



## Australian Government

### Defence Honours and Awards Appeals Tribunal

## **Jellicoe and the Department of Defence [2016] DHAAT 32 (23 August 2016)**

**File Number(s)** 2014/079

**Re** **Mr John Jellicoe**  
Applicant

**And** **Department of Defence**  
Respondent

**Tribunal** Mr Richard Rowe PSM (Presiding Member)  
Air Vice-Marshal John Quaife AM (Retd)

**Hearing Date** 9 March 2016

### **DECISION**

On 23 August 2016 the Tribunal decided to recommend to the Minister that the decision by the Department of Defence not to recommend the award of the Mention in Despatches (MID) to Mr John Jellicoe be affirmed.

### **CATCHWORDS**

*DEFENCE HONOUR –Mention in Despatches*

### **LEGISLATION**

*Defence Act 1903* – Part VIIIIC- Sections ss 110T, 110VB(1)  
*Defence Amendment Regulations (No.1) 2010* – Schedule 3 Part 2

*Commonwealth of Australia Gazette* No. S25 dated 4 February 1991 (Letters Patent and Regulations for the Australian Gallantry Decorations and the Australian Distinguished Service Decorations)

## **REASONS FOR DECISION**

### **Introduction**

1. The applicant, Mr John Jellicoe (Mr Jellicoe), 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 a Mention in Despatches (MID) for his service in Vietnam in 1971 and 1972.

2. On 21 June 2010 Mr Jellicoe wrote to the then Chief of the Defence Force, Air Chief Marshal Angus Houston AC AFC, seeking 'a review of a nomination of a Mention in Despatches' for himself and Mr Grant Hamilton for service in Vietnam in 1971 and 1972.

3. On 7 October 2010, the Directorate advised Mr Jellicoe that the Defence Department was not in a position to retrospectively recognise his, or Mr Hamilton's, service in Vietnam. On 28 May 2014, Mr Jellicoe applied to the Tribunal for a review of this decision.

### **Tribunal Jurisdiction**

4. Pursuant to s110VB(1) 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 an honour or award in response to an application. Regulation 93B of the *Defence Force Regulations 1952* defines a Defence honour as being those awards set out in Part 1 of Schedule 3. Included in the Defence honours set out in Part 1 is the MID.

5. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award. In accordance with s110VB(1) of the Defence Act, as the matter under review is for a Defence honour, the Tribunal does not have the power to affirm or set aside the decision but may make recommendations regarding the decision to the Minister.

### **Conduct of the Review**

6. On 22 August 2014, in accordance with the *Defence Honours and Awards Appeal Tribunal's Procedural Rules 2011 (No1)*, the then Chair of the Tribunal, Mr Alan Rose AO, wrote to the Secretary of the Department of Defence informing him of Mr Jellicoe's application for review and requesting that he provide a report and copies of any material on which the Department sought to rely in coming to its decision. A written submission was received from the Directorate, on behalf of the Secretary, on 17 June 2015.

7. On 24 June 2015, Mr Jellicoe was provided with a copy of the Directorate's written submission and he was invited to respond to this and submit any further additional comments he might wish to make in relation to his application. On 14 July 2015, Mr Jellicoe responded to the submission and provided comments by email. Mr Jellicoe was invited to provide oral evidence to the Tribunal and he agreed to do

this at a public hearing in Canberra on 9 March 2016 which was also attended by the Respondent. On 16 March 2016, the Tribunal held a second public hearing and heard evidence, by telephone, from Mr Grant Hamilton. Mr Martin James (representing Air Force) was present. Mr Jellicoe was sent a copy of the recording of the hearing on 23 March. On 2 April 2016, the Tribunal received Mr Jellicoe's comments.

### **Eligibility Criteria for the Mention in Despatches**

8. The MID is an Imperial award used by commanders to bring the services of deserving personnel to the attention of higher authority. It is awarded for gallantry or distinguished service in action or in operations. The current Defence Honours and Awards Manual states that to be 'in action' a member must be involved in an engagement between opposing forces and that members must be physically in a situation involving direct conflict between opposing forces.<sup>1</sup>

9. The MID was instituted in Australia in 1920 and continued until the introduction of the Australian system of honours and awards in 1975. In the Australian system, which does not have an MID, there are separate Commendations for Gallantry and for Distinguished Service.

