



MILITARY VETERANS **APPEAL BOARD**

Established by section 19 of the Military Veterans Act No. 18 of 2011

REPORT
2015 JUNE–JUNE 2020

INTRODUCTION

MANDATE AND RESPONSIBILITIES

The Appeal Board is tasked with the following:

- i) To consider any appeal lodged with it by a military veteran against any decision taken by an official in terms of the Military Veterans Act No. 18 of 2011 which adversely affects the rights of that military veteran.
- ii) To consider any question of law relating to military veterans referred to it by the Minister or the Director General
- iii) To advise the Minister or Director-General regarding any legal matter relating to military veterans which the Minister or the Director-General refers to it.

The report covers the activities of the Appeals Board from its inception and is broken down as follows:

- Part A: Establishment, appointment of members
- Part B: Powers and Duties of the Appeal Board
- Part C: Appeal Board Prescripts governing the Appeal Board and all parties
- Part D: Report on the work of the AB to date
- Part E: Challenges on the working Relationship with the DMV
- Part F: Recommendations
- Post Scriptum: The Appeal Board Secretariat

PART A:

ESTABLISHMENT OF THE MILITARY VETERANS APPEAL BOARD

The Appeal Board was established in terms of section 19 of the Act.

APPOINTMENT OF MEMBERS

Ms N.N. Mapisa-Ngqakula, Minister of Defence and Military Veterans, announced during her budget speech in Parliament in May 2015, the names of persons recommended for

nomination to serve on the Department of Military Veterans Appeal Board. The appointment of the Appeal Board (AB) members became effective in June 2015 when the Minister signed their letters of appointment to the following:

1. Chairperson- Mr Mavuso Msimang
2. Member- Mr Cyril Morolo
3. Member- Mr Ferdinand Hartzenberg
4. Member- Ms Nomusa Dlamini
5. Member- Advocate Mashudu Tshivhase

PROFILES

CHAIRPERSON

Mr Mavuso Msimang

Mavuso Msimang comes from uMkhonto we Sizwe (MK) and belonged to the Luthuli Detachment. He was stationed trained in urban guerrilla warfare in Moscow, then capital of the Soviet Union, specialising in Communication. He was later appointed to the MK High Command. In 1967 he was Chief of Communications' during the Wankie and Sipolilo campaigns (July 1967 to 1968). He was appointed Secretary to President O R Tambo after the 1969 Morogoro Conference.

Msimang holds a BSc from the University of Zambia and a Master of Business Administration obtained at the International University in San Diego, California. Msimang worked for the United Nations Volunteer in the health and refugee programmes in Zambia. He subsequently worked for the World Food Programme in Kenya. He also worked successively for the World University Service/Canada, Care Canada as the Country Director in Kenya, respectively. He subsequently worked for Unicef as head of the Emergency programme in Ethiopia and Eritrea.

Post-1994, Msimang was appointed Chief Executive Officer of Umthombo Pride, and later served in the same capacity for the South African Tourism Board which has since been

re-named SA Tourism, SANParks, SITA and then director General at Home Affairs. Msimang holds non-executive director positions in the public and private sectors.

MEMBERS

Advocate Mashudu Tshivhase

Advocate Tshivhase has served in leadership roles such as: Deputy Secretary for Northern Transvaal, Congress of South African Student (COSAS) year 1989; Umkhonto We Sizwe, year 1990-1994; Chairperson South African Student Congress (SASCO) Johannesburg Region, year 1999; Deputy President Vista University, year 2000; Treasurer MKMVA, Gauteng Province, year 2011 to 2013; NEC, member SANMVA (South African National Military Veterans Association, year 2008 to 2013 and currently serves as ANC - Gauteng Province Member of the African National Congress Gauteng Province Legal technical team. He is an Admitted Advocate of The High Court of South Africa specializing in: civil litigation, drafting of contract and contractual dispute, delictual claim, Administrative law, commercial law and labour law (including chairing of internal disciplinary Inquiries as well as leading evidence and/or prosecution). He currently serves as Chairperson of Labour Appeals Committee for the Department of Health Gauteng Province.

Ms Nomsa Dlamini

Nomsa Dlamini is a product of uMkhonto weSizwe, having acquired her general military training in Angola and further completed a specialization course in Military Engineering in Caculama Camp. She was a Commissar for women in the Angola Region during her time in exile. She received further training in National Security related courses in the German Democratic Republic (GDR), Harare, Zimbabwe, United States of America, Cuba and through the Defence College of the National Defence Force and studied Social Sciences at the Lenin's Institute in Moscow, Russia. Ms Dlamini holds a BA in Political Sciences and a BA HONS (International Politics). She is currently pursuing a master's degree in Business Leadership (MBL) with the University of South Africa (UNISA). She was a Chairperson of the Women's Military Veterans of South Africa (WOMVASA), from 2015 to 2017.

Ms Dlamini possesses certificates in Ethics, Corporate Governance, Executive National Security Program, amongst others. She has held managerial positions at the South

African Secret Service, the South African Revenue Services and Armscor. She is currently a Chairperson of the Appeal and Adjudication Board of the State Security Agency and is a Special Advisor to the Minister for State Security.

Mr Cyril Morolo

He is a member of the Azanian Liberation Army (AZANLA). He is a member of the Sub-committee of South African National Military Veterans Association (SANMVA) dealing with the Constitution, the Act and Policy. He is a Legal Advisor of the Military Veterans' Task Team for the Tshwane Region. He is a Sub-committee member of the Ministerial Structures, constitutive of Advisory Council, Appeals Board and SANMVA, which deals with the Military Veterans' Amendment Bill. He was a Committee Member responsible for drafting the Constitution of SANMVA, which was adopted by the National Conference in 2013.

