

Invalidity retirement

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Introduction

An application for invalidity retirement can be made by the employee or their employer to the employee's superannuation fund. Once an employee makes a successful application for invalidity retirement the rules governing how an employee can access their superannuation are managed by the relevant superannuation scheme.

If the employee requires more information as to which option their superannuation fund offers, they will need to contact their superannuation fund directly.

An invalidity retirement pension is payable to an employee if the administrators of the fund agree that an employee is suffering from a permanent medical condition that is likely to prevent the employee from working. The medical condition suffered by an employee may be compensable or a combination of compensable and non compensable conditions.

Comcare has a role in this process when an employee applies for invalidity retirement as a result of a compensable condition. In this situation, Comcare's role is limited to providing a recommendation to the fund administrator, either supporting, or not, the application for invalidity retirement.

If a Rehabilitation Case Manager does not request Comcare to provide a recommendation and Comcare becomes aware that an employee is in the process of being invalidity retired, you should contact the Rehabilitation Case Manager to discuss further (*Note: invalidity retirement does not affect an employee's right to claim compensation in respect of their compensable condition*).

Total and permanent incapacity

An application for total and permanent incapacity, will ordinarily be approved by the fund administrator, in situations where the employee is:

- unable to work again in a job which they are reasonably qualified for (or could be reasonably qualified for after retraining)
- unable to participate in any other employment with a government department
- unable to participate in any other employment.

Partial and total invalidity retirement

An employee can apply to their superannuation scheme for a partial or total invalidity retirement pension. A partial invalidity pension is a form of income maintenance. It is paid as a pension when an employee's salary is reduced permanently due to a medical condition.

An employee who is receiving incapacity payments from Comcare in respect of a compensable condition is not eligible for partial invalidity retirement as they are already receiving compensation payments for the hours they are unable to work.

Qualifying for invalidity retirement

An application for invalidity retirement should not be undertaken unless a concerted effort has been made to maintain the employee at work in some capacity. Prior to an application being lodged, superannuation funds including Commonwealth

Superannuation Corporation expect that a range of pre-application strategies have been attempted. These strategies could include, but are not limited to:

- appropriate leave to allow adequate recovery time
- health assessment/vocational assessment reports
- employing and undertaking any treatment or strategies recommended by an approved medical provider
- comprehensive rehabilitation assessment and program provision
- graduated return to work program
- reduction in hours
- redeployment, and
- any other treatment or strategy that has been recommended.

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Comcare's recommendation

When an employee applies for invalidity retirement in relation to their compensable condition, the Commonwealth Superannuation Corporation funds require that the employer seek Comcare's view on whether all return-to-work options have been attempted unsuccessfully or ruled out as a viable option. Comcare makes this assessment in line with the return-to-work hierarchy.

Comcare will support an application for invalidity retirement where there is substantial and consistent evidence indicating that the employee is totally and permanently incapacitated and no further treatment, rehabilitation or provision of suitable employment is likely to increase the employee's capacity for employment.

You should ask for further information when you notice any inconsistency about the employee's capacity with regard to their eligibility for invalidity retirement. Also if you discover something that does not look right, feel right or when you receive information either from the employee or another source (employer, rehabilitation provider etc.) that is relevant and has the potential to impact the management of a claim, please refer to the ["Just Ask"](#) process.

Considerations when providing a recommendation for invalidity retirement

When providing a recommendation to Commonwealth Superannuation Corporation in respect of an employee's application for invalidity retirement there are certain considerations (e.g. age, support to get the employee back to work, length of time off work, etc.) that are designed to provide an overall picture of the circumstances that have led to the application for invalidity retirement. Importantly, failure by an employee to meet, or not meet, any of these individual considerations **does not** mean the application is automatically supported or not supported as the case may be.

What is the age of the employee?

In general, where an employee is under 50 years old Comcare is unlikely to support an application for invalidity retirement. An employee under 50 years old has at least 15 years before retirement age and has a greater capacity for retraining and/or redeployment.

