



Australian Government

Defence Honours and Awards Appeals Tribunal

Lane and the Department of Defence [2017] DHAAT 02 (10 January 2017)

File number (s) 2015/021

Re **Mr Arnold Lane**
Applicant

And **Department of Defence**
Respondent

Tribunal Air Vice-Marshal A.J. Quaipe, AM (Retd) (Presiding Member)
Brigadier M. Bornholt, AM (Retd)
Ms N. Isenberg

Hearing Date 8 December 2016

DECISION

On 10 January 2017 the Tribunal decided to affirm the decision of the Parliamentary Secretary, to refuse to recommend Mr Arnold Lane for the United States Air Medal.

Further, the Tribunal recommends to the Minister that Section 110V of the *Defence Act 1903* be amended to restrict consideration of matters related to foreign awards to those awards for which a delegation to award is held by the Australian Government.

CATCHWORDS

DEFENCE AWARDS –Foreign Awards – the United States of America Air Medal - Australian Army Training Team Vietnam.

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1) and 110VB(2)
United States Department of Defence Manual of Military Decorations and Awards -
Number1348.33 Volume 3 dated 23 November 2010

REASONS FOR DECISION

Introduction

1. The applicant Mr Arnold Lane (Mr Lane) seeks review of a decision by the Parliamentary Secretary for Defence, Senator the Hon David Feeney (the Parliamentary Secretary) to refuse to recommend him for the United States Air Medal (the US Air Medal) for his service as an Air Despatcher with the Australian Army Training Team Vietnam (AATTV) from 9 September 1964 to 28 September 1965.¹
2. On 26 May 2009, Mr Lane wrote to the ‘Chairman of the Defence Honour and Awards Appeals’ (sic) seeking the award of the US Air Medal, asserting that he was eligible as ‘*several members of the AATTV received the US Air Medal in recognition of their services during flights.*’² The letter was not received by the Tribunal and on 29 November 2010, Mr Lane’s local Federal Member forwarded a copy of the letter to the Parliamentary Secretary through the Minister for Veterans’ Affairs.³
3. On 2 February 2011, the Parliamentary Secretary, acting on advice provided by the Defence Support Group⁴, responded to Mr Lane via his Federal Member. In this letter, the Parliamentary Secretary indicated that the US Air Medal required a nomination by an appropriate authority in the United States military and that it was Government policy not to approach foreign governments requesting their awards be made to Australian Defence Force (ADF) personnel.
4. On 9 July 2015, Mr Lane made application to the Tribunal for a review of Senator Feeney’s decision.⁵

Tribunal Jurisdiction

5. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision relating to a foreign award if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) of the Defence Act and includes a decision made by or on behalf of the Minister, or a former Minister whose ministerial responsibilities included defence or matters related to defence, to refuse to recommend a person for a foreign award in response to an application. The term *foreign award* is defined in s110T of the Defence Act as an honour or award given by a government of a foreign country, or by an international organisation. The US Air Medal falls within the definition of a foreign award.
6. The Tribunal was satisfied that Mr Lane’s letter to the Tribunal in 2009 constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal also considered that the Parliamentary Secretary’s 2011 letter, wherein he stated that ‘*neither the Government or Defence is in a position to approach the US on Mr Lane’s*

¹ Parliamentary Secretary for Defence letter to the Member for Blaxland dated 2 February 2011

² Letter from Mr Lane to the Defence Honours and Awards Appeals (sic) dated 26 May 2009

³ Letter from the Federal Member for Blaxland to the Minister for Veterans’ Affairs dated 29 November 2010

⁴ DGBCSS/OUT/2011/AF6741676 Schedule 104968 dated 10 January 2011

⁵ Application for Review of Decision by Mr Lane dated 9 July 2015

behalf constituted a refusal to recommend Mr Lane for a foreign award, satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. The Tribunal therefore has jurisdiction to conduct the review and was satisfied that the *reviewable decision* is the decision of the Parliamentary Secretary to refuse to recommend Mr Lane for the US Air Medal.

