



Australian Government

Defence Honours and Awards Appeals Tribunal

Hunter and the Department of Defence re: Goss [2016] DHAAT 08 (18 March 2016)

File Number(s) 2015/023

Re **Mr N.J. Hunter on behalf of Cornelius Goss**
Applicant

And **Department of Defence**
Respondent

Tribunal The Hon P. Lindsay (Presiding Member)
Brigadier M. Bornholt AM (Retd)

Hearing Date 11 March 2016

DECISION

On 18 March 2016 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Cornelius Goss is not eligible for the award of the War Medal 1939-45.

CATCHWORDS

DEFENCE AWARD – War Medal 1939-45

LEGISLATION

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

Defence Force Regulations 1952 - Reg 93C

Commonwealth of Australia, Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal – December 1948

REASONS FOR DECISION

Introduction

1. On 22 February 2011 the applicant Mr Neil Hunter (Mr Hunter) asked the Directorate of Honours and Awards of the Department of Defence (the Directorate) to make an assessment of his late grandfather, Mr Cornelius Goss' (Mr Goss) medal entitlements.¹ The Directorate found that Mr Goss was entitled to the Australia Service Medal 1939-45 (ASM 1939-45) and the medal was sent to Mr Hunter's sister on 16 May 2011.² On 12 August 2014 Mr Hunter applied to the Directorate for 'all honours and awards owing' to Mr Goss including the '39-45 War Medal'.³ On 13 April 2015 the Directorate informed Mr Hunter that Mr Goss was not eligible for the War Medal 1939-45 as there was no evidence that he had completed 28 days fulltime service between 3 September 1939 and 2 September 1945.⁴

2. Mr Hunter seeks review of the decision that Mr Goss is not eligible for the award of the War Medal 1939-45.⁵

Tribunal Jurisdiction

3. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) 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 a defence award in response to an application. Regulation 93C of the *Defence Force Regulations 1952* defines a *defence award* as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the War Medal 1939-45. Therefore, the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the review

4. In accordance with its *Procedural Rules 2011*, on 16 July 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Hunter's application for review and requested that he provide a report in relation to Mr Goss' eligibility for the War Medal 1939-45. On 24 August 2015 the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Goss did not meet the eligibility criteria for the award. On 27 August 2015 the Tribunal forwarded a copy of the report of the Directorate to Mr Hunter for comment. On 7 October Mr Hunter telephoned the Tribunal and advised that he had no further comment.

5. The Tribunal met on 10 November 2015 to scope the review. During its meeting the Tribunal considered the material provided by Mr Hunter and the Directorate. Due to

¹ Headquarters Airlift Group Fax dated 22 February 2011

² DH&A T34571 dated 16 May 2011

³ Application for the Posthumous Issue of Medals and/or Clasps dated 12 August 2014

⁴ DH&A T34571 dated 13 April 2015

⁵ Application for Review of Decision dated 1 May 2015

Mr Hunter's absence overseas, the Tribunal hearing for December 2015 was postponed to 11 March 2016 when Mr Hunter gave oral evidence by telephone.

War Medal 1939-45

6. In June 1946 the Imperial Committee on the Grant of Honours, Decorations and Medals announced that His Majesty King George VI had approved the institution of a War Medal and various other awards for service in the Second World War.⁶ The War Medal 1939-45:

'is to be granted to full-time personnel of the armed Forces wherever their service during the war has been rendered. A 28-day qualification will be adopted'...

7. On 11 June 1948, administration of the Imperial Second World War campaign stars, clasps, emblems and medals for personnel from the Dominions was delegated to the Dominion Governments. The criteria for the award of the War Medal 1939-45 to Australian servicemen and women is contained in the 'Dedman Papers'.⁷ The criteria includes:

...

111. *The War Medal 1939-45 is to be granted to full-time personnel of the Armed Forces wherever their service during the war has been rendered. A 28-day qualification will be adopted. Operational and non-operational service will qualify...*

113. *Service between 3rd September 1939 and 2nd September 1945, inclusive, will qualify wherever rendered...*

116. *Civilians.(a) The few approved categories of civilians who qualify ...*
(i) full-time uniformed representatives of the red Cross and other philanthropic bodies ...
(ii) recognised uniformed Press Correspondents serving in army operational commands ...
(iii) aircrew of civil air transport who have flown ... into theatres of war ...
(iv) other full-time uniformed persons accredited to the Forces in operational areas,

will be eligible for the War Medal ...

...

Australia Service Medal 1939-45

8. In 1945, the Australian Defence Committee recommended that Australia institute a medal of its own in connection with the Second World War for members of the Australian Forces and selected civilian organisations. On 17 January 1946 Cabinet approved a medal 'for all members of the Defence Forces of the Commonwealth of

⁶ Command Paper 6833 – *The War Medal, 1939-45* ... dated June 1946

⁷ *Commonwealth of Australia - Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal* – issued by the authority of The Hon. John J. Dedman, MP., Minister of State for Defence – dated December 1948

Australia who participated in the 1939-1945 war...'.⁸ Subsequently His Majesty King George VI instituted the ASM 1939-45 by Royal Warrant on 30 August 1949. The Royal Warrant was published in the *Commonwealth of Australia Gazette* in November that year.⁹ The Warrant in part states:

...

