirement. As the reasons for retirement do not always perfectly match the CF items of release, the SPB

must determine the most appropriate reason for retirement on the basis of the circumstances leading to the release.

5. Certain circumstances lead directly to obvious retirement reasons, for example release upon reaching retirement age, or upon disability as certified by the CF medical authorities. A Treasury Board directive made pursuant to ss. 49(4) of the CFSA exempts these obvious cases from being submitted to the SPB for its review and decision. The more difficult cases require that the SPB exercise its discretion within the limits of the law to arrive at the appropriate reason for retirement, and thus the appropriate retirement benefit under the CFSA. This is in particular the case with the "economy or efficiency" retirement benefit.

HISTORICAL BACKGROUND

6. The history of the SPB goes back to 1905, when the Minister of Militia and Defence authorized a board, designated as the Pensions and Claims Board to deal with pensions under the *Militia Pension Act*. With the coming into effect of the *Defence Services Pension Act* (DSPA) in 1950, the SPB as it is now known, came into being. Section 20 of the first version of the CFSA in 1959 was the same as the current version of s. 49 of the CFSA, quoted in para 2 above. A Board, today called the SPB, has thus been with us for ninety-eight years.

7. To reduce the number of cases that require a determination by the SPB, the Treasury Board has exempted the majority of routine cases from the necessary review by the SPB. These cases are dealt with by the Director Military Careers Administration Resource Management 4-3 (DMCARM 4-3) pursuant to a TB Minute dated 28 May 1969. The cases enumerated in the TB Minute consist of those cases where the reason for retirement and the retirement benefit payable are prescribed by statute and do not require the exercise of discretion by the SPB.

OBJECTIVITY

8. The task imposed upon the SPB arises from an Act of Parliament. Therefore, the duty of the SPB is to determine reasons for retirement on the basis of criteria established by Parliament through the CFSA. The members of the SPB are appointed by the Minister of National Defence (MND) and consist of a neutral chairman, a representative of the MND and a representative of the CF. The SPB thus has an important duty to fulfill as a neutral and objective body tasked with implementing the benefits set out by Parliament in the CFSA.

MEMBERSHIP

9. The last appointment made by the MND pursuant to ss. 49(1) of the CFSA was made on 22 September 2000 when the MND appointed:

- a) as the Chairman, the Judge Advocate General (JAG), or in the absence of the JAG, the Deputy Judge Advocate General/Chief of Staff;
- b) as his representative, the officer holding the position of Director General Compensation and Benefits (DGCB) or, in the absence of DGCB, the Director of Pensions and Social Programs (DPSP); and
- c) as the CF representative, the officer holding the position of Director General Military Careers (DGMC) or, in the absence of DGMC, the Director of Senior Appointments (DSA).

10. A legal officer from the Department of Justice, Pension and Finance Legal Services (P&FLS), a section of DND/CFLA performs the role of the Secretary to the SPB.

11. The list of members of the SPB for the year 2002 - 2003 is attached as Annex A.

PROCEDURE

12. The 1950 DSPA, the predecessor of the CFSA, provided that each Service would provide a recommendation to the SPB on the appropriate pension benefit payable to the member. The current provider of this recommendation was DMCARM 4-3, whose staff prepare in the official language of the concerned member, on the basis of the information contained in the member's personal file, a document titled "CANADIAN FORCES SUPERANNUATION ACT RECOMMENDATION FOR BENEFIT ". This summary, along with the recommendation, was then sent to the SPB Secretariat.

13. In January 2003, improvements to enhance procedural fairness were made. The new procedures require that DMCARM 4-3 prepare a "CAREER SUMMARY", which will be forwarded, without a recommendation, to the SPB Secretariat. The Secretariat will after a review of the Summary recommend a reason for retirement. In those cases where the Board has a discretion that could result in a more favorable benefit to the contributor than the one recommended, the Secretariat will notify the contributor of the recommendation, provide a copy of the Summary, and allow the contributor to make written representations to the Board.

