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Please quote our ref:PFA/GA/14484/2007/CMS

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): S CLAASENS (“the complainant”) v PEP LIMITED PROVIDENT FUND (“the first respondent”) AND GLENRAND MIB (“the second respondent”)

1. Introduction

- [1.1] This complaint relates to the alleged non-payment of a disability benefit. A complaint dated 21 May 2007 was received by this office on 5 June 2007. On 6 July 2007 a letter was sent to the complainant acknowledging receipt thereof and on the same day a letter was sent to the second respondent giving it until 6 August 2007 to file its response to the complaint. The second respondent filed its response to the complaint dated 2 November 2007.
- [1.2] After considering all the written submissions, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

- [2.1] The complainant was employed by Ackermans Store (“the employer”) from 01 August 1991 until 31 July 2004 and by virtue of her employment became a member of the first respondent.

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), S Mothupi (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), AP Lehana (Assistant Adjudicator), S Mokgara (Assistant adjudicator), L Molete (Assistant Adjudicator), T Nawane (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat

- [2.2] The complainant further states that she is now unemployed and she is receiving a disability pension from Workmen's Compensation in the amount of R925.00 per month.
- [2.3] The complainant states that while she was employed, there were four robberies that took place at the place of her employment in a period of two years that has resulted in her suffering from post-traumatic stress disorder that required counselling.
- [2.4] Upon the termination of her employment, the complainant was paid a withdrawal benefit in the amount of R71 420.42 by the first respondent on 24 May 2006.

3.Complaint

- [3.1] The complainant states that when she enquired about her disability pension from the first respondent, she was informed that her benefit will not be paid out as she was receiving a disability pension from the Workmen's Compensation.
- [3.2] The complainant further states that according to her benefit statement issued on 21 May 2004 which is attached to the complaint, she was entitled to a disability benefit in an amount of R144 668.56. Therefore, the complainant requests that the respondents should be ordered to pay her a disability benefit.

4.Second Respondent's Response

- [4.1] The second respondent states that it is the administrator of the first respondent. It states that the underwriter of the disability risk have declined to pay the disability pension on behalf of the complainant, attached to the response is a claims assessment report from Capital Alliance dated 23 December 2004 which states that:

"based on the medical evidence, the claim for total and permanent disability benefits has been declined"

- [4.2] The second respondent states further that it was advised that the complainant was to retire early due to ill health and it accordingly paid her share of the provident fund less deductions on 24 May 2006.
- [4.3] The second respondent basically states that the complainant is not entitled to the disability benefit on the ground that her claim was declined by Capital Alliance which is the underwriter of the risk in this matter.

5.Determination and reasons thereof

- [5.1] This complaint relates to the unpaid disability benefit. The complainant states that she is entitled to a payment of the disability benefit on the ground that she is suffering from post traumatic stress caused by four robbery incidents that took place at her employment within a period of two months which rendered her to become disabled and to discontinue her duties.
- [5.2] Total and permanent disability in terms of the definition in the rules of the first respondent has been described as:
- “a condition where a bodily injury or illness is the direct, effective and only cause why the member is prevented permanently, without interruption and totally to follow his normal occupation and to follow an occupation which, with due regard to his education, training or experience, he could reasonably be expected to accept, exercise and limit loss of income and profit, provided such condition is not due to deliberate self-inflicted injury, or is a result of the member deliberately or negligently exposing himself to danger, except in an effort to save the life of a person.”
- [5.3] The complainant has consulted with a clinical psychologist E F De Kock for psychometric evaluation whose diagnosis was that the complainant is suffering from post traumatic stress. On 17 September 2004 Dr S Brook compiled a psychiatric evaluation report on the complainant in which he states that:
- “the complainant should continue with further intensive psychiatric and psychological treatment in order to alleviate psychiatric symptoms and to improve work level of functioning.”
- [5.4] Capital Alliance has declined to pay the disability pension on behalf of the complainant on the ground that the medical reports did not confirm that the complainant was permanently disabled. Rule 5 of the first respondent states that:
- “the insurer is to decide on the disability of a member taking into account medical reports.”
- [5.5] The complainant was never declared temporarily or permanently disabled by any medical and/or psychiatric practitioner. The complainant has taken early retirement not on the advice of anyone but voluntarily and her early retirement was paid to her.
- [5.6] The complainant is not entitled to the disability benefit as she was never declared disabled, but instead chose to accelerate her normal retirement date. It must be noted that even on the benefit statement that were periodically sent to the complainant it is stated that:

“your death and disability benefits cease by reaching your normal retirement date irrespective whether you continue employment with the consent of the employer, after normal retirement date.”

[5.7] In the result, the complaint cannot succeed and is therefore dismissed.

SIGNED IN JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR