



Australian Government

Defence Honours and Awards Appeals Tribunal

Lewis and the Department of Defence [2017] DHAAT 15 (13 July 2017)

File Number 2016/014

Re **Mr Graham Lewis**
Applicant

And **The Department of Defence**
Respondent

Tribunal Mr Graham Mowbray (Presiding Member)
Rear Admiral James Goldrick AO, CSC, RAN (Retd)

Hearing Date 10 Apr 2017

DECISION

On 13 July 2017 the Tribunal affirmed the decision of the Directorate of Honours and Awards of the Department of Defence not to recommend Mr Graham Lewis for the award of the General Service Medal 1962.

CATCHWORDS

DEFENCE AWARDS – *General Service Medal 1962*

LEGISLATION

Defence Act 1903 – ss110T, 110V(1), 110VB(2)

Defence Force Regulations 1952 – Reg 93C, Sch 3

Defence Regulation 2016 – s85

United Kingdom *Command Paper 2466: Terms of Award of the General Service Medal, 1962 for Operational Service in Sabah, Sarawak and Brunei from December, 1962*, HMSO, London, September 1964

United Kingdom *Command Paper 3432: Terms of Award of The General Service Medal, 1962 for Operational Service in the Malay Peninsula/Singapore between 17th August 1964 and 11th August 1966*, HMSO, London, October 1967

Royal Warrant *General Service Medal 1962, with Clasp South Vietnam*, dated 8 June 1964

REASONS FOR DECISION

Introduction

1. The applicant, Mr Graham Lewis, seeks review of decisions by the Directorate of Honours and Awards of the Department of Defence not to recommend him for the General Service Medal 1962 (GSM 1962).
2. On 8 March 2004, Mr Lewis applied to the Directorate of Honours and Awards of the Department of Defence (the Directorate) for the award of the GSM 1962. On 7 June 2004, this application was rejected by the Directorate.¹ Mr Lewis applied again for the GSM 1962 on 27 July 2012 and this application was rejected on 2 April 2013 with particular reference to the 'BORNEO' clasp to the GSM 1962.² Mr Lewis made a further application for award of the GSM 1962 on 23 May 2013. This was also rejected, with reference to the clasps, 'BORNEO', 'MALAY PENINSULA' and 'SOUTH VIETNAM', by the Directorate on 17 June 2014.³
3. Mr Lewis emailed the Directorate on 30 November 2015, seeking award of the GSM 1962.⁴ The Directorate responded with an initial assessment that Mr Lewis did not meet the eligibility requirements of 30 days service in any of the prescribed areas during the periods laid down, and asked for Mr Lewis to provide any additional evidence that he might have by 29 January 2016 to allow the decision to be finalised.⁵ On 4 December (*sic*, January) 2016, Lieutenant Commander Jeff Wake RFD, RANR (Retd) wrote to the Minister for Defence on behalf of Mr Lewis concerning his earlier applications for the GSM 1962.⁶ On 17 April 2016, the Hon. Michael McCormack MP, then Assistant Minister for Defence wrote to Lieutenant Commander Wake advising him that Mr Lewis was not eligible for the GSM 1962 and setting out the reasons for that decision.⁷
4. On 11 July 2016, Mr Lewis wrote to the Tribunal to ask that it review his eligibility for the GSM 1962.
5. The 17 April 2016 letter from the Assistant Minister for Defence conveys a decision in effect refusing to recommend Mr Lewis for the award he seeks. This is the decision for which he has sought review from the Tribunal.⁸

¹ Directorate of Honours and Awards Letter 2004/1035472/1, 7 June 2004

² Directorate of Honours and Awards Letter AF13536636, 2 April 2013

³ Directorate of Honours and Awards Medals Assessment, 17 June 2014

⁴ Email Mr Graham Lewis to Honours and Awards, 30 November 2015

⁵ Directorate of Honours and Awards Medals Assessment, 23 December 2015

⁶ Lieutenant Commander Jeff Wake, RFD, RANR(Ret) Letter, 4 December 2016

⁷ The Honourable Michael McCormack MP, Assistant Minister for Defence Letter MC16-000340, 17 April 2016

⁸ Mr Graham Lewis Application for Review to the Tribunal, 11 July 2016

Tribunal Jurisdiction

6. 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 or the Minister to refuse to recommend a person for an honour or 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 3.⁹ Included in the defence awards set out in Part 2 is the GSM 1962.