3) *The persons eligible for the Medal shall be those of Our faithful subjects and others, male and female, who between the 3rd September 1939 and the 2nd September 1945, rendered the required service in the Australian Armed Forces, in the Australian Mercantile Marine or as civil members of the Royal Australian Air Force Reserve who served as aircrew in civil aircraft in operational areas ...*

7) *The period of qualifying service for full-time duty shall be eighteen months at home or overseas.*

8) *The period of qualifying service for part-time duty shall be three years ...*

...

9. The power to vary the conditions of the 1949 Royal Warrant was delegated to the Governor-General in 1995 by way of an exchange of letters between Prime Minister Paul Keating and Her Majesty the Queen. This delegated power was used in 1996 to reduce the qualifying period for the ASM 1939-45 from eighteen months to 30 days for full time service; and from three years to 90 days for part-time service.¹⁰

Mr Goss' Service Record

10. Defence was unable to locate a service record for Mr Goss. Mr Hunter provided material sourced from the National Archives of Australia which indicates that Mr Goss served in the Citizen Military Forces with the Tasmanian based 22nd Light Horse Regiment from 19 August 1925 to 1 January 1932.¹¹ An Army Mobilization Attestation Form also supplied by the National Archives indicates that Mr Goss joined the Volunteer Defence Corps (VDC) on 14 May 1942 at Ross in Tasmania.¹² The Central Army Records Office advised Mr Hunter that Mr Goss was discharged from the VDC on 24 September 1945.¹³ The source of this information was the VDC 2nd Battalion, D Company Roll Book and unit Routine Orders.

11. Mr Goss' entitlement to medals was assessed by the Directorate on 16 May 2011 and for his service, his family received the ASM 1939-45.¹⁴

⁸ Cabinet Agendum No 1002A: Proposal for an Australian Decoration, National Archives of Australia (NAA): A816, 66/301/251.

⁹ Royal Warrant, Australia Service Medal 1939-45, *Commonwealth of Australia Gazette* No. 91, 30 November 1949.

¹⁰ *Commonwealth of Australia Gazette* No. S 309, 21 August 1996.

¹¹ Army Attestation Form A.7 dated 26 August 1925

¹² Mobilization Attestation Form dated 14 May 1942

¹³ CARO E-mail dated 21 and 22 February 2011

¹⁴ DH&A T34571 dated 16 May 2011

Mr Hunter's Submission

12. Mr Hunter's submission to the Tribunal indicates that he had been advised that as his grandfather had been awarded the ASM 1939-45 'then he should also be entitled to the War Medal 1939-45'. He claims that his grandfather did have Second World War service and provided a copy of an internet accessed Second World War Nominal Roll that he asserted provided proof of this service.¹⁵ He claims that his Uncle could recall that Mr Goss 'served at a number of airfields during the war which included the Midlands and Launceston areas'.

13. Mr Hunter states that he:

*'finds it complexing that my grandfather was awarded and issued an ASM 1939-45 medal, which requires the member to have qualifying service of 30 or 90 days depending on the type of service; yet DH&A has deemed that my grandfather does not qualify for the War Medal 1939-45, which requires the member to have a minimum of 28 days' service'.*¹⁶

14. In a telephone conversation with staff from the Tribunal on 7 October 2015, Mr Hunter reiterated that he was 'confused as to why his late grandfather could receive the ASM 1939-45 and not the War Medal 1939-45'.¹⁷ In essence, Mr Hunter's contention is that because Mr Goss was entitled to the ASM 1939-45 then he should also be entitled to the War Medal 1939-45.

15. During the hearing on 11 March 2015, the Tribunal asked Mr Hunter who had advised him that Mr Goss 'should also be entitled to the War Medal 1939-45'. Mr Hunter stated he had worn his grandfather's medals on ANZAC day and he was told 'by his mates that if his grandfather was entitled to the ASM 1939-45 then he should also be entitled to the War Medal'. He said that he was also told this by the local Returned and Services League sub-branch. At the commencement of the hearing Mr Hunter stated that he expected that the hearing would be relatively short as he had subsequently been told that the advice he had received may have been incorrect.

The Directorate's Submission

16. In its written submission to the Tribunal, the Directorate confirmed that there is no formal instrument to delegate the authority to make decisions for Imperial awards and that by convention, the Director and Assistant Directors are accepted as responsible decision makers. The submission identifies the 'Dedman Papers' as the appropriate authority to rely upon for the eligibility criteria for the War Medal 1939-45.

