

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MULLINS J

[2007] QSC 360

No 10108 of 2007

JAY HANSEN

Applicant

and

MILITARY REHABILITATION AND
COMPENSATION COMMISSION

Respondent

BRISBANE

..DATE 23/11/2007

ORDER

HER HONOUR: It is declared that sections 79 and 430 of The Military Rehabilitation and Compensation Act 2004 do not preclude the respondent from paying the lump sum of \$21,765.74 to which the applicant is entitled under section 78 of the Act to the solicitors of the applicant in accordance with the written authority of the applicant to the respondent directing the respondent to make that payment to his solicitors' trust account.

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This is an application for a declaration as to the proper interpretation of sections 79 and 430 of The Military Rehabilitation and Compensation Act 2004. The applicant became entitled to compensation under the Act. Under section 78 of the Act the applicant was given the choice to convert the weekly amount that would otherwise have been payable into a lump sum. The applicant elected to take the lump sum payment. When that election was made the applicant also directed the respondent to make the payment of the lump sum to his solicitors' trust account.

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The respondent expressed the view that it was unable to do so because of the provisions of section 430 of the Act. That deals with payment by the respondent of the whole or part of a person's compensation to the credit of an account with a bank. The respondent took the view that it was limited by that provision to paying the lump sum to which the applicant was entitled to an account maintained by the applicant or an account maintained by the applicant jointly or in common with

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another person because of the provisions of section 430,
subsection (2) of the Act.

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It is therefore a matter of statutory interpretation.

The applicant argued that section 430 was concerned only with
payment of compensation at weekly intervals and not with the
payment of a lump sum. The respondent argued that section 430
applied to both weekly payments and lump sum payments.

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Section 430 is permissive. For example, it gives the
respondent power, in subsection (1), to determine to make the
payment at intervals at which the respondent determines. For
example, where a person is entitled to weekly payments, for
banking and administration convenience, the respondent could
determine that the payments be made fortnightly or monthly.

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I do not interpret section 430 as restricting the method by
which the Commission can pay a lump sum to a person who is of
full capacity and entitled to receive a one-off lump sum. For
example, section 430 would not preclude the Commission writing
a cheque and leaving it at its front desk for the applicant to
collect in person, if that was how the applicant wished to
receive his lump sum.

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In this case, the applicant, who has full capacity, has
authorised his solicitors to have the payment made to their
trust account. Section 430, in my view, does not prohibit the
Commission making the payment in that manner. That is why I

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have decided to make the declaration in the terms that I have indicated to the parties that I read out at the commencement of these reasons.

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HER HONOUR: The second order that I make is that the respondent pay the applicant's costs of the application, to be assessed.

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