He holds the degrees of B Proc and LLB conferred by UNISA. He is a former Practicing Attorney in the field of Human Rights and Labour Law.

Mr Ferdinand Hartzenberg

Ferdinand Hartzenberg has been practising as an admitted attorney for more than 20 years and for his own account since 1999. Despite being exposed to the High Court on a permanent basis since 1991, his field of expertise ranges from commercial and litigation work to property law and the structuring of new and existing enterprises nationally and internationally. Hartzenberg has the right to appear in the High Court and is currently appointed as a Commissioner of the Small Claims Court for Bela-Bela, Bronkhorstspuit and Pretoria. He serves as a trustee of the Bryan Habana Foundation. He has also acted as a Judge in the High Court of South Africa, Gauteng Division, Pretoria.

Hartzenberg has on a continuous basis assisted in various forms of family law from divorces and maintenance to the custody of minor children and has assisted clients with a South African connection worldwide. He acted for various South African parastatal companies drawing on his knowledge of the administrative law. Amongst his clients count well known businessmen, national sports personalities and companies.

PART B:

POWERS AND DUTIES OF THE APPEAL BOARD

The AB derives its powers from Section 33 of the Constitution, read together with Promotion of Justice Administration Act (PAJA). The Appeal Board has extensively utilized the provisions of PAJA to perform its functions of promoting efficient administration, in terms of Section 20 of the Act.

SECTION 20 OF THE ACT

Section 20(1) (a) of the Act enjoins the Appeal Board to consider any appeal lodged with it by a military veteran against any decision taken by an official in terms of the Act, which adversely affects the rights of that military veteran.

The Board's decision is by a majority of its members, which decision may serve to confirm, set aside, vary or substitute the relevant or adverse decision taken by an official of the Department against a military veteran, or provide the required legal advice, in terms of Section 20(2)(a)(b) and (c) of the Act.

The exercise of such powers and duties imposes a corresponding responsibility upon the AB to conform to all applicable law, in particular the Constitution, PAJA, Case Law and the Act.

Section 20 of the Act, herein incorporated, among others, grants the Appeal Board the power, for the purposes of an appeal, to summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his or her possession or custody or under his or her control any document which has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce that document, and may retain, for examination, any document so produced.

The AB also has the power to call any person to present at the appeal proceedings as a witness, and question such person and require such person to produce any document in his or her possession or custody or under his or her control, and such person shall be entitled to legal representation at his or her own expense.

The rights of the military veterans and their dependants to benefit in terms of the Act are set out in Section 5(1) of the Act. There are 11 benefits statutorily regulated from which the Military Veterans are entitled to benefit. The Database registration is regulated in terms of Section 1(a)(b) and (c) of the Act.

PART C:

REPORT ON THE WORK OF THE AB TO DATE

Administrative documents

Notwithstanding the difficulties encountered during its embryo stages, the Appeal Board managed to do the following:

- The Act (Appendix A)
- Rules and Procedures of the Appeal Board (Appendix B)
- Terms of Reference (Appendix C)
- Appeal Board logo
- Appeal application form (Appendix D)
- Appeal Board handouts (for public knowledge) (Appendix E)

THE ACT

The Board used the commencement of the five year term to study the Act as mandatory.

TERMS OF REFERENCE

This is a document that regulates the Appeal Board's relationship with the Minister. It sets out expectations and what is to be delivered. The 13-page document which outlines the mandate of the board, composition and procedural arrangements was formulated and

signed by the chairperson shortly after the appointment of the Appeal Board.

RULES AND PROCEDURES OF THE APPEAL BOARD

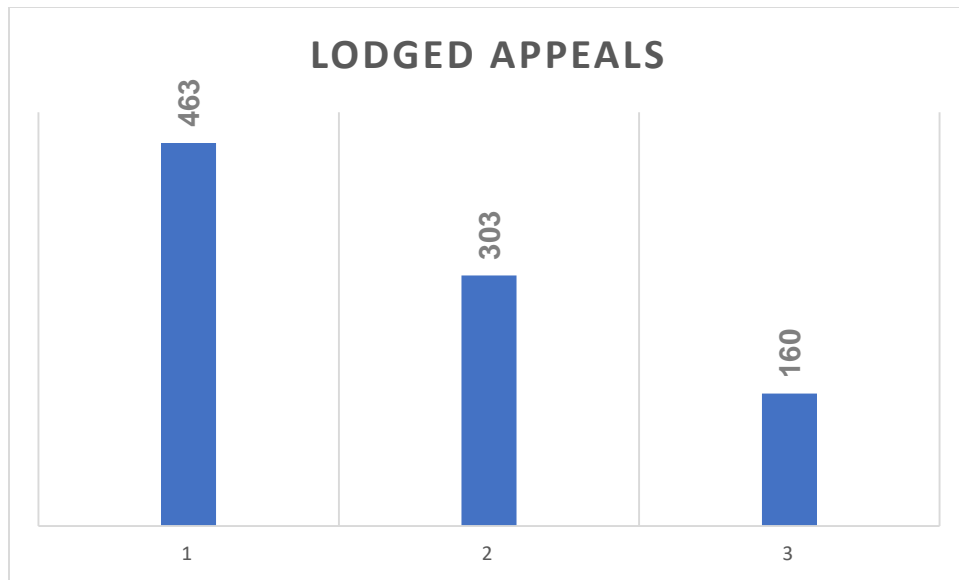
This work incorporates Rule and procedure for the Appeal Board in accordance with section 20(4) of the Military Veterans Act 18 of 2011. It is a valuable resource for members of the Appeal Board to understand that the Board operates on a minimum set of rules and procedures. However, the Board has taken into consideration that the Decisions of the Appeal Board are subject to Review by the High Court, in terms of Rule 53 of the Uniform Rules; therefore the rules are reasonable and accommodate the fundamental principles enshrined in the Constitution and the PAJA Act (The Rule of Law and Natural Justice).

APPEAL BOARD LOGO

The creation of the Appeal Board Logo reinforced the autonomy of the Appeal Board. This was necessary to differentiate it from the Department of Military Veterans, in the eyes of the military veterans and the public. The emblem of the logo signifies an institution built on the principles of the rule of law, natural justice and *audi alteram partem* which is the cornerstone of the country's legal foundation and the Constitution. The use of black and white colours symbolises an all-inclusive system.

APPEALS RECEIVED FROM 2016-2020

Since its inception in 2015, the AB has had the opportunity of intervening on behalf of military veterans in cases where the Department had erred in its judgment in dealing with their cases. There have been enormous difficulties for the AB in its numerous attempts to obtain funding from the Department for roadshows to the provinces to publicise its work among military veterans countrywide. Despite this as at the compilation of this report, it has received **463** military veterans' appeals. Of these, **160** appeals have been finalised, while **303** are pending.

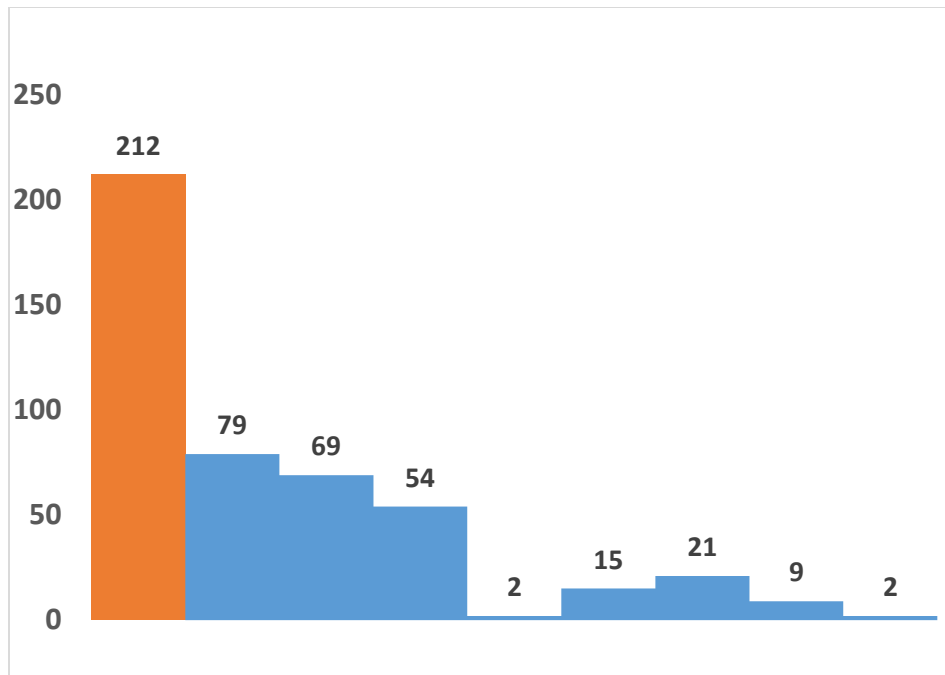


Why there are pending cases:

The analysis of pending cases shows the following:

- The largest component of pending cases (212) came as a “Class Act” from military veterans from the Western Cape (178) and Eastern Cape (34) who were placed in PRASA. Their cases have only gone through a pre-hearing and their Preliminary Reports are hereby attached.
- A “no show” of the Respondent in a scheduled Appeal Hearing. The case gets deferred to another date to allow for *audi alteram partem*. Fifty-six (56) matters are awaiting finalization (Hearing).
- Thirty-five (35) are new cases.

TYPES OF APPEALS



The Appeal Board received two hundred and twelve (212) cases for employment facilitation in PRASA, in terms of Section 5 (1) (e) of the Act. Fifty-four (54) appeals are for inclusion in the database, Sixty-nine (69) are for housing, Seventy-nine (79) are for education (Basic and Tertiary), fifteen (15) are for social relief for the destitute, Twenty-one (21) for compensation, nine (9) are for skills development, two (2) for burial support and two (2) for medical support.

TYPES OF APPEALS AND HOW THEY WERE HANDLED

The AB started receiving appeals in 2016. These were at first very slow as many military veterans were not aware of the existence of the AB. The AB has considered a variety of Appeals lodged with it by military veterans, in terms of Section 5(1) of the Act, which provides for benefits to military veterans. The Decisions, Pre-hearing Decisions, Reports and Judgments of the Appeal Board can be found in the attached Indexed Bundle containing Records of Appeals.

CATEGORIES OF BENEFITS

(a) Compensation

Section (5) (a) of the Act provides thus: “Compensation to military veterans who sustained disabling injuries or severe psychological and neuro-psychiatric trauma or who suffer from a terminal disease resulting from their participation in military activities.”

When dealing with compensation appeals the AB observed that the Department’s officials do not always apply their minds when making decisions on this sensitive issue. The decisions taken are not based on the provisions of the Act and the regulations. Also, in the vast majority of cases the determination of the compensation is not computed with the guidance of an Actuarial Report.