7. Mr Lewis' email of 30 November 2015 constituted an application and the Assistant Minister for Defence's letter of 17 April 2016 amounted to a refusal to recommend Mr Lewis for an award as required by s110V(1) of the Act. Thus, the Tribunal has jurisdiction to review the decision on the GSM 1962. In conducting this review the role of the Tribunal is to determine what is the correct or preferable decision on Mr Lewis' application for the GSM 1962, having regard to the applicable law and the relevant facts.

Conduct of the Review

8. In accordance with its *Procedural Rules 2011*, on 31 July 2016 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Lewis' application and requesting a report on the material questions of fact and the reasons for the decision made on Mr Lewis' eligibility for the GSM 1962.

9. The Director Honours and Awards provided a report and Defence's submissions on the GSM 1962 on 28 September 2016.¹⁰ On 4 October 2016 the Tribunal forwarded the Defence report to Mr Lewis for his comments.¹¹ Mr Lewis provided these on 23 October 2016.¹²

10. On 11 April 2017 the Tribunal held a hearing by telephone with Mr Lewis. Defence was represented by Mr David Bell and Ms Margot Kropinski-Myers, with Ms Narelle Shingles as an observer.

Mr Graham Lewis' Service Record

11. Mr Lewis was born on 24 February 1946 and enlisted in the RAN on 6 January 1962, being discharged on 8 May 1967 having attained the rank of Leading Airman (the present equivalent RAN rank is Leading Seaman). He also served in the Australian Cadet Forces from 1 August 1990 until 22 February 2001.¹³

⁹ Under s85 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

¹⁰ Letter DH&A/OUT/2016/0149 Director Honours and Awards to the Tribunal, 28 September 2016

¹¹ Letter DHAAT/OUT/2016/014 Tribunal to Mr Graham Lewis, 4 October 2016

¹² Letter Mr Graham Lewis to Tribunal, 23 October 2016

¹³ Details are from the Defence Report: Letter DH&A/OUT/2016/0149 Director Honours and Awards to the Tribunal, 28 September 2016

12. During his time with the RAN Mr Lewis had a number of sea postings, including:

- HMAS *Parramatta* – 18 November 1963 to 23 February 1965, and
- HMAS *Stuart* – 23 July 1965 to 18 April 1966.

13. For his service in the RAN and the Australian Cadet Forces, Mr Lewis has received the following awards:

- The Australian Active Service Medal 1945-1975 with Clasp ‘MALAYSIA’
- the Australian Service Medal 1945-1975 with Clasp ‘FESR’
- the Australian Defence Medal,
- the Australian Cadet Forces Medal with First Clasp,
- the Pingat Jasa Malaysia medal, and
- Returned from Active Service Badge.

Eligibility Criteria for the General Service Medal 1962

14. The General Service Medal 1962 (GSM 1962) was established by Royal Warrant on 15 August 1964. Notably, the GSM 1962 can only be awarded with a Clasp for service in a particular area over a defined period. It cannot be awarded without such a Clasp. The award of the GSM 1962 with Clasp ‘BORNEO’ is specified in the United Kingdom *Command Paper 2466*.¹⁴ Of particular relevance to the current application are the following eligibility criteria:

3. *The qualifications in the Royal Navy and Royal Marines will be:*

i. For service afloat thirty days in the aggregate from 24th December, 1962, inclusive, to a future date to be decided in due course, in ships or craft operating on the rivers or inland waters of Sabah, Sarawak or Brunei, or operating off the coast in support of forces ashore and upriver; or

ii. Service of thirty days or more ashore, on the posted or attached strength of a unit or formation which took part in the operations in Sabah, Sarawak or Brunei from 24th December, 1962, inclusive, to a future date to be decided in due course; or

iii. One sortie or more into these territories, during this period, by aircrew of an aircraft, in direct support of the operations.