Has there been any recent comprehensive rehabilitation assessment or rehabilitation program provided in line with medical recommendations?

In order to support an application for invalidity retirement Comcare needs up to date comprehensive rehabilitation information – i.e. reports that are no more than six months old. This information will help establish whether all rehabilitation options have been explored and will indicate whether rehabilitation programs were provided in line with medical recommendations, or not (*Note: where a rehabilitation program was not provided in line with medical recommendations there may be other rehabilitation avenues to explore*).

Has a graduated return to work (GRTW) plan been put in place?

Any recommendations made are done so in line with the return to work hierarchy. In order to support an application for invalidity retirement Comcare needs to be satisfied that the rehabilitation authority has done everything it can to return an employee to work. This includes putting a GRTW program into place and trialling different types of GRTW programs.

How many GRTW programs were attempted and when was the last attempt?

In a situation where there has been a significant gap between a GRTW program closing and the application for invalidity retirement being made, you need to consider whether the employee's circumstances have changed since the GRTW program finished and if so, whether the employee may now have capacity to undertake a new GRTW program which may be successful.

Has the employer offered a range of suitable employment?

Section 40 of the SRC Act places a statutory duty on employers to take all reasonable steps to provide an employee with suitable employment where the employee is undertaking or has completed a rehabilitation program. Suitable employment involves duties which are appropriate to the employee's age, experience, training, language and other skills and are in line with any medical restrictions. Taking 'reasonable steps' to providing suitable employment may include, but is not limited to, modification to existing duties, alternative duties or modified hours, similar to the principle of reasonable adjustment in the *Disability Discrimination Act 1992*.

While an employee may be incapacitated for their pre-injury duties in their original form, they may be able to undertake these duties with modifications or adjustments. In some circumstances an employee may be totally incapacitated for their pre-injury duties but capable of undertaking alternative suitable employment (*Note: you need to be satisfied that the employer has taken reasonable steps to provide suitable employment to the employee*).

Has redeployment to another employer (government or private) been considered?

An employee may be totally and permanently incapacitated for their pre-injury employment, however, they may be able to return to work with an alternative employer or with the same employer in a different area of the organisation.

You need to be satisfied that all attempts have been made to return an employee to work, including redeploying the employee.

How long has the employee been off work?

Where an employee has been consistently totally incapacitated for a significant period (generally more than six months) this may be an indication that the employee does not have any capacity for employment (*Note: you will need to determine the reasons behind this incapacity, i.e. is the employee incapacitated solely as a result of their injury, or is it because a GRTW program has not been provided or suitable employment found*).

What are the recommendations from treating practitioners regarding the employee's capacity for work?

Do the employee's treating practitioners consider the employee is totally and permanently incapacitated for any work? Have they recommended any rehabilitation programs or strategies which have not been adopted by the employer?

Is there any potential for improvement in work capacity if the employee undertakes further medical treatment?

Invalidity retirement should only be supported where all reasonable medical treatment has been undertaken.

If an employee's capacity for work may improve with medical treatment it is unlikely Comcare would support an application for invalidity retirement.

What are the recommendations from any independent medical examiners (s57) regarding the employee's capacity for work?

Has the employee been assessed recently by an IME and if so, do they believe the employee is totally and permanently incapacitated? Have they recommended any new rehabilitation strategies or programs which have not been implemented by the employer?

Where an independent medical examiner has provided advice on rehabilitation strategies (e.g. suggested a new program), you should be asking the employer why they have not implemented this advice.

Where an IME has recommended alternative medical treatment you should discuss this with the employee's treating practitioner. If an employee's capacity for work may improve with medical treatment it is unlikely Comcare would support an application for invalidity retirement.

Does the rehabilitation provider believe all vocational options have been explored?

The rehabilitation provider works closely with the employee and should have a good understanding of the employee's capabilities, skills and qualifications.

Before making a recommendation on an application for invalidity retirement you should review any documentation on file from the rehabilitation provider regarding their opinion on the employee's capacity to return to work. If there is insufficient information you should contact the rehabilitation provider to discuss and/or seek further information.