14. The SPB meets approximately once every six to seven weeks and met seven times during the reporting year (see Annex B). For each meeting of the SPB, consisting on average of 55 cases, the Secretariat prepares an agenda and distributes the cases to the members prior to the meeting. The SPB considers individual cases on the basis of the CAREER SUMMARY, the Secretariat's recommendation and where applicable representations from the released member.

15. To ensure the tracking of cases and the keeping of reliable records, cases are numbered and registered on a computer-listing program specific to the SPB. After each meeting, the Secretariat produces the SPB certificates, which certify the reason for

retirement (see Annex C) and then forwards them to the Director Accounts Processing, Pay and Pensions (DAPPP) for action.

16. Given the time constraints imposed upon each member of the SPB, when it is impossible to reconcile the agendas of the members and the nature of the cases to be considered is such that the recommendations submitted are easily concurred with by the members, the SPB may hold a Secretarial Meeting. When the meeting is held secretarially, members of the SPB review independently the Summary and the recommendation submitted, and send their determinations to the Secretariat in writing. When all members agree with the recommendation and there is no requirement to discuss a case in depth, then the cases agreed to by all members are approved. Those cases requiring discussion are deferred until the next opportunity when the members can meet. Two such Secretarial Meetings took place during the past reporting year.

RESPONSIBILITIES OF THE SERVICE PENSION BOARD

17. As stated in ss. 49(2) of the CFSA, *"It is the duty of the Service Pension Board to determine, in the case of any contributor who is retired from the regular force, the reason for retirement..."*

18. Determining the reason for retirement involves an analysis of the circumstances, which led to the release from the regular force, in order to attribute to each individual the reason most appropriate to his or her circumstances, from amongst the list of reasons stipulated in sections 16 to 19 of the CFSA.

19. There are times, when the SPB wishes to go beyond the material prepared by DMCARM 4-3 to better analyze and understand nuances of a case. The SPB then requests additional information, which it obtains either by reading relevant parts of an individual's personal file, or by requesting specialist advice, such as requesting an opinion from the Director Medical Policy (DMedPol).

20. When faced with a difficulty in interpreting the CFSA, the SPB can request a legal opinion; which then serves to establish additional guidelines for future cases and for the use of DMCARM 4-3 in preparing the Summary for each case. Precedents are thus developed over the years, which serve to guide the SPB.

21. While the SPB enjoys a certain measure of discretion, it must do so in accordance with the law. The SPB could not award a specific retirement reason merely because someone requests it or because it appears the applicable benefit is more generous than another. The SPB must ensure that the circumstances of each individual released meet the criteria set out by the CFSA. When a doubt occurs between two specific reasons, the SPB looks for additional facts if they exist, for expert advice when warranted, and sometimes for a legal interpretation of the CFSA provisions involved. It then determines the reason for retirement, and in so doing, will be sympathetic to the person whose benefit is at stake, but always within the confines of the Act.

REASONS FOR RETIREMENT

22. With the removal in 1999 of "misconduct" as a reason for retirement, there are now six different reasons for retirement under the CFSA:

- a) having reached compulsory retirement age (CRA) and having been released for any reason other than disability (s. 16 CFSA);
- b) having completed an Intermediate Engagement (IE) with at least 20 years of service, not having reached retirement age and not serving on an Indefinite Period of Service (IPS) (ss. 17(1) CFSA);
- c) having completed a Short Engagement (SE) with less than 20 years service, and not serving on an IE or IPS (ss. 17(2) CFSA);
- d) compulsory retirement due to having become disabled (ss. 18(1) CFSA);
- e) compulsory retirement to promote economy or efficiency (EorE) before having reached retirement age (ss. 18 (2) CFSA); and
- f) any other reason (OR) than described above (ss. 19(1) CFSA).

23. Depending on the reason for retirement, different pension benefits are payable varying from a return of contributions, to a cash termination allowance, to a deferred annuity, to an immediate reduced annuity or to an immediate unreduced annuity.