10. The Commendation for Gallantry 'may be awarded for other acts of gallantry in action which are considered worthy of recognition'.<sup>2</sup>

11. The Commendation for Distinguished Service 'shall be awarded only for distinguished performance of duties in warlike operations'.<sup>3</sup>

12. Unlike other Imperial and gallantry and distinguished service awards, the MID was not governed by a Royal Warrant or set of Regulations. Awardees were simply 'mentioned' in the London or Commonwealth Gazette, with the number of mentions during operational service being subject to a quota.

13. Both the End of War List – Vietnam and the Independent Review Panel of the End of War List – Vietnam dealt with the issue of retrospective awards of the MID after the introduction of the Australian honours system. Those found by both reviews to have had a valid claim to an MID for their service in Vietnam were, depending on the contemporary citation, awarded either a Commendation for Gallantry or a Commendation for Distinguished Service, in lieu of an MID. Claims were determined based on documentary evidence of a signed recommendation from the highest level of command in Vietnam.

14. According to the Office of Air Force History (OAFH), the Royal Australian Air Force (RAAF) policy on operational awards in Vietnam over the period July - December 1970 was that up to three RAAF members employed on ground duties could be recommended for MIDs.<sup>4</sup> No evidence in relation to quotas has been located

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<sup>1</sup> Defence Honours and Awards Manual, Volume 1, Chapter 7, [7.3]

<sup>2</sup> *Commonwealth of Australia Gazette* No. S25 dated 4 February 1991

<sup>3</sup> *Ibid*

<sup>4</sup> This is based on a ratio of '1 decoration to each 250 members...average strength over period 643', RAAF policy on operational awards, Jul - Dec 70, NAA A2880, 5/5/90, received under cover of OAFH Minute AB19940395, dated 28 October 2014..

for the period when Mr Jellicoe was serving in Vietnam (April 1971 to February 1972). Nor, according to the OAFH, is there any evidence to suggest that the policy during that period would have been different from that of 1970.<sup>5</sup>

### **Mr Jellicoe's Service Record**

15. Mr Jellicoe enlisted in the RAAF on 9 June 1958. He served in Vietnam as a Sergeant with 1 Operational Support Unit (IOSU) from 28 April 1971 to 29 February 1972. Mr Jellicoe received his commission as an officer in April 1975 and retired as a Flight Lieutenant on 15 June 1979.

### **Summary of Mr Jellicoe's claims**

16. Mr Jellicoe's claims for the award of the MID are set out in his letters of 21 June 2010 to Air Chief Marshal Houston and of 28 May 2014 to the Tribunal. The letters also purport to be a claim for the award of the MID to Mr Grant Hamilton as well.

17. Mr Jellicoe states that both he and Mr Hamilton were stationed at the RAAF Base at Vung Tau with IOSU from 28 April 1971 to 29 February 1972. They had responsibility for fulfilling stock requirements for maintenance supplies and aircraft spares for 9 Squadron (SQN) and 35 SQN. This required them to travel by road convoy from Vung Tau to the United States Marine Base at Long Binh. During five of the six trips that Mr Jellicoe undertook the convoy came under 'some form of live fire actions'. Mr Jellicoe states that, because of the risks involved, a command decision was then made that the road convoys would be discontinued and replaced by air supply flights (using Iroquois helicopters or Caribou aircraft). Mr Jellicoe states that both he and Mr Hamilton took part in these flights.

18. Mr Jellicoe states that 'at a later time' while both he and Mr Hamilton were still serving in Vietnam their Section Commander, Flight Lieutenant Milton Tulk informed them that he had nominated both of them for the MID 'for the repeated incidents involving live fire actions' as their 'actions were over and above what we would normally be exposed to' or 'normally expected of non-combat service'. Mr Jellicoe states further that Flight Lieutenant Tulk was 'so sure we would receive the award that he gave each of us the Oak Leaf to hold until the award was announced'. He also mentions that neither he nor Mr Hamilton wore the Oak Leaf and that the timing of this 'gesture' coincided with news that the Vung Tau Base was to be closed. Mr Jellicoe says 'we heard nothing more of our nominations and eventually returned the Oak Leaf to our Section'.

