



Australian Government

Defence Honours and Awards Appeals Tribunal

Delaney and the Department of Defence [2017] DHAAT 13 (11 May 2017)

File number (s) 2016/016

Re **Mr Shawn Mathew Delaney**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr Richard Rowe PSM (Presiding Member)
Brigadier Kevin O'Brien CSC (Retd)

Hearing Date 2 March 2017

DECISION

On 11 May 2017 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Shawn Mathew Delaney is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Defence Medal.

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1) 110VB(2)

Defence Force Regulations 1952 - reg 93C and Schd 3

Commonwealth of Australia Gazette No S48 dated 30 March 2006 – Australian Defence Medal Regulations 2006

Australian Defence Medal Regulations 2006 – Instrument of Delegation – dated 9 August 2014

CDF Determination on Qualifying Service as Efficient Service – dated 6 February 2013

REASONS FOR DECISION

Introduction

1. The applicant, Mr Shawn Mathew Delaney (Mr Delaney) 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 Defence Medal (ADM). On 6 May 2014 Mr Delaney made an application to the Directorate for the award of the ADM. On 16 June 2014, the Directorate advised Mr Delaney that he did not qualify for the award. On 18 August 2016 Mr Delaney applied to the Tribunal for a review of the Directorate's decision.

Tribunal Jurisdiction

2. Pursuant to s110VB (2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term reviewable decision is defined in s110V (1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an award in response to an application. Regulation 93C of the *Defence Force Regulations 1952*¹ defines a defence award as being those awards set out in Part 2 of Schedule 3. The ADM is included in the defence awards set out in Part 2. Therefore the Tribunal has jurisdiction to review decisions in relation to this award. The role of the Tribunal is to determine whether the decision of the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

Conduct of the Review

3. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (as amended)*, on 25 August 2016, the Tribunal wrote to the Secretary of the Department of Defence advising him of Mr Delaney's application for review and seeking a report on the reasons for the original decision and the provision of relevant material that was relied upon in reaching the decision. On 6 October 2016, the Directorate, on behalf of the Secretary, provided the Tribunal with the Defence submission in the form of a written report. The Tribunal forwarded a copy of the Directorate's written report to Mr Delaney for comment on 11 October 2016. On 15 October 2016 Mr Delaney provided the Tribunal with his comments on the Defence submission.

4. The Tribunal considered the material provided by Mr Delaney and the Directorate. On 2 March 2017, the Tribunal held a hearing with Mr Delaney. Defence was represented at hearing by Ms Margot Kropinski-Myers, Director Honours and Awards, and Mr David Bell, Manager, Service Assessments.

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.

5. The Tribunal considered the material provided by Mr Delaney and by the Directorate. Relevant extracts of Mr Delaney's service and pay records were provided to the Tribunal with the Defence submission.

Australian Defence Medal

6. The ADM was instituted by Her Majesty, Queen Elizabeth the Second by Letters Patent on 8 September 2005, *for the purpose of according recognition to Australian Defence Force personnel who have served for a minimum of six years since the end of World War II.*

7. The Regulations are set out in the Schedule attached to the Letters Patent. Those Regulations were amended on 20 March 2006.² As a result of that amendment the minimum period of service became four years. Regulation 4 of the amended Regulations states:

(1) The Medal may be awarded to a member, or former member, of the Defence Force who after 3 September 1945 has given qualifying service that is efficient service:

*(a) by completing an initial enlistment period; or
(b) for a period of not less than 4 years service; or
(c) for periods that total not less than 4 years; or
(d) for a period or periods that total less than 4 years, being service that the member was unable to continue for one or more of the following reasons:*

*(i) the death of the member during service;
(ii) the discharge of the member as medically unfit due to a compensable impairment;
(iii) the discharge of the member due to a prevailing discriminatory Defence policy, as determined by the Chief of the Defence Force or his or her delegate;*

(2) For sub regulation (1), the Chief of the Defence Force or his or her delegate may determine that a period of the member's qualifying service is efficient service.

...³

8. The minimum periods of a member's annual qualifying service that is efficient service for the award of the ADM are set out in the Australian Defence Medal Regulations Determination by the Chief of the Defence Force dated 6 February 2013. The Determination states, with respect to members of the Army Reserve, that until 30 June 1993 the minimum qualifying period is 26 days, including such periods of continuous training and home training as are directed by the proper military authority.

² *Australian Defence Medal Regulations 2006, Commonwealth of Australia Gazette No. S48, 30 March 2006.*

³ *Ibid*

Mr Delaney's service record

9. The Tribunal noted that Mr Delaney's application covered his service with the Australian Army Reserves was when he was enlisted in his then name of Shawn Edward Evans. He changed his name in 1994. He provided the Tribunal with a copy of the relevant certificate from the Registry of Births Deaths and Marriages.