¹⁴ United Kingdom *Command Paper 2466: Terms of Award of the General Service Medal, 1962 for Operational Service in Sabah, Sarawak and Brunei from December, 1962*, HMSO, London, September 1964

And:

7.

i. *Short Service*

a. *The grant to persons described in paragraphs 3 to 6 above for gallantry in operations on a specific occasion during the uncompleted qualifying period not amounting to thirty days of a British Honour, Decoration or Medal of the status of the British Empire Medal or above, or a Mention-in-Despatches, or a Queen's Commendation, will qualify the recipient for the General Service Medal, 1962 and Clasp.*

b. *If qualifying service described in paragraphs 3 to 6 above is brought to an end before the completion of thirty days on account of death or evacuation owing to wounds or other disability due to service the reduced period of service will be sufficient qualification for the award.*

15. *Command Paper 2466* made no specific provision for the Royal Australian Navy, nor the Royal Australian Air Force, although it did so for the Australian Army and the Royal New Zealand Air Force. This is believed to reflect the operational deployments at the time of the paper's promulgation. In late 1965, the Queen approved amendments to *Command Paper 2466* which grouped the Royal Australian Navy with the Royal Navy and the Royal Australian Air Force with the Royal Air Force in determining eligibility.¹⁵

16. The terminal date for the GSM 1962 with clasp 'BORNEO' was set at 11 August 1966. Notably, the British signal which provided notice of that date, also promulgated the final 1966 qualifying service for HMA Ships in the Far East Strategic Reserve which had taken part in operations relevant to the campaign for which the Clasp 'BORNEO' was issued.¹⁶

17. The RAN units which had qualifying service for the clasp 'BORNEO' were promulgated to the Navy by means of Navy Orders. These were ANO 327 of 1966¹⁷ and ANO 2 of 1967; the latter also promulgated the end date for qualifying service.¹⁸

18. There are also clasps 'MALAY PENINSULA' and 'SOUTH VIETNAM' associated with the GSM 1962. The qualifications for the 'MALAY PENINSULA' clasp for units of the RAN are laid down in *Command Paper 3432*:

a. *Ashore: Service of thirty days or more ashore, not necessarily continuous, on land in the Malay Peninsula/Singapore between 17 August 1964 and 12 June 1965 (both dates inclusive) while on the posted or attached strength of any unit or formation in these areas;*

¹⁵ Secretary Department of Defence Memorandum to Secretary Department of the Navy 38/201/14 dated 21 January 1966. NAA A1813/38/201/14

¹⁶ Commander Far East Fleet Signal to Australian Commonwealth Naval Board 140808Z NOV 66

¹⁷ Australian Navy Order 327 of 1966

¹⁸ Australian Navy Order 2 of 1967

b. *Afloat: Service of 30 days or more afloat in the waters surrounding the Malay Peninsula/Singapore between 17 August 1964 and 12 June 1965 (both dates inclusive). Service in any Royal Australian Navy vessel on sea patrol duties between 13 June 1965 and 11 August 1966 (both dates inclusive) may also reckon as qualifying service. This service may be aggregated with qualifying service on land as in a. above, to complete the required period of 30 days.*¹⁹

These conditions for eligibility and the RAN units involved and their qualifying service were promulgated in ANO 538 of 1969.²⁰

19. The final conditions for the award of the GSM 1962 with Clasp 'SOUTH VIETNAM' were set out in the Royal Warrant of 8 June 1968, which, in establishing the Vietnam Medal, confirmed the opening date for eligibility as 24 December 1962 and the closing date as 29 May 1964.²¹

Mr Lewis' Evidence and Submissions

20. Mr Lewis provided evidence and submissions to the Tribunal in a number of written documents associated with his various earlier applications, most notably in attachments to his application to the Tribunal of 11 July 2016, and his comments of 23 October 2016 on the Defence report. He also presented oral evidence at the hearing on 11 April 2017.