IMPORTANT ISSUES ENCOUNTERED BY THE SPB DURING THE REPORTING YEAR

24. As reported at para 12 above, the SPB has adopted procedures to enhance the procedural fairness applicable to the cases, which come before the Board. As a result of these changes in procedure, there have been three cases of special note.

a) In the first case, which was a request for a rehearing, the contributor had been released pursuant to Item 2(a) and the reason for retirement determined by the SPB was ss. 19(1), other reasons. The contributor in seeking a ss. 18(1) having become disabled, reason for retirement submitted representations indicating that starting in 1996, he had reported symptoms associated with PTSD, for which he is receiving from Veterans Affairs a 30% disability pension and an Attendance Allowance which is paid when a person is found to be totally disabled. It had been recommended prior to his release that he be posted to SPHL, as not employable because of medical restrictions. His medical condition led to a G5 O4 medical category.

On rehearing the case, the SPB determined that the reason for retirement was ss. 18(1).

b) In the second case, the contributor was released pursuant to Item 5(f) for incidents of family violence and the recommended reason for retirement was ss. 19(1). Again, the contributor submitted that the more appropriate reason for retirement should be ss. 18(1). His submission revealed that prior to his release, he had been diagnosed as suffering from a medical condition called Bi-Polar Disorder and which may have been caused, contributed or exacerbated by military service factors. He had been placed on sick leave for approximately 8 months prior to his release. Besides regular appointments with a MO, a CF psychiatrist saw the contributor on 13 occasions in a 15 month time period.

The Board determined that in view of the definition in the CFSA of disabled “any condition rendering him mentally or physically unfit to perform his duties” that ss. 18(1), having become disabled, was the most appropriate reason for the contributor’s retirement.

c) In the third case, the contributor had been released pursuant to Item 2(a) and the recommended reason for retirement was ss. 19(1). Again, the contributor submitted that the most appropriate reason was ss. 18(1), having become disabled. The material accompanying his representations indicated that he had been diagnosed with PTSD, along with a Major Depression and an Item 3(b) release had been approved. However, prior to his release, a Standing Court Martial found him guilty of two offences and his release item was changed to Item 2(a). Following his release, Veterans Affairs awarded him a 70% disability pension for PTSD. A review of other cases where the member had been convicted of similar offences, but did not suffer from medical problems, revealed that in the majority of these cases, the members were still serving.

The case was deferred by the Board to allow for a career review, which resulted in a return of the Item 3(b) release. According to the Treasury Board Minute, this case did not have to be considered by the SPB. The member received a ss. 18(1) reason for retirement and the corresponding immediate unreduced annuity.

25. These cases resulted in lengthy discussions by the SPB. The Board first had to determine whether it had the jurisdiction to determine that ss. 18(1) was the most appropriate reason for retirement even though the contributor had not been released for medical reasons. The Board concluded that since the SPB had been created pursuant to the CFSA, it had a statutory duty to determine the most appropriate reason for retirement, based on the particular circumstances of each individual case. As the Treasury Board had not specified that these types of cases were exempt from scrutiny by the SPB, the full range of reasons for retirement were available to the Board, including ss. 18(1).

26. The Board then had to determine when ss. 18(1) would be the most appropriate reason for retirement. The Board concluded, in those cases where the medical condition of the individual was such that it would have ultimately resulted in the member’s release, that the reason for retirement was ss. 18(1), having become disabled. The fact that subsequent conduct by the member resulted in a non-medical release item did not change the reason for retirement.

27. The SPB also had the opportunity to consider whether s. 20 of the CFSA constituted a reason for retirement or whether the section only described how pension benefits are to be determined. The Board concluded that s. 20 does not provide a reason for retirement but simply provides that a person who is retired for “other reasons” and meets additional conditions i.e., retires while serving on an IPS, having completed an IE, is entitled to different benefits than those set out in s. 19. The Board determined that the correct reason for retirement in these cases is ss. 19(1).