(b) Section 5(1)(d) provides for Education, Training and Skills Development

Educational Support

The Department has been performing its duties and functions without the support of an Education Policy and/or the Regulations. In the academic year 2016, the Department unilaterally made an Education Policy without following due process set out in Section 25 of the Act.

To correct the situation, the Minister convened a Special Meeting of Ministerial Structures, on **January 10, 2017**, which was attended by the Minister and her Advisor; members of the Advisory Council; the National Office Bearers of South African National Military Veterans Association (SANMVA) and the Department’s Executive Committee (EXCO). The resolutions taken at the said meeting were as follows:

- The unsolicited Education Policy for academic year 2017 be withdrawn forthwith;

- The Department convene a workshop in the course of academic year 2017 to develop an appropriate Education Policy, in compliance with the mandatory provisions of Section 25 of the Act.

The above proviso means that, prior to convening a workshop to review the Education Policy, the Department may not introduce any Education Policy without first convening a workshop of bona fide stakeholders. So far the Department has failed to convene a workshop. A copy of the minutes of the Special Meeting convened by the Minister are attached as Appendix F.

Failure by the Department to convene a Policy Workshop constitutes a contravention of the provisions set out in Section 5(1) (d) of the Act, an infringement of the military veterans' constitutional right to education, which is enshrined in Section 29 of the Constitution.

Skills Development

These appeals emanate mostly from Appellants' complaints about undue delays experienced in processing their applications. These applications can be as long as two years, and more. The Department attaches no urgency on, and are, indeed, extremely casual about, processing these applications. The Appeal Board generally finds in favour of the Appellants yet there has been little success.

Facilitation of employment

Section 5(1) (e) provides for facilitation of employment placement as one of the benefits that the Department and other organs of state are expected to provide to military veterans; and through the enforcement of Section 3(f) of the Act, which provides thus: "... all organs of state or governmental entities involved with military

veteran affairs must cooperate with the Department to ensure the achievement of the object of this Act ...”.

In compliance with the above section of the Act, PRASA introduced a policy in this regard (see Appendix G) PowerPoint presentation titled: “PRASA COMPLIANCE WITH MILITARY VETERANS ACT NO. 18 OF 2011)

To this end, the Appeal Board received 178 appeals against PRASA regarding employment facilitation in the Western Cape. A PowerPoint presentation on PRASA’s Policy, implicitly grants military veterans employed within PRASA the right to appeal. The presentation also confers the required jurisdiction to the AB to fulfil its functions, as set out in Section 20(1) (a) of the Act.

The AB was once again approached by 34 (thirty-four) Military Veterans (MV) that are employed at PRASA in Port Elizabeth at Eastern Cape Province, with a complaint of unfair discrimination that they experience within their working environment. The AB undertook a fact-finding trip to Port Elizabeth on December 06, 2019, to investigate the legitimacy of the Appeal. The 34 Appellants were represented by their Military Veterans Associations appointed representatives, for the purpose of appearing before the AB.

Furthermore, one of the alleged grounds of appeal by the above appellants (EC and WC) is based on the provision of Section 3(1) (e) of the Act, which stipulate thus: “... disparities, inequalities or unfair discrimination as regards the benefits of military veterans and their dependents must be identified and, where possible, remedied”. It is against this background that the AB entertained the appeal of the appellants in this matter. The AB Preliminary reports are attached hereto as Appendix H.

Housing

Section 5(1) (j) provides housing benefit for Military Veterans, in terms of Regulation 14(1) which stipulates thus: “A Military Veteran qualifies for a housing benefit of a total value not exceeding **R175 000.00 (now R188 000.00)** if he or she–

- (a) is not employed and receives pension from the State; or (b) is employed and has an annual income of less than **R125 000** and–
- (i) does not own a house;
- (ii) has not previously received a house or other housing benefit from the state;
- (iii) or, if he or she is in spousal relationship, his or her spouse has not received a house or other housing benefits from the State.

Weaknesses of Regulation 14(2) on Housing

There are notable weaknesses in the Regulation where it deals with housing provision for military veterans. The Regulation states: “Where a Military Veteran owns a house and the total sum of the balance of the mortgage loan registered in his or her name at a registered financial institution is equal to or less than the housing benefit to which he or she would, but for sub regulation (1)(i), have been entitled in terms these regulations, the Department may, despite his or her disqualification by that sub regulation from being entitled to a housing benefit, settle the outstanding balance of the mortgage loan with that financial institution, whereupon the military veteran forfeits his or her housing benefit which he or she would, but for that sub regulation, otherwise have been entitled to in terms of these regulations had it not been for such settlement”.

- **Emergency Housing**

The Regulation is silent on emergency housing in instances where the military veteran is rendered homeless. The Department has an obligation to provide the veteran with emergency housing assistance as required in terms of section 26 of the Constitution, which provides that everyone has a right to shelter. Though the Department did not make any provisions in its regulation or policy to cater for the homeless, the AB exercises its discretionary powers located in Section 33 of the Constitution to decide in favour of providing shelter to indigent and destitute military veterans.

- **Renovations and home improvements**

The provision of housing benefit to military veterans who wish to improve or renovate their existing houses has not been provided for in the Department's Regulations and/or policies. This omission tends to disadvantage Military Veterans who may be in possession of a property and seeking further assistance in repairing or erecting a property, who qualify for housing benefit in terms of the above regulations.