21. Mr Lewis' principal contention is that the operational contribution of HMAS *Parramatta* and her consorts extended to the entire period of deployment in the Philippine, Malaysian and Indonesian archipelagos from the departure of HMA Ships *Yarra* and *Parramatta* from Subic Bay on 28 May 1964 until the arrival of the task group in Singapore on 8 June 1964, rather than just the 3 days spent in the Jesselton (now Kota Kinabalu) anchorage or on patrol outside the harbour from 4 to 6 June while HMAS *Sydney* unloaded equipment and ammunition.

22. Mr Lewis also argues that other aspects of operations during HMAS *Parramatta's* deployment in 1964 accumulate sufficient days of active service to justify the award of the GSM 1962. These include escort duty on other occasions, surveillance by Soviet intelligence gatherers, interaction with Indonesian submarines and surface craft and the repeated conduct of high speed passages while darkened at night in difficult navigational situations.²² Mr Lewis presented substantial supporting material with his application, including ships' Reports of Proceedings, charts and extracts from HMAS *Parramatta's* log. He also drew the attention of the Tribunal to errors in Navy Order 327 of 1966 which listed the qualifying service for the GSM 1962 by HMA Ships in his period of interest.

¹⁹ United Kingdom *Command Paper 3432: Terms of Award of The General Service Medal, 1962 for Operational Service in the Malay Peninsula/Singapore between 17th August 1964 and 11th August 1966*, HMSO, London, October 1967

²⁰ Australian Navy Order 538 of 1969

²¹ Royal Warrant 'General Service Medal 1962, with Clasp *South Vietnam*' dated 8 June 1964

²² Mr Graham Lewis' Application for Review of Decision, 11 July 2016, pp. 2-3

23. Mr Lewis has also submitted to the Directorate that the Department of Veterans Affairs has acknowledged HMAS *Parramatta* as being allotted for service in 'Sarawak, Sabah and Brunei' from 26 May 1964 until 26 June 1964 on the authority of an instrument signed by the Vice Chief of Defence Force on 13 August 2002.²³

24. Mr Lewis' oral submissions added little to the written material before the Tribunal. In the end, he contended that he had a moral entitlement to the GSM 1962, notwithstanding his award of the ASM and AASM for the relevant aspects of HMAS *Parramatta*'s 1964 deployment.

The Defence Submission

25. The Defence Submission sets out the history of its consideration of Mr Lewis' requests for award of the GSM. It contends that as Mr Lewis did not meet the prescribed periods of eligible service under the various criteria for the GSM, the Directorate's decision should be affirmed.²⁴ Oral submissions by representatives of Defence on 11 April 2017 reiterated its written ones.

Tribunal Consideration

26. The Tribunal carefully considered Mr Lewis' eligibility against the criteria in the warrants and associated orders setting out the conditions for the award of the GSM 1962 with Clasps 'BORNEO', 'MALAY PENINSULA' and 'SOUTH VIETNAM'.

27. It is not in dispute that Mr Lewis was a member of the RAN from 6 January 1962 until 8 May 1967. This included a seagoing posting to HMAS *Parramatta* from 18 November 1963 to 23 February 1965. This service includes the period for which he seeks the GSM 1962.

28. HMAS *Parramatta* deployed to South East Asia in 1964. During that period, those serving continuously onboard, who included Mr Lewis, earned a total of 128 days qualifying service for the Australian Service Medal 1945-1975 with Clasp 'FESR', 3 days qualifying service for the Australian Active Service Medal 1945-1975 with Clasp 'MALAYSIA' and 3 days qualifying service for the GSM 1962 with Clasp 'BORNEO'. The latter two periods of qualifying service both relate to the period in which HMAS *Parramatta* spent at anchor inside or operating in the approaches to Jesselton (now Kota Kinabalu) anchorage while HMAS *Sydney* was unloaded. Because of the shorter qualification period for the AASM (one day) than the GSM 1962 (30 days), Mr Lewis has qualified for the first, but not the second medal.

