



Australian Government

Defence Honours and Awards Appeals Tribunal

COOMBS and the Department of Defence [2017] DHAAT 04 (25 January 2017)

File Number(s) 2016/011

Re **Michael John COOMBS**
 APPLICANT

And **Department of Defence**
 RESPONDENT

Tribunal Ms Naida Isenberg (Presiding Member)
 The Hon. Peter Lindsay OAM

Hearing Date 8 December 2016

Date of Decision: 25 January 2017

DECISION

The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Michael John Coombs is not eligible for the award of the Australian Service Medal with Clasp 'SE ASIA'.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Service Medal with Clasp 'SE ASIA'.

LEGISLATION

Defence Act 1903 – ss 110VB(2), 110T, 110V, 110VA
Defence Force Regulations 1952 - reg 93C and Schd 3
Australian Service Medal Regulations 1988
Australian Service Medal 1945-1975 Letters Patent and Regulations 1995
Australian Service Medal 1945-1975 Regulations 2001
Australian Service Medal Declaration and Determination under the Australian Service Medal Regulations 2002

REASONS FOR DECISION

Introduction

1. The applicant, Mr Michael John Coombs (Mr Coombs) seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Australian Service Medal (ASM) with Clasp 'SE ASIA' (the claimed award).
2. Mr Coombs lodged an application for the claimed award on 10 March 2014, in respect of his service at Butterworth in 1982. The Directorate wrote to Mr Coombs on 28 November 2014 and informed him that he was not eligible for the claimed award, because he had previously been awarded the ASM 1945-75 with Clasp 'SE ASIA', in respect of his service in Singapore.
3. Being dissatisfied with the decision of the Directorate, Mr Coombs lodged his application for review with the Tribunal on 20 June 2016. In the application for review, Mr Coombs contended that he qualifies for the claimed award because his service in Butterworth was different to his service in Singapore for which he had been awarded the ASM 1945-75 with Clasp 'SE ASIA'.

Tribunal Jurisdiction

4. There is no dispute that the Tribunal has jurisdiction to review the Directorate's decision in regard to Mr Coombs application for the claimed award: see subsection 110V(1) and 110T of the *Defence Act 1903* and regulation 93C and Schedule 3 of the *Defence Force Regulations 1952*¹.

Steps taken in the conduct of the review

5. On 30 June 2016, in accordance with the *Defence Honours and Awards Appeal Tribunal's Procedural Rules 2011* (as amended), the Tribunal wrote to the Secretary of the Defence Department advising of Mr Coombs' application for review and inviting submissions and asking that the Tribunal be provided with any relevant material. A written submission was received from the Directorate on 16 August 2016.
6. On 18 August 2016 Mr Coombs was provided with a copy of the Directorate's written submission to which he was invited to respond and to submit any further material he may have in support of his contentions in relation to the claimed award. Mr Coombs wrote to the Tribunal on 24 August 2016 reiterating the anomalies. Mr Coombs was also invited to give oral evidence (by telephone) to the Tribunal at the hearing on 8 December 2016. The Directorate was represented by Mr David Bell.

¹ Under Section 85 of the *Defence Regulation 2016*, the *Defence Force Regulations 1952* continue to apply to an application made under those regulations before their repeal on 1 October 2016.

Australian Service Medal 1945-75 Regulations

7. The Australian Service Medal 1945-75 is an Australian award instituted by Letters Patent on 22 February 1995. The Medal is awarded to recognise military service in a prescribed non-warlike operation from 1945 to 1975. The Schedule sets out the *Regulations Governing the award of the Australian Service Medal 1945-1975* (the Regulations). Regulation 3 states that the Governor-General, on the recommendation of a Minister may declare a non-warlike operation in which members of the Defence Force were engaged, between 3 September 1945 and 16 September 1975, to be a declared operation. Regulation 4 of the ASM 1945-75 Regulations sets out the conditions for the award of the medal.

Australian Service Medal with Clasp ‘SE ASIA’

8. The eligibility criteria for the ASM with Clasp ‘SE ASIA’ are contained in the *Commonwealth of Australia Gazette No. S 64*, Declaration and Determination under the Australian Service Medal Regulations - dated 28 February 2002. That document provided the authority to:

- ...
- (b) declare under regulation 3 of the Regulations that the following non-warlike operations in which members of the Australian Defence Force were engaged with elements of the Australian, New Zealand and United Kingdom (ANZUK) Forces; Australian Army Rifle Company (Butterworth); Five Power Defence Arrangement; and Australian Army Survey Operations in South East Asia during the following periods to be a declared operation for the purpose of the Regulations:
 - (i) Defence Force activities on land in Malaysia during the period that commenced on 14 February 1975 and ended on 31 December 1989;
 - (ii) ...
 - (c) determine, under Subregulation 4(2) of the Regulations, that the conditions for award of the Australian Service Medal with Clasp ‘SE ASIA’ (“the Medal”) for the declared operation are:
 - (i) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted to or serving as a member of the Australian element of the declared operation for a period of 30 days, or for periods amounting in the aggregate to 30 days;
 - (ii) ...
 - (d) determine, for the purposes of this determination, that a person is **not eligible** for an award of the Medal where:
 - (i) a previous entitlement exists to the Australian Service Medal 1945-75 with Clasp ‘SE ASIA’ due to service prior to and including 14 March 1975; (Tribunal’s emphasis)
 - (ii) a separate award of the Australian Service Medal with Clasp ‘SE ASIA’ has been awarded; or
- ...