19. Mr Jellicoe also refers, in his letter of 28 May 2014 to the Tribunal, to a 'Confidential Report' on him prepared by Flight Lieutenant Tulk on 10 January 1972 which states, inter alia, in the comments section, that: 'He continuously volunteered for logistic road convoy supply duty, during which on two separate occasions was subject to enemy harassing fire'. The Tribunal noted that this Report also commented very positively about Mr Jellicoe's performance of his duties and responsibilities.

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<sup>5</sup> OAFH Minute AB19940395, dated 28 October 2014.

## **The Directorate's Submission**

20. In its submission, Defence noted that Mr Jellicoe had made an application for the MID 'based on his knowledge' that his Section Commander at the time, (then) Flight Lieutenant Tulk, had intended to recommend (then) Sergeant Jellicoe and Sergeant Hamilton for a MID. Defence advised the Tribunal that OAFH had been tasked to conduct a historical review of the previous decisions made in relation to Mr Jellicoe's recognition of service and confirm the details in Mr Jellicoe's application.

21. The submission noted that OAFH found that there is documentary evidence supporting the claim that Mr Jellicoe probably did come under enemy fire while deployed with 1OSU but there is no evidence that Mr Jellicoe was recommended for the MID. A subsequent review by OAFH expanded the search to include the National Archives but no new documents relating to the case were found.

22. The submission also notes that Air Force sought more information, through interviews conducted by an officer from Air Force Headquarters, from two men who deployed in Vietnam during the same period as Mr Jellicoe and who he mentions in his application, namely: Wing Commander Tulk (Retd) and Mr Hamilton. This information was sought to determine the conditions Mr Jellicoe was subject to during his service and the intention of (then) Flight Lieutenant Tulk regarding the recommendations for the MID. Wing Commander Tulk was interviewed on 14 May 2015 and Mr Hamilton on 12 May 2015.

23. As part of the submission, both Wing Commander Tulk and Mr Hamilton stated that they were subject to harassing enemy fire during the convoys from Vung Tau to Long Binh over a period of four months and that five or six convoys had been subjected to such fire. Both stated that their orders were that the convoy was not to stop even if fired upon. They further stated that they could not see who was firing, whether it was the Viet Cong or villagers. Mr Hamilton stated that the harassing fire was a type of psychological warfare and that the men were nervous before each convoy. Both he and Wing Commander Tulk stated there were no fire fights during their time at 1OSU. The Commanding Officer ordered the convoys to be stopped due to the harassing fire. Thereafter, supply runs were conducted by aircraft.

24. In relation to Mr Jellicoe's statement that a recommendation had been made for him and Mr Hamilton to receive the MID, Wing Commander Tulk stated in his interview that 'while both men deserved something', 'no paper work was ever submitted. No clasps or insignia were presented either'. He was going to recommend Mr Jellicoe and Mr Hamilton for the MID because they worked well and ensured good results in both the clerical and physical sides of logistics; they had 1OSU ready to move when required; and worked under less protection after 9SQN and 161 SQN had withdrawn. However, he did not follow through with the recommendations because he was informed by officials in Saigon that the quota for awards, including the MID, had been exhausted.

25. Mr Hamilton said in his interview that he could not recall there being any paperwork prepared recommending the award of the MID. He also said he could 'confirm that the Clasps were not awarded'.

26. The submission notes that (then) Flight Lieutenant Tulk was the decision maker in so far as the decision to not make the recommendation for the MID to be awarded to Sergeant Jellicoe and Sergeant Hamilton and that this decision was based 'on advice from higher command that the extant quota for such awards had already been reached'. The submission also states that the 'RAAF has located evidence that there was a quota applied to the awarding of the MID in Vietnam in 1970 with an allowance of three such awards per year for RAAF members employed on ground duties. No evidence has been located for 1971 but there is no evidence to suggest that the policy would have been different from that of 1970'.