Steps taken in the conduct of the review

7. In accordance with the *Defence Honours and Awards Appeals Tribunal's Procedural Rules 2011*, as amended, on 2 July 2015 the Tribunal wrote to the Secretary of the Department of Defence advising him of Mr Lane'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 27 August 2015 the Directorate of Honours and Awards in the Department of Defence (the Directorate), on behalf of the Secretary, provided the Tribunal with the Defence submission in the form of a written report.⁶ The Tribunal forwarded a copy of the Directorate's submission to Mr Lane for comment on 28 August 2015.⁷ Mr Lane provided comment on 5 September 2015.⁸

8. Mr Lane was invited to provide oral evidence at a hearing held in Canberra on 8 December 2016. The Directorate was represented at the hearing by Mr Michael Stevens and Ms Tiff Dawes. Mr Michael McCulloch of the Department of Defence attended as an observer.

Mr Lane's Service Record

9. Mr Lane enlisted in the Australian Imperial Forces on 12 March 1946 and continued to serve in the Australian Interim Army until 30 June 1948. He served in the Regular Army Special Reserve from 1 July 1948 to 18 June 1950 and the Australian Regular Army (ARA) from 19 May 1950 to 1 December 1967. During his service with the ARA he served with the Royal Australian Infantry Corps including active service in Korea and Malaya.

10. Mr Lane transferred to the Royal Australian Army Service Corps in May 1962 and qualified as a loadmaster and air despatcher/loader. He deployed to Vietnam as a member of the AATTV from 9 September 1964 to 28 September 1965. During his service in Vietnam he was a Warrant Officer Class 2; Mr Lane states in his application that during his deployment he was 'attached to the 5th Special Forces Group (Airborne), 1st Special Forces at Da Nang where he was tasked as an Air Supply Officer'

11. After his discharge from the ARA, Mr Lane served with the Emergency Reserve until 29 November 1975. For his service, Mr Lane has received the following awards and badges:

- Australian Active Service Medal 1945-75 with Clasps 'KOREA', 'MALAYA', MALAYSIA' and 'VIETNAM';

⁶ Letter DH&A/OUT/2015/185 to the Tribunal dated 27 August 2015

⁷ Letter DHAAT/OUT/2015/515 to Mr Lane dated 28 August 2015

⁸ Letter from Mr Lane to the Tribunal dated 5 September 2015

- Korea Medal;
- United Nations Service Medal (Korea);
- General Service Medal 1918-1962 with Clasp 'MALAYA';
- Vietnam Medal;
- Australian Service Medal 1945-75 with Clasps 'JAPAN', 'KOREA' and 'PNG';
- Australian General Service Medal for Korea;
- Defence Force Service Medal with First Clasp;
- National Medal;
- Australian Defence Medal;
- Long Service and Good Conduct Medal;
- Republic of Vietnam Campaign Medal;
- Republic of Vietnam Gallantry Cross with Palm Unit Citation;
- Pingat Jasa Malaysia;
- United States of America Meritorious Unit Citation;
- Queen Elizabeth II Coronation Medal, 1953;
- Infantry Combat Badge; and
- Returned from Active Service Badge.

12. On 11 June 1966, Mr Lane was made a Member of the Order of the British Empire (MBE) in the Military Division on the Queen's Birthday for his service as an Air Supply Officer with United States Special Forces in the I Corps tactical zone. The honour was recommended by the Commanding Officer AATTV and the Commander Australian Army Force Vietnam.