17. The submission states that 'evidence could not be located to confirm that Mr Goss completed 28 days full-time operational or non-operational service'.¹⁸ The original Statement of Reasons for the decision indicated that the Directorate had confirmed that Mr Goss had served in the VDC (part-time duty) and there was no

¹⁵ Hunter Submission 1 May 2015, Attachment 5

¹⁶ Hunter Submission, Supporting E-mail dated 3 July 2015

¹⁷ Telephone Record of Conversation dated 7 October 2015

¹⁸ Defence Submission dated 24 August 2015, Paragraph 15

evidence that he had completed 28 days 'operational or non-operational service for full-time personnel between 3 September 1939 and 2 September 1945'.¹⁹ The submission indicated that on receipt of the application for review, the Directorate had reassessed Mr Goss' eligibility and again concluded that he did not meet the criteria as he had not 'completed 28 days or more full-time service'.

The Volunteer Defence Corps

18. The Directorate's Assessment Working Papers indicate that:

*'... according to research conducted by the Directorate in conjunction with the Army History Unit in 2006, service in the VDC was part-time service only ...'*²⁰

19. The Tribunal also researched the VDC.²¹ The VDC was inaugurated on 15 July 1940 under the auspices of the Returned Sailors, Soldiers and Airmen's Imperial League of Australia (now the RSL). Its founding principle was to provide a means by which ex-servicemen could make a contribution to the defence of their communities. In May 1941 the VDC became part of the army and in 1942 became a corps of the Citizen Military Forces. It comprised men from every part of Australia and every walk of civilian life including volunteers who were unfit for combat in the regular forces, over the age limit or in reserved occupations. David Horner described the purpose of the VDC as a part time force who initially 'were involved in defending static positions (bridges and power stations), but later operated anti-aircraft batteries and searchlights'.²² Most volunteers served on a part-time basis, reporting for duty for about six hours per week. The VDC was organised into regionally based battalion groups and numbered approximately 75,000 men by 1943. In July 1944 the majority of volunteers were placed onto reserve status and most units were disbanded. Shortly after the war ended the VDC was demobilised.

The Tribunal's Consideration

20. The Tribunal carefully considered all the material placed before it including written submissions and oral evidence. The Tribunal was satisfied with the Directorate's explanation that the decision to refuse Mr Goss' eligibility was made by convention and that the correct authority, being the 'Dedman Papers', had been used to inform the decision.

21. There is no dispute that Mr Goss served in the VDC from 14 May 1942 to 24 September 1945. There is also no dispute that Mr Goss was entitled to the ASM 1939-45. The Tribunal noted that Mr Goss' eligibility for this medal was a direct result of his service in the VDC where he met the criteria that he provides:

*'... qualifying service for **part-time duty** shall be three years ...*
(Highlight added for clarity)

¹⁹ DH&A T34571 dated 13 April 2015

²⁰ DH&A Tribunal Assessment Working Paper dated 29 July 2015

²¹ <http://www.diggerhistory.info.com.au> accessed 2 November 2015

²² *Australia's Military History*, David Horner, Wiley Publishing 2010 - Page 296

22. At issue is whether or not Mr Goss also meets the criteria for the War Medal 1939-45. The Tribunal noted that the criteria for the award of the War Medal 1939-45 to Australian serviceman and women contained in the '*Dedman Papers*' requires that:

...
*111. The War Medal 1939-45 is to be granted to **full-time personnel** of the Armed Forces wherever their service during the war has been rendered. A 28-day qualification will be adopted. Operational and non-operational service will qualify...*²³ (Highlight added for clarity)

23. The Tribunal was satisfied that there was no evidence to suggest that Mr Goss' service with the VDC was on a full-time basis or that he had completed 28 days of full-time operational or non-operational service whilst with the VDC.

24. The Tribunal also considered whether Mr Goss could have been considered under the provisions for declared civilian categories for the War Medal 1939-45.²⁴ The Tribunal could find no evidence that he was a full-time member of a philanthropic organisation, was a press correspondent, aircrew or accredited to the Armed Forces in an operational area. The Tribunal therefore found that Mr Goss could not meet the civilian criteria for the award.

25. The Tribunal noted Mr Hunter's assertion that Mr Goss should be entitled to the War Medal 1939-45 because he was also entitled to the ASM 1939-45. The Tribunal did not agree with this assertion. Eligibility for service medals are contained in the Regulations and conditions for each of the awards and are assessed independent of each other. Precedent or eligibility for one award does not flow necessarily to other awards.

Finding

26. For the reasons stated above, the Tribunal finds that Mr Goss was not a full-time member of the Armed Forces during the Second World War and is therefore not entitled to be awarded the War Medal 1939-45.

DECISION

27. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Cornelius Goss is not eligible for the award of the War Medal 1939-45.

²³ *Commonwealth of Australia - Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal* – issued by the authority of The Hon. John J. Dedman, MP., Minister of State for Defence – dated December 1948 – Folio #27

²⁴ *Ibid.* Clause 116