28. Following last year’s decision on the rehearing of cases, where the Board concluded there would be occasions, based on evidence not previously available, on which previous decisions could be revisited, the SPB had the occasion to rehear two cases. One of these cases has been discussed at para 26(a) above and in the other case; the SPB confirmed the earlier determination.

OTHER MATTERS

29. During the reporting year, an application was made in the Federal Court of Canada for Judicial Review of a decision made by the SPB in 1961. The Board at that time had determined that the member’s retirement was voluntary and not to recommend to the MND that a recommendation be made to Treasury Board granting the member a reduced annuity.

30. A Motion was made to the Federal Court to dismiss the application for Judicial Review. The Judge in finding that the application for Judicial Review was so “bereft of success” and “had no likelihood of success whatsoever” dismissed the application. This decision was not appealed.

31. As reported last year, the 1969 TB Minute, which specified that a determination or certification by the SPB was not necessary in certain classes of cases, required updating and amending. A submission has been prepared to the Treasury Board seeking the necessary amendments and recommending that cases where the contributor is released, having completed an IE, thereby entitling the contributor to an immediate annuity, no longer come before the SPB. As approximately 70% of the cases presently submitted to the SPB are of this nature, there will be a corresponding reduction in the workload of the SPB. This will allow the Board more time to consider the representations that may be made by contributors.

32. During the reporting period, BGen J.M.J. Leclerc, DGMC was posted and replaced by the new DGMC, BGen P.R. Hussey.

CONCLUSION

33. The SPB has again throughout the reporting year been faced with many challenging issues. The requirement of addressing challenges and dealing with cases in a timely manner remains the priority of the Board.

34. This is the fifth Annual Report and it is hoped that the promulgation of Annual Reports will be of assistance in understanding the nature of the role played by the SPB under the CFSA.

35. Dated 26 of May 2003 at Ottawa.

“J. Pitzul”

Jerry S.T. Pitzul, Q.C./c.r.
MGen/Mgén
JAG

“L. J. Colwell”

L.J. Colwell
Col
DGCB/DGRAS

“P.R. Hussey”

P.R. Hussey
BGen/Bgén
DGMC/DGCM

ANNEX A

LIST OF SPB MEMBERS FROM 01 APRIL 2002 TO 31 MARCH 2003

Chairman

MGen Jerry S.T. Pitzul, Q.C., JAG (May 1998 to present)

Representing the Minister

Col L.J. Colwell, DGCB (July 2000 to present)

Representing the Canadian Forces

BGen J.M.J. Leclerc, DGMC (September 2000 to March 2002)

BGen P.R. Hussey, DGMC (August 2002 to present)

ANNEX B

SERVICE PENSION BOARD MEETINGS

FOR PERIOD 01 APRIL 2002 TO 31 MARCH 2003

<u>Pension Board No.</u>	<u>Number of Cases</u>
14 May	97
24 June	57
31 July	38
15 September	59
15 October	46
10 December	71
06 February	25
06 March	39
Total	432

*** Please note the discrepancy between the Grand Total on the Certificates Report and the total Number of Cases stated above is due to deferred cases, which are examined at more than one (1) SPB meeting.**

ANNEX C

SPB CERTIFICATES REPORT

REPORTING FROM 01 APRIL 2002 TO 31 MARCH 2003

Certificate	CFSA Reason for Retirement	Item of Release	Total	Percent
I/E	17(1)	2(a)	1	0.23%
I/E	17 (1)	5(c)	285	64.63%
I/E	17(1)	5(d)	1	0.23%
I/E	17(1)	5(f)	2	0.45%
S/E	17(2)	4(b)	4	0.91%
S/E	17(2)	5(c)	12	2.72%
EorE	18(2)	4(b)	1	0.23%
EorE	18(2)	5(c)	57	12.93%
EorE	18(2)	5(d)	6	1.36%
OR	19	2(a)	6	1.36%
OR	19	5(d)	40	9.07%
OR	19	5(f)	24	5.44%
I/E w/o IPS	20	5(f)	1	0.23%
MEDICAL	18(1)	5(f)	1	0.23%
Grand Total			441	