10. Mr Delaney's service record shows he enlisted with the Australian Army Reserves (ARES) on 20 March 1984 for a three year initial enlistment period. He was discharged from the ARES on 19 August 1986. His service record states that he was discharged under Australian Military Regulation (AMR) 176(1)(g) "Discharge at own request". Mr Delaney served two years, four months and 23 days of his enlistment period.

11. On 16 April 1991, Mr Delaney re-enlisted in the ARES with an open ended enlistment period.

12. On 1 July 1991, Mr Delaney was discharged from the ARES. His service record states that he was discharged under AMR176(1)(n) "Retention in the Military forces not being in the interest of those forces". Mr Delaney served two months and 16 days of his enlistment period.

13. According to his service records Mr Delaney's combined service with the ARES was a total of two years, seven months and eight days.

Mr Delaney's Submission

14. In his application for review, Mr Delaney stated that he had served in the Australian Army Reserves from 28 March 1984 to 1986 and claimed that he continued his service after taking twelve months leave until July 1991. He further stated that the last unit he served in was 2 Commando Company in Williamstown and that he served eight months with that unit, previously being stationed at 3 Military Police Company in Kew, Victoria; and, prior to being posted to 2 Commando Company, he completed 100 days service at Army Headquarters in Queens Road Melbourne. He also stated that while at 2 Commando Company he found out that while he had been on twelve months leave he had been discharged and needed to reenlist, and that his re-enlistment was completed on 16 April 1991.

15. In his letter of 15 October 2016 providing his comments on the Defence submission Mr Delaney made further statements regarding his service. In particular, he claimed that when he was sworn in on 16 April 1991 at 2 Commando Company the service date should have been backdated from 12 February 1990 as that was the date on which he joined the Company and, then, in the subsequent period, he completed 100 days of paid service, at the Reserve Pay and Administration Centre (RPAC) in Queens Road and at Williamstown. He states, further, that he joined 2 Commando company on 12 Feb 1990 and that in that period he completed 100 days at (RPAC) in Queens Road, Melbourne, to be trained as an orderly clerk, and then further attendance as an orderly clerk at Williamstown. Mr Delaney stated that his assertion that his service with 2 Commando Company should have been backdated to 12 February 1990 was noted in a complaint he wrote to his Commanding Officer

dated 30 April 1990. He also states that he transferred to 2 Commando Company in February 1990 when he was “not accepted at 3MP Company”.

16. Mr Delaney claims that he has completed the service required to be eligible for the ADM.

Defence’s Submission

17. Defence’s submission, dated 6 October 2016, concluded that after reassessment of all material questions of fact, including relevant documentation, Mr Delaney was not eligible for the ADM because he did not meet the eligibility criteria for the award, in that he:

- did not complete his initial enlistment period;
- did not serve for a continuous or aggravated period of not less than four years; and
- was not discharged as medically unfit due to a compensable impairment.

18. The submission included (paragraphs 25 and 26) reference to an assessment of Mr Delaney’s eligibility for the ADM having been completed by the Directorate’s then Service and Assessment and Awards medal assessor, Mrs Belinda Turley, on 15 May 2014. This submission mentions that, in advising Mr Delaney by letter on 16 June 2014 that he was not eligible for the ADM, Mrs Turley stated: “I note from your correspondence that you have stated you continued to serve between 1986 and 1991. Unfortunately there is no evidence to support this in your service record.”

Tribunal Consideration – The Merits Review

19. The Tribunal carefully considered all the material placed before it. At the hearing on 2 March 2017 the Tribunal focused on Mr Delaney’s service record with particular reference to evidence in support of that record. The Tribunal accepted that Mr Delaney had served in the ARES from 20 March 1984 until 19 August 1986 and also from 19 April 1991 until 1 July 1991. The Tribunal noted that there was no documentary evidence, such as service or pay records, to support Mr Delaney’s assertion that he had also served from 12 February 1990 to 1 July 1991. The Tribunal informed Mr Delaney that such evidence would be required to substantiate his assertion.

20. Mr Delaney asserted that: he did, in fact, serve during this period; there was a sufficient trail of information to support his assertion; he thought he had never been discharged; and, he did not think there would be a need for him to re-enlist.

21. The Defence representatives at the Hearing informed the Tribunal that there were no pay records for Mr Delaney for the period 12 February 1990 to 19 April 1991.

Tribunal Finding

22. The Tribunal carefully considered Mr Delaney's application, his service and pay records and the evidence he provided at the Hearing. It also carefully considered Defence's submission and evidence provided at the Hearing.

23. The Tribunal finds, based on the evidence, that Mr Delaney is not eligible for the ADM as he does not meet the eligibility criteria for the award in that he:

- did not complete his initial enlistment period;
- did not give 'qualifying service that is efficient service' for four years;
- was not discharged as medically unfit; and
- was not discharged due to a prevailing discriminatory Defence policy.

The Tribunal finds that the decision of the Directorate is the correct decision.

DECISION

24. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Shawn Mathew Delaney is not eligible for the award of the Australian Defence Medal.