Mr Coombs's service

9. Defence records of Mr Coombs's service state he enlisted in the Australian Regular Army on 6 January 1970, serving until his discharge at own request on 4 July 1993, whereupon he enlisted in the Inactive Australian Army Reserves and served in that capacity until 14 April 1994. Mr Coombs reached the rank of Warrant Officer Class One during his service.

10. Mr Coombs served from 24 July 1971 to 26 February 1972 (218 days) in Singapore, from 17 June to 30 June 1980 in Honolulu, from 5 to 15 January 1982 (11 days) at Butterworth Air Force Base (Malaysia), and from 2 February to 28 May 1982 (108 days) at Butterworth again. During his service at Butterworth, he served with the Rifle Company which had been stationed there on a rotational basis since 1970.

11. For his service, Mr Coombs has been awarded the:

- ASM 1945-75 with Clasp 'SE ASIA'
- Defence Force Service Medal with First Clasp
- Australian Defence Medal

Consideration

12. Mr Coombs contended he was eligible for the claimed award in respect of his 1982 service *at Butterworth*. He disputed the basis that the Directorate had refused his claim on the basis that he has already been previously been awarded the ASM 1945-1975 with Clasp 'SE ASIA' to recognise his earlier service *in Singapore*.

13. In his submissions Mr Coombs also raised a number of perceived anomalies in that eligibility for some other awards was not precluded by the relevant service having been the basis for some other award. However, as was discussed at the hearing, each award has its own eligibility criteria, and the Tribunal's role is to apply those eligibility criteria, and has no discretion in that regard.

14. In his oral evidence Mr Coombs reiterated the matters raised in his written submissions. He contended that he should receive the claimed award because there could be no contention of 'double dipping' because there were two separate periods of service in two different locations in South East Asia. He could see no logic as to why service in Malaysia (Butterworth) and Singapore should not be regarded as separate locations for the purposes of the claimed award.

15. He re-iterated his concerns about anomalies with respect to Navy service in the FESR where service in Malaysia and Singapore was considered separately, and about service in the Middle East which attracted both ASM 1945-1975 with Clasp 'SE ASIA' and ASM with Clasp 'SE ASIA'.

16. At the hearing the Defence representative, Mr Bell conceded that there were anomalies.

17. The Tribunal was referred to Department's policy document DEFGRAM NO 233/2001 dated 2 July 2001. The policy referred to service in SE Asia during 1955 to 1989 as essentially having a single purpose, namely to provide security within the SE Asia region. The policy specifically referred to its effect being that a person who has been awarded the ASM 1945-1975 with Clasp 'SE ASIA' for service up to February 1975 will not be awarded the ASM with Clasp 'SE ASIA' for service at a later date.

18. Whilst the Tribunal is not bound to apply policy guidelines of the kind referred to, it will usually apply the guidelines unless there are cogent reasons in a particular case for not doing so: see *Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634 at 639-645; *Dainty and Minister for Immigration and Ethnic Affairs* (1987) 6 AAR 259 at 267; and *Minister for Immigration, Local Government and Ethnic Affairs v Roberts* (1993) 41 FCR 82 at 86.

19. Even if this policy were not in place, the Tribunal observed that the Regulation specifically provides that where a previous entitlement exists to the Australian Service Medal 1945-75 with Clasp 'SE ASIA' due to service prior to and including 14 March 1975; the Australian Service Medal with Clasp 'SE ASIA' may not be awarded.

The Tribunal's Findings

20. In conducting this review, the Tribunal is bound by the eligibility criteria that govern the claimed award. Accordingly, in order for Mr Coombs to be eligible for the claimed award it must be established that his service met with the eligibility criteria as stated in the Declarations and Determinations made under the Regulations.

21. There is no dispute that Mr Coombs served, relevantly, in Singapore, from 5 to 15 January 1982, and from 2 February to 28 May 1982 (a total of 119 days) at Butterworth Air Force Base in Malaysia.

22. The eligibility criteria for the ASM with Clasp 'SE ASIA', specifically states that:

...a person is not eligible for an award of the Medal where... a previous entitlement exists to the Australian Service Medal 1945-75 with Clasp 'SE ASIA' due to service prior to and including 14 March 1975

23. Hence it is clear that Mr Coombs is not eligible for the claimed award because he has previously been awarded the ASM 1945-75 with Clasp 'SE ASIA' in relation to his service in Singapore which was prior to 14 March 1975.

24. The Tribunal acknowledges that there may be perceived anomalies in the availability of multiple clasps for service in the same area of operation. However these are not matters for the Tribunal; it is bound to apply the eligibility criteria for the claimed award. Those criteria specifically exclude circumstances such as Mr Coombs. In that regard the Tribunal has no discretion.

25. For the reasons set out above, the Tribunal finds that since Mr Coombs has already been awarded the ASM 1945-75 with Clasp 'SE ASIA', he is ineligible to also receive the claimed award.

26. This conclusion does not in any way diminish the commitment and contribution Mr Coombs made to his country for the period he served.

DECISION

27. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Coombs is not eligible for the award of the Australian Service Medal with Clasp 'SE ASIA'.