- Delays in delivering houses for Military Veterans

The provision of housing by the Department is done jointly with the Department of Human Settlement. Poor coordination results in delays in delivering housing benefits to military veterans. This leads to the appeals that are lodged with the AB.

- . Capped amount not aligned to inflation

The Department contributes a maximum amount of R188 000.00 towards housing benefit for each applicant. This amount should be subject to annual review by the Minister of Defence and Military Veterans and the Minister of Human Settlement to take account of inflation. This has not happened since the programme started.

Unreasonable threshold amount

The R125 000.00 maximum annual income as a housing benefit, is grossly inadequate as it doesn't take into account the living expenses of the applicants or track inflation changes. The AB is of the view that this amount should be scientifically arrived at, taking into account various aspects that affect the cost of living of the designated beneficiaries.

- Illegal occupations and invasions

There are military veterans who applied for housing subsidies back in 2013, who have not been allocated houses. Instead, the houses have been illegally occupied by unauthorised persons. A common complaint is that DMV does not allocate houses in time, and the delays result in the houses being illegally occupied. More often than not, the DMV does not act to correct the situation.

Data base registration

The AB is approached by individuals who claim to be a military veterans and have been rejected by the Department in inclusion in the Database. These individuals have a right to appeal. In determining the status of the Appellant, the AB relies on Section 1 of the Act, which read thus:

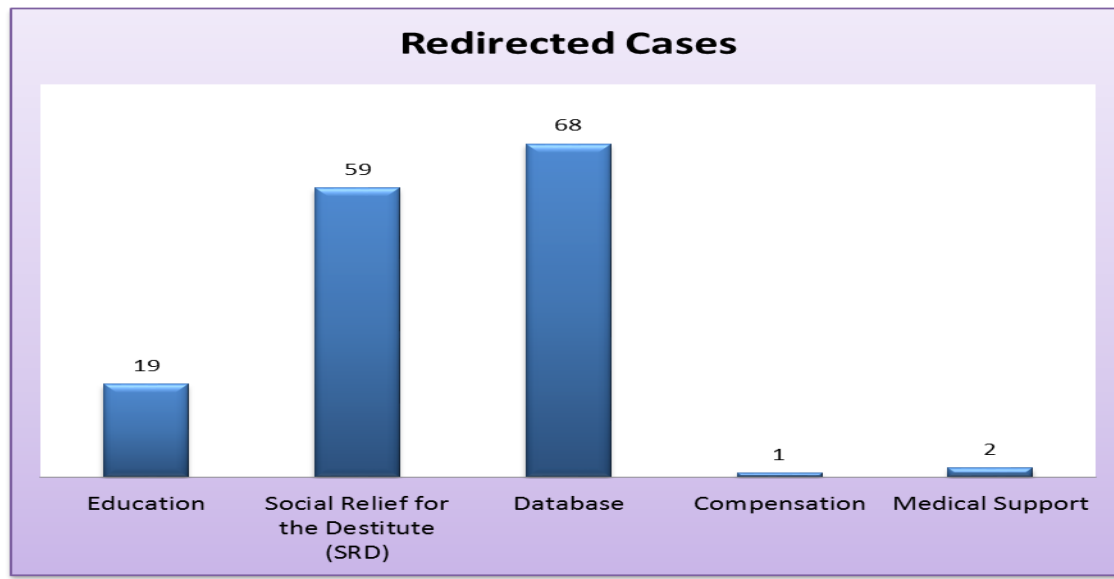
“Military veteran means any South African citizen who: -

- (a)** rendered military service to any of the military organizations, statutory or non-statutory forces, which were involved on all sides of South African’s Liberation War from 1960 to 1994;
- (b)** served in the Union Defence Force before 1961; or
- (c)** became a member of the new South African National Defence Force after 1994 and has completed his or her military training and no longer performs military service and has not been dishonourably discharged from that military organization or force: Provided that this definition does not exclude any person referred to in paragraph (a), (b) or (c) who could not complete his or her military training due to an injury sustained during military training or a disease contracted or associated with military training.”

In adjudicating these cases, the AB relies on the Record of Proceedings that the Department is expected to provide to the AB Secretariat and the minutes from the Verification Panel. The challenge as experienced by the Appeal Board is that, the applicants rejected by the verification panel do not receive written communication of the decision. Five years on, most of them are still uncertain as to whether or not their names have been captured onto the database as military veterans.

The AB has put processes in place to deal with database inclusion appeals and deals with such appeals meticulously, invoking the provisions of Section 20(3) of the Act, to summons the deponents (witnesses) to the affidavits to testify at the AB hearings about the contents of the affidavits. The applicants and witnesses are rigorously questioned by AB members to assess the veracity of their claims to be military veterans.

REDIRECTED CASES:



The Appeal Board received 149 appeals which it had to redirect to the Department because the appeals had either not reached the stage where the Department had made a decision on the requested benefit; or the appeal did not fall under the jurisdiction of the Appeal Board. Nineteen (19) of these cases are for education support, 59 for social relief, 68 for the database, one (1) for compensation and two (2) for medical support. Acknowledgement of receipt by the DMV was given to the AB.

OTHER DUTIES PERFORMED BY THE APPEAL BOARD

Besides adjudicating the appeals lodged by military veterans who are not satisfied with the decision of the Department or are experiencing delays, the AB is also mandated by Section 20 (1)(b) and (c) to perform the following other duties:-

Section 20(1) (b) & (c) of the Act

The above provisions stipulate thus: "Appeals Board must:

- (b) Consider any question of law relating to Military Veterans referred to it by the Minister or the Director-General, and

(c) Advise the Minister and Director-General regarding any legal matter relating to Military Veterans which the Minister or Director-General refers to it".