27. The submission concludes with the following statement: 'Based on the available evidence and the statements from Wing Commander Tulk and Mr Hamilton, RAAF has concluded that Sergeant Jellicoe was not nominated for the award of the MID in line with the quota policy that was legitimately in force at the time. Further, the statement for (from) Wing Commander Tulk does not provide sufficient emphasis to warrant determination that Sergeant Jellicoe's actions demonstrated gallantry or distinguished service in action or on operations. It is further questionable as to whether the fact that he came under fire, but followed orders to depart the scene, qualifies him as being 'in action''. Accordingly, 'RAAF believes that these factors combined, warrant a recommendation that Sergeant Jellicoe not be awarded the MID for his actions in Vietnam in 1971'.

### **The Tribunal's Consideration**

28. On 9 March 2016 the Tribunal held a public hearing in Canberra which was attended by the applicant, Mr Jellicoe, who gave evidence in support of his application.

29. The following witnesses, representing the Respondent, also attended the hearing: Mr Martin James, Air Force History Unit, Department of Defence; Air Commodore Hayden Marshall, Chief of Staff, Air Force Headquarters; and Flight Lieutenant Simon Hall, Air Force Headquarters.

30. Wing Commander Tulk participated in the hearing by telephone.

31. Mr Jellicoe outlined his claims for the award of the MID as set out in his letters of 21 June 2010 to Air Chief Marshal Houston and of 28 May 2014 to the Tribunal (paragraphs 16 to 19 above). He confirmed that, formally, his application only related to himself: he was not making an application on behalf of Mr Hamilton. He commented, including in response to questions by the Tribunal, that he was under the misapprehension that both he and Mr Hamilton had been recommended for the award of the MID and been 'knocked back'. He now understood that no recommendations had been submitted. This did not, however, change the fact that he considered he was deserving of the award. He said that (then) Flight Lieutenant Tulk had told him 'I am going to write you up for an MID' and that he had been given an Oak Leaf by Flight Lieutenant Tulk.

32. Mr Jellicoe also said, in response to questions, that five of the six convoys from Vung Tau to Long Binh he took part in 'had an event': they came under fire,

which was sporadic, as if to intimidate. The convoys did not return fire as the enemy was not sighted. The vehicles in the convoys were not hit by fire nor were any personnel wounded. He said that the convoys were under the protection of RAAF Airfield Defence Guards (ADG). If an engagement had occurred as a result of the harassing fire, contact with the enemy would have been undertaken by the ADGs. No such engagement occurred.

33. Mr Jellicoe confirmed to the Tribunal that his duties in Vietnam in relation to the convoys were essentially of a logistics nature. He did not have a combat role. He commented that he had volunteered for convoy duty.

34. Mr James informed the Tribunal that while records were incomplete or were never raised for the period Mr Jellicoe was in Vietnam it was a fact that road convoys, which increased after 1970, did come under attack from time to time from 'harassment fire'. No casualties had been sustained as a result of these attacks. The convoys were nonetheless considered 'risky'.

35. Air Commodore Marshall informed the Tribunal that Air Force Headquarters had engaged in collecting information relating to Mr Jellicoe's application. This fact-finding had involved interviewing both Wing Commander Tulk and Mr Hamilton (paragraphs 22 to 25 above refer). No nomination 'from the IOSU' for the award of the MID to Mr Jellicoe (or for Mr Hamilton) had been located. No nomination had been submitted through the chain of command. As regards the quotas for RAAF members employed on ground duties, Air Commodore Marshall commented that they would have applied to any nomination put forward and expressed the view that the quotas would have been well subscribed at that time. He also noted that Mr Jellicoe and Mr Hamilton would have carried weapons for self defence rather than for 'combat related' purposes.

