

Copy of papers relating to 1 Primary and 1 Secondary Report

Investigation into research report [REDACTED]

Complainant: [REDACTED]
[REDACTED]

Report relating to: [REDACTED]

Report author: [REDACTED]

Specific complaints:

1. the sub contractor held himself to be expert but failed to present the full evidence regarding 'roll calls'.
2. The Department of Veterans Affairs relied on the information in such a manner, as to unreasonably extend the investigation.
3. The Veteran's credibility was damaged.
4. The report is misleading, comprises false statements and conclusions.
5. The researcher either has been negligent or with held evidence that would have been available to or be known by such an expert.

Reports examined by: Marie Leach

Approach: the approach taken in examining the report was to be as critical as possible of the content in order to find maximum fault.

Findings:

There were two reports. The first is dated 19 March 2004. The second is dated 10 August 2004 and was requested following DVA's receipt of statements supporting [REDACTED] claim that he served at Fire Support Patrol Base *Coral*.

March 2004 report:

- details the source information for the Vietnam Database used by the researcher.
- Provides background on Fire Support Patrol Base *Coral*.
- Examines entries in the roll book.
- Makes conclusions on contentions.

Comment on the March 2004 report:

Contention 3 refers to a tent "neighbour". The researcher in his discussion of the contention uses the term tent "mate". This issue was raised by [REDACTED] and becomes relevant because the researchers' comment that [REDACTED] could not have been a tent mate of [REDACTED] is a conclusion that was not claimed in the contention. This conclusion is repeated at paragraph c. of the summary.

The summary of the report at paragraph b. contains the conclusion that "As he did not serve at FSPB *Coral* he could not have seen the bodies of the slain enemy or a

prisoner of war as he claims." This is a conclusion that is best left to the delegate to make based on the factual information within the report and balanced with other evidence that may be available to them.

The summary of the report at paragraph d. uses wording that argues against the 4th contention of the claimant. The wording of paragraph 25 is factual and it is best left to the delegate to decide whether the factual information supports the claimant's contention or not.

August 2004 Report:

Describes the method used by the researcher to search the Database.
Lists the major attacks on FSPB *Coral* (4 instances) within the time period.
Acknowledges numerous other incidents around *Coral* including another close PSPB.
Discusses the 4 statements from other servicemen provided by the claimant after the first report Defends the accuracy of the roll book and explains why though concedes possibility of very rare errors.
Provides additional discussion in relation to contention 2.
Makes a conclusion and provides a summary of the report content.

Comment on the August Report:

Dates quoted in paragraph 15 do not agree with the dates quoted in the paragraph 16. The researcher should have noted the different dates [in relation to the duty at *Coral* for ██████████ who providing a supporting statement] and commented on the discrepancy if they were from different sources. However, it appears possible that in writing paragraph 16 the researcher has erroneously picked up the 29 May date which related to ██████████ at paragraph 12. Regardless of how the discrepancy occurred, this should have been picked up before the report was finalised as this type of error can cause doubts about the accuracy of other information in the report.

Paragraph 19: the ██████████ hand written comments highlight the use of the words "personal" and "at Nui Dat" in relation to the researcher's comments about events of 13 May 1968 at FSPB *Coral* and appear to query the researchers' ability to apply his personal experience at Nui Dat to comment on a mortar and ground assault at *Coral* by ██████████ who also provided a supporting statement. If this is the criticism that the ██████████ was making, it overlooks the fact that the researcher was a GSO grade 3 Intelligence and he could be expected to know about the *Coral* staffing situation and so confirm ██████████ statement. *Note: Because there were no words associated with the ██████████ highlighting on paragraph 19 of the report, I have deduced that their criticism was as described above.*

Paragraph 24: the ██████████ criticises the researcher's statement in that it is not substantiated. The researcher should have referred to his source which was possibly the Vietnam Database.

Paragraph 25: the ██████████ comment is "not relevant". However, the paragraph is relevant because it details the date of the second and final convoy to *Coral* (23 May 1968) and is useful in relation to dates and method of travel mentioned in the supporting statements.

Paragraph 26: the [REDACTED] comment is "says nothing". However, the paragraph shows the norm was for one attachment per person. While this is general it should be viewed in light of the possibility that [REDACTED] may have gone to FSPB Coral before his leave - as raised by [REDACTED] statement at para 21.

Paragraphs 27-1-29: The [REDACTED] comments are illegible in places, however appear to criticise the researcher's claim of the accuracy of the roll book. The [REDACTED] also criticises the researcher's lack of contact with people that the roll indicated were at *Coral*.