Australian Policy on Foreign Awards

13. Foreign governments may confer honours or awards on ADF personnel in recognition for gallantry on operations, bravery in civil actions or for meritorious or outstanding service. Awards recognising operational service may also be made. The *Guidelines Concerning the Acceptance and Wearing of Foreign Honours and Awards by Australians* was approved by Her Majesty the Queen and issued on 5 December 1997.⁹ The Tribunal noted that in 2009, the Chiefs of Service Committee agreed to a set of principles that would apply to the acceptance of foreign honours and awards. These principles informed the policy detailed in the Defence Honours and Awards Manual. Relevant to Mr Lane's claims is the policy in the manual regarding 'contact with foreign governments.'¹⁰ The policy states:

35.29 The first principle of the Australian Honours System in relation to foreign awards is that a formal offer needs to be made by a foreign government to the Australian Government for a unit or individual to be issued an award.

35.30 The policy of successive Australian Governments has been that foreign governments are not formally approached to pursue their awards for Australians. Such requests are considered confronting, place the foreign

⁹ *Commonwealth of Australia Gazette (CAG) No S 548 'Guidelines concerning the acceptance and wearing of foreign honours and awards by Australians'* dated 22 December 1997

¹⁰ *Defence Honours and Awards Manual* Volume 1, Chapter 35, Paragraph 35.16

government involved in a difficult situation and serve only to diminish the integrity of awards within the Australian Honours System.

The United States Air Medal

14. The US Air Medal was instituted on 11 May 1942 by US Executive Order.¹¹ The eligibility criteria for the award of the US Air Medal are contained in US Department of Defense Manual 1348.33 (the Manual) which states:

...

7.c.(1) Eligibility Criteria.

- (a) The AM may be awarded to any person who, while serving in any capacity with the U.S. Armed Forces, subsequent to September 8, 1939, distinguishes himself or herself by meritorious achievement while participating in aerial flight.*
- (b) It may be awarded for combat or non-combat action in recognition of single acts of valor, heroism, or merit while participating in an aerial flight. Additionally, it may be conferred for sustained meritorious achievement (distinction) in the performance of duties involving aerial flight.*

...

7.d. Foreign Military Personnel. The AM may be awarded to foreign military personnel. See section 12 of this enclosure for procedures.

...

12.a. Introduction

(1) It is DoD policy ... to recognize individual acts of heroism, extraordinary achievement, or meritorious achievement on the part of members of the armed forces of friendly foreign nations when such acts have been of significant benefit to the United States or materially contributed to the successful prosecution of a military operation or campaign by U.S. Armed Forces. Such acts or achievements shall be recognized through the award of a personal U.S. performance or valor award.

...

(5) Unless specifically stated elsewhere in this Manual, the Secretary of Defense shall approve all proposals to award U.S. Military decorations to foreign nationals.

...

c. Decorations Authorized for Award for Achievement or Meritorious Service

...

(3) Other Decorations for Achievement or Meritorious Service.

¹¹ US Executive Order 9158 – *Establishing the Air Medal* as amended by Executive Order 9242-A dated 11 September 1942

(a) *The DFC and AM may be awarded for extraordinary achievement while participating in aerial flight.*

...

(c) *The award will be based on an act, actions, or service that would satisfy the criteria governing the award of the decoration to a member of the U.S. Armed Forces.*

...

(f) *The approval authority for foreign personnel of the equivalent U.S. pay grade of O-6 and below is the applicable Military Department Secretary.*

(g) *Before the awarding of any decoration ... the applicable Military Department shall:*

1. Coordinate with the appropriate U.S. embassy to ensure that the decoration is consistent with the overall interests of the United States.

2. Obtain a counterintelligence record check on the award nominee from the pertinent military counterintelligence organization to ensure the foreign award nominee has not committed an act or engaged in any activity wherein the award of a U.S. decoration would cause embarrassment to the United States. The military counter intelligence agency shall provide a statement of concurrence or non-concurrence with the proposed award recommendation.