1.2 In terms of the above provisions, the Acting DG of the Department sought a legal opinion from the AB regarding a dispute which arose at the National General Council (NGC) of SANMVA, held at Birchwood Hotel from October 28th to 30th October 2016.

1.3 The AB was required to determine the constitutionality and/or validity of a resolution taken at the NGC by the National Executive Council of MKMVA to recall the President of SANMVA.

1.4 The AB, in its comprehensive report found that the decision to recall the President of SANMVA, by the NEC of MKMVA was irrational, unconstitutional and contrary to the Constitution of SANMVA.

1.5 A detailed report of the AB is attached hereto marked as "Appendix I" to which we refer the Minister.

- **Section 20(1) (b) & (c) of the Act (Legal Opinion)**

1.1. In terms of the above provisions, the Acting DG of the Department, in his letter addressed to the Appeals Board dated **October 31, 2017**, requested the AB to make inputs and comments on their legal opinion.

- **Amendment of the Military Veterans Bill**

The AB together with the AC and SANMVA, have played a pivotal role in providing inputs to the Amendment of the Military Veterans Bill which will benefit military veterans and their dependents.

PART D:

CHALLENGES ON THE WORKING RELATIONSHIP WITH THE DMV

Upon its appointment, the AB held an introductory meeting with former DG, Mr. Motumi who played a role in facilitating the establishment of the administration of the AB. With the exit of Mr. Motumi, the AB had to deal with various Acting DGs. The relationship with these officials varied. Of all the A/DGs that the AB had to work with, the relationship with A/DG Lt. Gen (Ret) Mgwebi has been satisfactory.

It is most unfortunate that executive officials who are supposed to support the A/DG have little interest in, or understanding of, the relationship between the AB and the DMV. This renders cooperation and coordination extremely difficult. Their attitude is not different from that they display towards military veterans who are often treated like hapless supplicants. Some of the said officials confuse the AB or mistake the AB members to be staff members of the DMV who are subordinates and report to them. Their poor pitiful understanding of the purpose of the establishment of the AB, as an administrative agency in terms of the Promotion of Administrative Justice Act (PAJA), has hobbled the functioning of the AB, which in turn has severely compromised the interests of military veterans.

HEARINGS AND PRE-HEARINGS

Section 6 (a) of the Act clearly sets out the peremptory support DMV must provide to the Appeal Board. However, since its establishment in 2015, with various Accounting Officers, again with the notable exception of Lt. Gen (Ret) Mgwebi, the AB has received unsatisfactory support from the DMV. The AB has had to constantly remind the DMV of its (AB) mandate of assisting military veterans with their appeals. Some of the past Accounting Officers were not keen to even meet the AB to ensure a professional working relationship. This negativity has, in some instances, filtered down to other executives and lower level officials. Some of the decisions and judgments that the AB has made are pointedly ignored and no effort is made to engage the AB to clarify matters where this may be necessary. For instance, as the respondent in veteran appeals, the Department has had to be notified through subpoena to attend the hearings. It is not uncommon for such notices to be ignored. As a result, many decisions and judgments have been made in the absence of the respondents. They have little concern for *audi alteram partem*. The

AB's requests for the situation to be corrected simply fall on deaf ears.

The arrival of the Lt General had brought in renewed hope that the working relationship with the DMV will improve. Sadly, some of the executive managers are still withholding the required co-operation. A new working relationship was established in a meeting that the Lt-General held with the AB in September 2018. This has already seen significant improvements that include the appointment of a nodal office (Legal Services) to co-ordinate all correspondences with the Appeal Board and attend Pre-Hearings. The challenge that the AB still experiences is that of the Respondent sending junior officials who lack the authority to make certain decisions to represent it at the Hearings at worse, no one attends at all resulting in matters being postponed. Engagement with the nodal person on this issue continues and the hope is that the situation will soon be rectified. The fact needs to be conveyed to the Minister that the Appeals Board has a totally unwarranted backlog. The end-product of the Department's reluctance to cooperate with the Appeal Board directly affects the interests of the very military veterans without whom the officials would not be in the jobs they hold.

BUDGET

From inception, 2015, the AB operates without a budget. The DDG concerned has made sure that this status quo remains in place for as long as she holds the position. As a result, the AB was unable to plan and execute activities effectively. There was no transparency, and the AB does not know the basis on which funds are released for its use. It is meaningless to be informed by this individual that the AB does have a budget however there's no breakdown/report on the actual budget. One on one meetings with the CFO has reaped nothing but empty promises, notwithstanding the fact that AB submitted all the necessary documents required by Finance. In short, the AB does not have the support of the Department that would make it possible to run an efficient operation. This is a breach of Section 6(a) of the Act. At the beginning of 2020, the Appeal Board was informed that there is an overall budget of R612 000.00 for the 2020/2021 financial year (Appendix L).

VEHICLE FOR THE OFFICE OF THE SECRETARIAT

The Secretariat operated without a motor vehicle to assist it in the administration of Appeals Board functions. It is important to have transport at hand and at a high frequency, to ferry appellants and witnesses to and from the venue of the hearings as the AB office is situated away from public transport routes. DMV has, with effect from September 2019, released a pool vehicle to the Centurion (AB office) for daily operations.

PETTY CASH

The AB has explained the necessity of having petty cash that is solely set aside for use on Appellant needs. A lack of a petty cash impinges on the individual Board members' funds and secretariat officials. Many appellants travel from far and would benefit from having taxi fare and a snack when they come for hearings and other relevant pursuits.