36. At the hearing the Tribunal heard evidence, by telephone, from Wing Commander Tulk who said that if he had been given permission he would have recommended both (then) Sergeant Jellicoe and (then) Sergeant Hamilton for the MID. He was advised, however, that the quota for awards had been filled so he did not submit any written nominations for the MID (nor for any other award). He commented that, in his view, the system was at fault. While the convoys had come under harassing fire his nominations would have been based on the total overall performance of the two men, particularly in relation to their supply and logistics duties. He also said that he told both men that he would have recommended them for the MID.

37. The Tribunal informed Mr Jellicoe that they would be taking evidence from Mr Hamilton at a subsequent public hearing. Mr Jellicoe said that while most of the time he and Mr Hamilton went together on the convoys, there would be 'contradictions' between them regarding some of the facts.

38. On 16 March 2016, the Tribunal held a second public hearing and heard evidence, by telephone, from Mr Hamilton. Mr James was present. Mr Hamilton confirmed that he was not an applicant for the review of the decision that he and Mr Jellicoe are not eligible for the award of the MID. He said he had no recollection of any intention that he be recommended for the MID and only became aware of the

matter last year. He said that while convoys in which he participated did come under fire 'three or four times'...'they weren't trying to kill us': it was harassing fire; the convoys were under orders not to stop nor did they engage with the enemy. He confirmed that he had stock and supply duties; he did not have a combat role.

39. Subsequent to the hearings, Mr Jellicoe drew to the attention of the Tribunal by email that the MID was awarded to the Padre at the Vung Tau base and that this award was presented before the base was closed on 29 February 1972. Mr Jellicoe queried whether this did not create a precedent in which 'our superiors did in fact overrule the rules of the quota system of awards'. The Tribunal considered this information but gave little weight to it in its findings.

### **Tribunal's Finding**

40. On the basis of the evidence before it, the Tribunal finds that Mr Jellicoe's Section Commander, (then) Flight Lieutenant Tulk, had intended to recommend Mr Jellicoe (and Mr Hamilton) for the award of the MID but that he did not, in fact, submit a recommendation because of oral advice he received that the quota for awards had been filled. The Tribunal finds that Flight Lieutenant Tulk's decision to not proceed with a recommendation for the award of the MID, or any other form of award, was appropriate given the nature of Mr Jellicoe's (and Mr Hamilton's) service and the advice received. In the absence of a specific written recommendation for the award, the Tribunal is not in a position to determine whether the quota system was properly applied or whether the recommendation would have or should have been approved.

41. Notwithstanding the absence of any recommendation, the Tribunal considered whether the participation of Mr Jellicoe in the convoys which came under fire and his exemplary service in Vietnam, if constituting a valid claim to the MID, would merit recognition by the award of either the contemporary Commendation for Gallantry or the Commendation for Distinguished Service. The Tribunal found that, on the basis of the evidence before it, Mr Jellicoe's service, while highly commendable and professional, did not meet the eligibility criteria for the award of the Commendation for Gallantry, namely: '...other acts of gallantry in action which are considered worthy of recognition'. The Tribunal also found, on the basis of the evidence before it, that Mr Jellicoe's service did not meet the eligibility criteria for the Commendation for Distinguished Service, namely: '...distinguished performance of duties in warlike operations'. In particular, and with reference to the criteria for the MID (paragraph 8), the Tribunal finds that while the convoys in which Mr Jellicoe participated did, on several occasions, experience harassing fire without any engagement with the enemy (the fire was not returned and the convoys did not stop), this did not constitute being 'in action': in the sense of being involved in an engagement between opposing forces and being physically in a situation involving direct conflict between opposing forces.

42. In relation to the MID criterion of 'distinguished service...in operations' the Tribunal recognised, based on the evidence before it, that Mr Jellicoe did provide very efficient and effective service throughout his time with 1OSU. However, the evidence presented to the Tribunal did not, in its view, meet this criterion. The Tribunal found, therefore, that Mr Jellicoe did not merit the award of the Commendation for Distinguished Service or the Commendation for Gallantry.



43. Accordingly the Tribunal finds that the decision of the Directorate is the correct decision.

#### **DECISION**

44. The Tribunal decided to recommend to the Minister that the decision by the Department of Defence not to recommend the award of the Mention in Despatches (MID) to Mr John Jellicoe be affirmed.