...¹²

Mr Lane's Submissions

15. In his letter of 26 May 2009 seeking the award of the US Air Medal, Mr Lane indicated that as an Air Supply Officer with the 5th Special Forces Group he had responsibility for air resupply to special forces camps, outposts and patrols in the I Corps area using aircraft provided by the USAF, US Army and RAAF.¹³ Mr Lane quoted from a book *The Men Who Persevered* which details awards made to the AATTV.¹⁴ Mr Lane claimed that the book lists 'several members of the AATTV (who) received the US Air Medal in recognition of their services during flight'. He also stated that:

For a person not on flying status I accumulated a significant number flying hours and operational missions in fixed wing aircraft. These missions were carried out in all weather conditions and the aircraft altitude could invite hostile ground fire and at times it was necessary to have fighter escorts.

¹² United States Department of Defense Manual 1348.33 Volume 3 (November 23, 2010)

¹³ Letter from Mr Lane to the Defence Honours and Awards Appeals (sic) dated 26 May 2009

¹⁴ Bruce Davies and Gary McKay, *The Men Who Persevered*, Allen and Unwin, Sydney 2005 p. 370 – Folio

16. Mr Lane attached copies of his flying log book to the letter to prove that he had completed numerous flights as a drop-master or despatcher during the deployment. The Tribunal noted that the log records a total of 824 hours by day and 82 hours by night between 30 September 1964 and 23 September 1965.¹⁵

17. Mr Lane also attached a copy of what he described as a:

citation from the Commander 311 Air Commando Squadron, USAF to support my claim to receive an Air Medal.

18. The citation to which Mr Lane refers is a certificate of commendation presented to him for distinguishing himself 'through outstanding and exemplary performance of duty as an Air Movements Officer.'¹⁶

19. In a letter dated 24 June 2015 to the Tribunal, Mr Lane re-stated his claims and also included excerpts from a book *Special Forces of the United States Army 1952-1982* which details the background to the US Air Medal and records that '4,527 Air Medals awarded for Meritorious Achievement and Service to members of the 5th SF Group'.¹⁷

20. During his oral evidence Mr Lane described his service in Vietnam as creating eligibility for the award of the US Air Medal. Mr Lane suggested his eligibility was defined by his service as a fixed wing drop-master on numerous re-supply missions over a period of six months service. Mr Lane stated that:

*'... I'm not in the 'V' category, but I have researched the U.S. Regulations which state that a foreigner who is required to fly, has an entitlement after a period of time to be awarded the Air Medal ...'*¹⁸

21. Mr Lane believes that, because he had served 'the required amount of time and performed the necessary missions', he was eligible under the US provisions for the award related to sustained meritorious achievement (distinction) in the performance of duties involving aerial flight.¹⁹

22. Mr Lane also told the Tribunal at the hearing that to his knowledge he was not nominated by any person within his US chain of command, or at all, for the US Air Medal. Similarly, the Defence representatives told the Tribunal that no Australian record has been found of Mr Lane being nominated for the US Air Medal.

The Directorate's Submission

23. On 21 August 2015, the Directorate informed Mr Lane that during the assessment of his claims for the US Air Medal, they had discovered that he had not

¹⁵ RAAF Observers, Air-Gunners and W/T Operators Flying Log Book – 22715 A.J. Lane

¹⁶ Undated Certificate of Commendation 311th Air Commando Squadron

¹⁷ LTC Ian Sutherland, *Special Forces of the United States Army 1952-1982*, RJ Bender Publishing, San Jose, 1990, p.655

¹⁸ Oral evidence Mr Lane, 8 December 2016

¹⁹ United States Department of Defense Manual 1348.33 Volume 3 (November 23, 2010) 7.c.(1)(b)

been awarded his full entitlement of medals for his Army service. The Directorate assessed that he was also entitled to the Defence Force Service Medal with First Clasp and the National Medal. The Directorate advised that these medals had been approved, scheduled and would be sent to Mr Lane in the near future.²⁰

24. The Defence submission, dated 27 August 2015, outlined the Directorate's actions in providing the 2011 advice to Senator Feeney which formed the basis of his decision and further stated in relation to the application for review by Mr Lane:

*Defence does not assess applications for the US Air Medal, nor is able to nominate members for it.*²¹

25. The submission noted that US Department of Defense Manual No 1348.33 Volume 3 dated 23 November 2010 and amended 13 March 2015, provided that 'the Secretary of the Military Department concerned may approve awards for foreign personnel in the equivalent US pay grade of O-6 and below'. The Directorate advised that in this case the US Secretary of the Army would be the decision maker. The submission indicated that Army Regulation 600-8-22 dated 25 June 2015 provides the policies and procedures for US Army awards to foreign military personnel.