TELEPHONE LINE AND DATA BUNDLES

The Office of the Secretariat is expected to function efficiently, communicating with its various stakeholders. Neither an outgoing landline nor sufficient data bundles are provided, often leading to secretariat officials having to use their own units, air time and data for official work. The department does not reimburse these expenses.

TOOLS OF TRADE

Since its inception in 2015, the AB has requested to be provided with tools of trade like the electronic equipment. To-date the Department has not seen fit to provide this. It is disempowering to expect members to function without laptops and phones when the functions they perform involve researching, preparations, perusal, writing judgments, reading, editing judgments on round robin, communicating with Appellants who ask to be called back and expect members of the Board to respond. The Appeal Board is functioning without this vital support from the DMV. Promises are made but not fulfilled. One gets a feeling that the Department regards the Appeal Board as an unwanted relative, at best a distant cousin.

ROAD SHOWS

From the beginning, the AB realized that the Military Veterans community needed to be aware of the existence of the AB. Without a budget it was not possible for the AB to embark on roadshows. To-date, it is clear that there are many military veterans out there who are not aware of the existence of the AB and the assistance they can get from it. The AB designed a communication strategy and asked the DMV to fund its program. The Department had promised to help the AB design the strategy. It did not happen. The AB plans on doing a roadshow during the 2019/2020 financial year.

OWN INITIATIVES

The inadequate support from the DMV did not deter the AB from fulfilling its mandate. It has made contact with local radio stations like IKWEKWEZI FM and SOSHA FM and put up a stand at the Rand Show in order to publicise its existence, mandate and operations. While support from the Department would be most welcome, alternatives will also be investigated.

CATERING

In some cases, despite following the procedure prescribed by the DMV, AB requests to cater for the hearings have gone unheeded. For the longest time Supply Chain Management conveyed their refusal to supply confirming that AB did not have an account/budget when the Department assured AB that an account will be created on the system. Although this procurement problem affected several areas in the office, it is crucial to note that appellants come from far, in some cases from other provinces, and sometimes have to wait till late for their turn to appear before the Board. Other meetings of the AB itself are not catered for as the DMV ignores the requests.

PAYMENTS

Payments to AB Board members for sittings and other work done is erratic and are frequently withheld for extended periods of time.

OBSERVATIONS

DMV Provincial Coordinators: These officials are not empowered with office space and

administrative costs. Communication between the coordinators and the military veterans is ineffective primarily due to lack of offices. This makes access to them by the veterans difficult.

Associations: Some of the leadership of Military Veterans Associations are not sensitive to the plight of their constituents, for instance, when the veterans apply at DMV for benefits and/or appeal against a decision taken by the department. The AZANLAMVA at some stage refused to allow their constituents to participate in AB hearings, on the basis that they as the leadership had not been consulted. The AZANLAMVA leadership is also reluctant to cooperate in the verification of military veterans who claim to have been members of AZANLA. However, there was welcome cooperation by the AZANLAMVA provincial executive committee in database applications.

The CMVO (former statutory force) appears organized and supportive of its members. The representatives liaise with the DMV and support their people during the AB hearings. It is unfortunate that the indigent and previously disadvantaged military veterans are left to their own vices and are not supported to ensure that they take full advantage of the benefits offered by government.

Policy and Regulations: Lack of policies is the fundamental reason why the DMV is unable to implement the Act as expected. Further to that, most of the appeals are as a result of the failure of the DMV to adhere to the Act, their decisions are not supported by the Act. In other instances, the application of the same is not consistent e.g. the SRD benefit which led to the shutdown of the offices because of the protests from Military Veterans.

The Department has been operating and continuously so, with Regulations which violate the peremptory provisions of **Section 25 of the Act**. As a result, the interests of the military veterans are not taken into account, because the Advisory Council and the Minister were left out of the process, when the Regulations were made. Therefore, the Department due to lack of any empowering legislation, contravened the above **Section of the Act**.

DMV Management: The DMV management has so far been helpful in terms of facilitating its work. One can only speculate as to what happens to the unused portion of the budget.

Are the funds returned to National Treasury? Or, does the Department find some other use for it?

Lack of Sensitivity and Empathy:

More often than not, the Appellants make a point of expressing themselves to the AB that the DMV management and officials treat them with disdain and are insensitive to their plight. According to them, they are made to feel as if they do not matter and are seen as irritants.

Phones go unanswered:

Military veterans constantly complain about phones that go unanswered at the Department, resulting in an overflow of misdirected calls for the AB.

The decisions taken by the AB in absence of any representative from the Department, implicitly, contravenes the Rules of Natural Justice and *Audi Alteram Partem*. These constitutional principles are the foundational cornerstone upon which our constitutional democracy rests. In this instance, the AB has no alternative but to take the default judgments, in order to protect the interests of the military veterans.

The AB has reiterated in many of its decisions that the Department derives its original powers from **PAJA**. The **PAJA Act** was promulgated in order to comply with the requirements set out in **Section 33 of the Constitution**. The provisions set out in PAJA are flagrantly disregarded by the Department. Its failure to take decisions contributes to the majority of appeals lodged with the AB.

In consequence, the Department violates its own Regulation 21 which states:

- (1) The Department must, within 30 working days from the date of the application for a benefit, notify the applicant in writing of the outcome of the application.
- (2) A notification contemplated in sub-regulation (1) must be delivered to the Applicant by ...

- (3) If the application contemplated in sub-regulation (1) is unsuccessful, the Department must give the applicant in writing –
- (a) The reasons for the refusal; and
 - (b) The Applicant's right to appeal the decision, and the appeal procedure.