In these paragraphs, the researchers' explanation of the use of the roll book is intended to counteract the claims put by [REDACTED] (at paragraph 15) that the roll book entries were commonly inaccurate. It is valid for the researcher to state his reasons for relying on the entries in the roll book. It is then up to the delegate to weigh up the opposing claims. There is no indication as to why the researcher did not contact those known to be at *Coral* during the compilation of either report. It is possible that his confidence in the accuracy of the roll negated any requirement to do so.

Paragraph 33: The [REDACTED] criticism is that whether sending the claimant to FSPB Coral was a bad administrative decision or not is irrelevant because the claimant was as *Coral* and had witnesses to his presence there. The researcher's comment about a "bad administrative decision" is in relation to 12-13 May 1968 only. The comment was used by the researcher in an attempt to verify or otherwise the dates mentioned by [REDACTED] in support of the claimant (paragraph 21).

Paragraph 34: [REDACTED] criticism that the researcher provides his opinion. The researcher does provide his opinion that, in relation to [REDACTED] he considers it "highly unlikely that he was detached for duty at *Coral*." and then goes on to list his reasons for this opinion. It is the responsibility of the delegate to come to conclusions based not only on the research report but on the information available to the delegate from all sources.

Paragraph 34 a: The [REDACTED] criticism is that s.119 allows for lack of evidence. However the researcher was reporting that the roll book positively indicated the claimant was not at *Coral* but at Nui Dat.

Paragraph 34 c: The [REDACTED] criticism is that "it would take a considerable amount of time to search and bury and count 55 bodies". The researcher could have referred to the source of his information for his statement that bodies were buried expeditiously. The [REDACTED] notes state that the delegate had been provided with extract from publications which indicated bodies were left unburied for 18 to 24 hours. The delegate is required to make a decision based on all available information, not just the content of a research report.

Paragraph 35: At "b." the researcher used the word "erratic" in relation to the dates in the four supporting statements. The word "differ" may have been a better choice.

Suggestions for improvement (related to this report) but that could be generally applied:

- The use of footnotes rather than an appendix to identify sources of information.
- Facts only to be provided - no opinions on the contentions made by the claimant.

- Particular care to be taken that the report content is accurate.
- Conclusions to be made only by the delegate.

Comment re Specific complaints:

1. the sub contractor held himself to be expert but failed to present the full evidence regarding 'roll calls'.

The contradictory statements in relation to the accuracy of the roll book is a matter for the delegate. The researcher has presented one side and the supporting statements for the claimant have presented the other. It is the delegate's responsibility to decide how much weight each will carry towards his final decision.

2. The Department of Veterans Affairs relied on the information in such a manner, as to unreasonably extend the investigation.

The first report was received 19 March 2004. As soon as this report was received the researcher was instructed to conduct further research following the receipt of statements supporting the claims made by [REDACTED]. The second research report was received 10 August 2004. The review officer's decision to accept the claim was made 6 September 2004. It was not unreasonable for the review officer to seek a supplementary report from the researcher after the receipt of additional information in the form of the supporting statements. The department did not delay a decision after receipt of the second report.

3. The Veteran's credibility was damaged.

The researcher reported that the roll book indicated the veteran did not serve in FSPB *Coral*. The veteran countered this by providing supporting statements. The researcher then provided further information relating to dates and events. It was then up to the delegate to make a decision based on all the information available.

4. The report is misleading, comprises false statements and conclusions.

The report does not provide direct evidence that the veteran was at FSPB *Coral*. It also refutes the possibility that the veteran was continually exposed to dead bodies. These are findings by the researcher based on his research. The fact that these findings do not directly support the veteran's claims does not make the report misleading or false. It is the responsibility of the delegate to weigh the opposing evidence and make a decision taking into account all available information.

The researcher's apparent date error at paragraph 16 and his confusion of the terms "tent neighbour" with "tent mate" are deficiencies in the report. However, the researcher presented date and event evidence he found based on his research of the unit's roll book and the Vietnam Database, HQ 1 ATF duty officer's log and other references he lists at annex A. The researcher is entitled to comment in relation to the evidence he has found.

The report did contain comments and conclusions about the veterans' contentions. It should have been left for the delegate to make conclusions based on all the information available.

5. The researcher either has been negligent or withheld evidence that would have been available to or be known by such an expert.

The researcher could have provided a more direct link to what reference source provided which information. Once provided with the statements supporting the veteran's claim to have served at *Coral*, the researcher sought material such as dates and events that could provide confirmation of those statements. There is nothing to support the claim that the researcher withheld any evidence. Neither can the claim of negligence be supported. If the delegate considers that the researcher has not sufficiently investigated the matters he was instructed to investigate, the delegate can request that the researcher to undertake further research.