The Tribunal's Consideration

26. **Mr Lane's Service Record.** There is no dispute that Mr Lane served with the AATTV in Vietnam from 9 September 1964 to 28 September 1965. Mr Lane's flying log books provided with his application also indicate that he regularly served as a 'despatcher' or 'dropmaster' while flying in Vietnam.

27. **Legislation and Policy.** The Tribunal was reasonably satisfied that the relevant legislation and policy in relation to Mr Lane's claim for the US Air Medal is set out in the Manual.²² The Tribunal considered that, although Defence had referred to the 2015 amendment to the Manual, the correct version to be applied is the 2010 version as this was the version in place at the time of the *reviewable decision*. The Manual details the eligibility criteria for the US Air Medal. The Tribunal also noted that the US Air Medal is not a campaign medal or Service Award. The US Air Medal *may* be awarded on nomination to recognise single acts of valour, heroism, or merit while participating in an aerial flight. Additionally, it *may* be conferred, also on nomination, for sustained meritorious achievement (distinction) in the performance of duties involving aerial flight.²³

28. The Tribunal was satisfied that, although Mr Lane participated in sustained duties involving aerial flight, he was not nominated or recommended for recognition by any US officer eligible to make such a nomination. Relevantly, the Tribunal also noted that the Australian Government has no general power to make foreign awards. Unlike a limited number of other foreign awards, the Australian Government also holds no delegation for the nomination or recommendation of Australian personnel for any US award, including the US Air Medal.

²⁰ Letter DH&A/OUT/2015/0184 to Mr Lane dated 21 August 2015

²¹ Letter DH&A/OUT/2015/185 to the Chair of the Tribunal dated 27 August 2015

²² United States Department of Defense Manual 1348.33 Volume 3 (November 23, 2010)

²³ *Ibid.* 7.(c) 1 (b.)

29. **Unit Commendation.** The Tribunal noted that Mr Lane claims that the ‘citation from the Commander 311 Air Commando Squadron, USAF’ supports his eligibility to ‘receive an Air Medal’.²⁴ The Tribunal noted that the citation to which Mr Lane refers is a certificate of commendation presented to him for distinguishing himself ‘through outstanding and exemplary performance of duty as an Air Movements Officer.’

30. The Tribunal decided that the citation could not be used to support or substitute for a nomination for the US Air Medal and that the commendation was acknowledgement of service which fell short of meeting the standard required for a decoration.

Finding

31. For the reasons stated above, the Tribunal finds that Mr Lane was not nominated for the US Air Medal and that no further action may be taken by the Australian Government with respect to his claim for recognition under the United States system of honours and awards.

32. This review has highlighted the provisions of Section 110V of the *Defence Act 1903* relating to reviewable decisions with respect to foreign awards. The legislation currently allows for the review of any foreign award regardless of whether or not the Australian Government has accepted an award delegation. The Tribunal recommends that the wording of this section be restricted to ensure that only matters related to those foreign awards for which a delegation to award is held by the Australian Government, be subject to review.

DECISION

33. The Tribunal decided to affirm the decision of the Parliamentary Secretary, to refuse to recommend Mr Arnold Lane for the United States Air Medal.

34. Further, the Tribunal recommends to the Minister that Section 110V of the *Defence Act 1903* be amended to restrict consideration of matters related to foreign awards to those awards for which a delegation to award is held by the Australian Government.

²⁴ Undated Certificate of Commendation 311th Air Commando Squadron