It is a matter of public knowledge that the Department possesses discretionary powers to relax the means test contained in the regulations. They are granted to the Department, either expressly or implicitly, by the legislature.

The Department has clearly demonstrated its ability to exercise its discretionary power to relax the provisions of these regulations, in instances of the application of **Regulation 16(a)**, which is referred to as Burial Support. **Regulation 16(a)** is implemented by the Department on a daily basis, without any consideration whatsoever of the means test referred to in, for example, Regulation 14(1)(a).

MEETING WITH THE HON. MINISTER

On the sixth September 2019, the Appeal Board held its very first meeting with the Honourable Minister. Four years down the line, the Minister was able to highlight concerns faced by the Department, concerns also shared by the AB. The following pertinent matters were discussed:

- Education Budget deficit: the decision not to fund all dependants (new and old applicants) was a result of the deficit and an ever increasing number for support by beneficiaries. She also confirms that the decision taken in a meeting held with the Advisory Council was superseded by CoD. She asked that minutes to this meeting be forwarded to AB, this has not happened yet.
- Hearings and Pre-Hearings: The Minister urged the A/DG to ensure that the Department cooperates with AB including appearing at Pre-Hearings and Hearings as this results in default judgments, to the detriment of the Department.
- Lack of support for the A/DG: There was consensus that the A/DG is not equipped with the necessary skills, dedication and support from staff, resulting in meetings and commitments not being honoured by some staff members. AB raised concerns

about Ms Mafu, who seems to be abusing her powers in her position as a DDG. The Minister concurred confirming that this was not the first complaint she had received, she was however surprised that as a Military Veteran, she expected her to display more sympathy towards fellow Military Veterans.

- Rapport: Meetings between the Minister and AB will be held every 2 months.

PART E:

WAY FORWARD:

1. Workshop between the Department and the Ministerial structures
2. Independence and Accountability for the AB Budget: transfer payment
3. A Bi-monthly meeting between the AB and the Acting DG
4. A Quarterly meeting with the Deputy Minister

CONCLUSION

On balance a great opportunity to serve mostly the most distressed and neglected section of military veterans has been missed. Most unfortunately, there has been very little support for the Appeals Board which, as indicated elsewhere, has been treated like an unwanted partner. The greatest casualty in all of this have been the luckless military veterans. These are people who sacrificed their lives to fight for the freedom South Africans attained in 1994. These include officials who are employed in the Department of Military Veterans.

The past four years have not been easy for the Appeals Board. It could have achieved more and must still thrive to do so. Opportunities must be created and utilized. The leadership of the Department of Military Veterans have a critical role in facilitating this desperately needed success, especially because the vast majority of appellants are individuals who gave up almost everything to fight for the liberation of South Africa. They do not deserve the wretched circumstances in which they find themselves, particularly when citizens through their elected government have allocated adequate resources to ensure the amelioration of most of their travails. Nations treat their war veterans with pride and honour. Ours have received a lot less. Those who could not fend for themselves live in penury.

POST SCRIPTUM: THE APPEAL BOARD SECRETARIAT

(Hereinafter referred to as Secretariat)

The Secretariat of the Appeal Board was established in terms of Section 6(a) of the Military Veterans Act No. 18 of 2011 (The Act, see appendix A) for the purpose of giving administrative support to the Appeal Board. Its task includes first and foremost, that Appeal Board meetings are held on schedule and that all documents required for its work are made available in a timely manner. The Secretariat is charged with maintaining effective liaison with relevant officials of the Department of Military Veterans in order to facilitate the work of the Board.

To-date, this task was assigned to the capable hands of Ms Charmaine Twala, kindly assigned to the role by the Department, which also pays her salary. For this we are greatly indebted to the department. Ms Twala tackled her task all by herself for the best part of the period under review. She did everyone proud. With the workload increasing it became necessary to seek additional resources. Help came in the form of a secondment kindly provided by the Navy, in the Defence Force. This arrangement has been in place since October 2017.

In the past five years of the AB's existence, the office of the Secretariat has gained highly valued experience in running of the administration of the AB. Members of the AB not being full-time functionaries, and yet having to deal with appeals received on a daily basis, the two-person secretariat has had to deal with a big load of AB work. The office disburses funds for traveling allowance and ensures provision of accommodation for appellants and witnesses who have been subpoenaed in terms of Section 20(3) of The Act. It also handles logistical arrangements for Board sittings in provinces whenever the need arises, which is quite often. Essentially, the secretariat ensures timely and orderly arrangements for pre-hearings and liaises with the Department to ensure the attendance of its officials in pre-hearings and Hearings and all other relevant stakeholders. Pre-hearings and Hearings also entail efficient transportation of appellants to the meeting venues; arranging meetings and catering; also ensuring appellants whose cases were not finalized are not

too demoralised.

Numerous challenges experienced in coordinating AB support from the Department have been managed mainly by means of the high level of professionalism by the secretariat. In its work the secretariat is guided by the Appeal Board's Rules and Procedures as outlined in Section 20 (4) of the Act, attached hereto as Appendix B. The Appeal Board is grateful for this service.

(Original signed)

(MAVUSO MSIMANG)

CHAIRPERSON: MILITARY VETERANS APPEAL BOARD

TO:

Hon. Minister of Defence and Military Veterans

Hon. Deputy Minister of Defence and Military Veterans

Acting Director General: Department of Military Veterans

For Info:

South African National Military Veterans Association

Advisory Council on Military Veterans