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Retrospective Invalidity retirement

Ex-employees can apply for retrospective invalidity retirement under the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) through Commonwealth Superannuation Corporation, if they have a preserved superannuation component.

An ex-employee may do this in order to be granted payment of an invalidity pension from the date they originally exited their employment.

If you are asked to make a recommendation on a retrospective application for invalidity retirement, the process is the same as if the employee was currently employed. You will need to be satisfied the ex-employee was totally and permanently incapacitated at the date of separation from their employment.

If you receive an application for a retrospective invalidity retirement, you will need to discuss the application with your Assistant Director.

Note: If an employee has a superannuation fund other than Commonwealth Superannuation Corporation they will need to contact their fund to confirm if their fund allows for retrospective invalidity retirement.

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Procedure for actioning an invalidity retirement recommendation

Introduction

When an application is made to an employee's superannuation fund for invalidity retirement in respect of a compensable condition the employer will request Comcare provide a recommendation, either supporting or not, the application for invalidity retirement.

The employer often has a limited timeframe in which to submit the application for invalidity retirement to Commonwealth Superannuation Corporation. If this is not met, they may need to start the process for application again, which can include a new assessment etc. Therefore, when Comcare receives a request for a recommendation for invalidity retirement, it is necessary that the request be actioned as quickly as possible.

The following procedure describes how to action a request for an invalidity retirement recommendation.

Step 1: Review relevant claims information

Claim information could include:

- the request for support of invalidity retirement from the employer
- reports attached to the request
- rehabilitation reports as well as return to work (RTW) plans
- medical reports, and
- the employee's incapacity history on Pracsys.

If you have received a *Fitness for Duty* report from the employer, you need to ensure you have an authority on file signed by the employee giving Comcare permission to retain this document.

Step 2: Determine if there is sufficient information to allow you to make a recommendation

If yes, go to step 4.

If no, continue to step 3.

Where an assessment is complex and/or there is inconsistent medical evidence, you should discuss the application with Injury Management Team (IMT). The Injury Manager (IM) may be able to provide comments that can be included in the CM's report. The IM will not be authoring the report, so should be a contributor only.

Step 3: Contact the employer

Your initial conversation with the Rehabilitation Case Manager should be by telephone and include:

- that there is currently insufficient information available to allow you to make a recommendation
- whether the RCM has provided all relevant information and request they provide any additional information they may have in relation to the invalidity retirement
- confirmation that you will be able to provide them with a response within 28 days of the receipt of all information
- that you will follow up the phone call with written correspondence confirming the details of the conversation and any additional information that you require.

If the RCM has provided all available documentation you will need to issue the recommendation based on information available on the claim file.

You should email Rehabilitation Case Manager with a confirmation of the details you have discussed (*Note: if you have contacted the RCM to request additional information you should include these details in the email and confirmation that you will be able to make a decision within 28 days of receipt of the additional information*).

Step 4: Update Pracsys

Go to 'Manage Claim Comment' (MCOM) and enter a comment. Your comment should include that you received a request for an invalidity retirement recommendation. Record any conversations. If you are also waiting on additional information you should include this in the comment.

Step 5: Draft and send a letter to the employer

Your letter should include:

- your recommendation
- the reasons for your recommendation, and
- details of the information considered in making your recommendation.

Your letter will need to be quality assured by your Assistant Director.

Note: Where relevant, follow up with a phone conversation advising the employer that their rehabilitation obligations continue even if the employee is invalidity retired.

Step 6: Contact the employee

Your initial conversation should be by telephone and include:

- that you have provided a recommendation in respect of invalidity retirement to their employer
- details of the recommendation
- the reasons for the recommendation
- that if they are invalidity retired, Comcare will continue to monitor their capacity for employment
- that following separation their employer continues to have rehabilitation obligations for them.

Step 7: Update Pracsys

Go to 'Manage Claim Comment' (MCOM) and enter a comment. Your comment should include whether or not invalidity retirement is supported. Record any conversations.

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