²³ Department of Veterans Affairs, 'Units Assigned for Operational Service: Item 6: Sarawak, Sabah and Brunei – 8 Dec 1962 to 16 Aug 1964'

²⁴ Letter DH&A/OUT/2016/0149 Director Honours and Awards to the Tribunal, 28 September 2016

29. The Tribunal noted that Mr Lewis does not dispute that the only period of his seagoing service relevant to his application is that in HMAS *Parramatta*. Mr Lewis has at no time suggested that his later service in HMAS *Stuart* should count as operational service. The prescribed period of eligible service for the ‘MALAY PENINSULA’ clasp (17 August 1964 to 11 August 1966) does not cover any of the period in 1964 during which HMAS *Parramatta* was deployed as part of the Far East Strategic Reserve (12 February 1964 to 18 June 1964). That for ‘SOUTH VIETNAM’ (24 December 1962 to 29 May 1964) does intersect with HMAS *Parramatta*’s period of service, but there is no evidence that the ship conducted any operations for the defence of the Republic of Vietnam.

30. The decision not to recommend Mr Lewis for the award of the GSM 1962 with Clasp ‘BORNEO’ was based on the judgement that his service in HMAS *Parramatta* in 1964 amounted to only 3 days qualifying service while in the environs of Jesselton Harbour, rather than the full 30 days of afloat service required within the prescribed sea areas. While there are provisions in the regulations for the award after shorter service, it is not in dispute that Mr Lewis does not meet their qualifying conditions.

31. The Department of Veterans Affairs’ records of assignments to operations relate to its administration of its responsibilities under the relevant legislation for veterans’ entitlements. Decisions made in this context do not have bearing on defence awards and cannot change the criteria for those awards. The determination of the Vice Chief of Defence Force of 13 August 2002 in relation to allotments for service is therefore not relevant.

32. Mr Lewis’ evidence and submissions focus on his assertion that other aspects of his service in HMAS *Parramatta* during its 1964 deployment to South East Asia amount to active service. With due respect, for the purposes of the GSM 1962 with Clasp ‘BORNEO’, such service would have to be “*in ships or craft operating on the rivers or inland waters of Sabah, Sarawak or Brunei, or operating off the coast in support of forces ashore and upriver*” for it to qualify for this award. Examination of HMAS *Parramatta*’s Reports of Proceedings for the deployment concerned indicate that 4 to 6 June 1964 was the only period spent in the locality described.²⁵

33. Mr Lewis made the point that there are errors in the Navy Orders which list the qualifying days of HMA Ships for the GSM 1962. This is correct, notably in the failure to list HMAS *Yarra*’s service for 4-6 June 1964 in ANO 327 of 1966. The ship was HMAS *Parramatta*’s consort when escorting HMAS *Sydney* to and from Jesselton. Examination of HMAS *Parramatta*’s Reports of Proceedings confirms, however, that the Navy Order concerned is correct in relation to at least this ship when Mr Lewis was a member of the crew.

²⁵ HMAS *Parramatta* Reports of Proceedings for January 1964 (dated 4 February 1964), February 1964 (dated 9 March 1964), March 1964 (dated 6 April 1964), April 1964 (dated 3 May 1964), May 1964 (dated 5 June 1964) – folios 240-273; June 1964 (dated 6 July 1964)

34. The Tribunal accepts, to a degree, Mr Lewis' claims as to the general challenges and complexity of operations in the Far East Strategic Reserve during the period concerned. It understands, however, that the creation and award of the Australian Service Medal 1945-1975 with Clasp 'FESR' and the Australian Active Service Medal 1945-1975 with Clasp 'MALAYSIA' were to provide appropriate recognition for such service. Mr Lewis has received these awards.

Tribunal Findings

35. For the reasons given above, the Tribunal finds that Mr Lewis is not eligible for the GSM 1962 with Clasps 'MALAY PENINSULA' or 'SOUTH VIETNAM', given that he saw no service in the relevant areas during the periods prescribed under the qualifying regulations.

36. The Tribunal finds that Mr Lewis is not eligible for the GSM 1962 with Clasp 'BORNEO', given that his service in HMAS *Parramatta* amounted to only 3 days under the qualifying regulations for award of the medal and clasp concerned.

TRIBUNAL DECISION

37. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence not to recommend Mr Graham Lewis for the award of the General Service Medal 1962.