



Australian Government

Defence Honours and Awards Appeals Tribunal

**APPLICATION BY MAJOR DOUGLASS WAKLEY CAHILL (RETD)
SEEKING A REVIEW OF A REVIEWABLE DECISION OF HIS ELIGIBILITY FOR
THE RESERVE FORCE DECORATION
AND DEFENCE LONG SERVICE MEDAL**

DECISION UNDER REVIEW

The decision of the Directorate of Honours and Awards of the Department of Defence made most recently on 21 April 2009 that Major Douglass Wakley Cahill (Retd) is not eligible for the Reserve Force Decoration or Defence Long Service Medal.

DECISION OF THE TRIBUNAL

The decision of the Directorate of Honours and Awards of the Department of Defence that Major Cahill is not eligible for the Reserve Force Decoration or Defence Long Service Medal is affirmed.

DATE OF DECISION

11 November 2012

THE TRIBUNAL

For the purpose of this appeal the Tribunal was constituted by:

Ms Christine Heazlewood (Presiding Member)
Air Commodore Mark Lax OAM, CSM (Retd)

REPORT OF THE TRIBUNAL

Introduction

1. The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the *Defence Act 1903*. Its functions are set out in s.110UA of the Act. Those functions include reviewing a decision refusing to recommend a person or persons for a defence award. After conducting a review, the Tribunal may make a decision affirming the original decision, substituting a new decision or referring the matter to a person for reconsideration. The Tribunal's role is to conduct a review on its merits of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) and consider Major Cahill's application for the medals afresh, and to make a decision as to his eligibility for the Reserve Force Decoration (RFD) or Defence Long Service Medal (DLSM).
2. On 17 June 2005 Major Douglass Wakley Cahill (Retd) (Major Cahill), a member of the Australian Army Specialist Reserve from 9 October 1986, applied to the Directorate for a long service award. On 3 April 2007 the Directorate determined that Major Cahill did not meet the eligibility criteria for the award of the RFD or the DLSM because he had not served for the period prescribed in the applicable medal Regulations. Major Cahill did not receive this letter and on 23 October 2008 and 16 April 2009 requested a reply. The Directorate advised Major Cahill on 21 April 2009 that he did not qualify for either the RFD or the DLSM.
3. On 25 March 2011 Major Cahill applied to the Tribunal for review of the Directorate's decision that he was not eligible for the RFD or the DLSM.
4. On 22 June 2011 Major Cahill provided to the Tribunal certified copies of his work diary entries for the years 1995-1998. On 5 September 2011 Major Cahill wrote to the Tribunal asking whether the Tribunal needed any further information. On 16 September 2011 the Tribunal wrote to Major Cahill asking whether he wished to provide any further information for the Tribunal to consider and at Major Cahill's request, provided him with an application for the DLSM. Major Cahill replied on 21 September 2011 that he thought he had provided adequate details of his service.
5. By letter dated 16 November 2011 Major Cahill asked the Tribunal whether he needed to provide further evidence. The Tribunal replied on 25 November 2011 that Major Cahill should provide any further evidence in support of his claim by 2 December 2011. The Tribunal did not receive any further evidence from Major Cahill.
6. The Tribunal prepared Tables (see paragraph 29) setting out the details of Major Cahill's efficient and non-efficient service which were sent to him for comment on 18 April 2012. Major Cahill replied by letter dated 27 July 2012 that there must be proof that he had provided efficient service in the relevant period. The Tribunal replied on 2 August 2012 that the Table set out his efficient service as recorded in his service record and requesting that Major Cahill provide any further evidence in relation to his service by 15 August 2012. Major Cahill did not reply to this request.
7. When considering the eligibility criteria for the award of the RFD and DLSM, the Tribunal reviewed the basis on which the medals had been created and the circumstances in which they had been awarded. It paid heed to the integrity of the Australian system of honours and awards and the consequential impact any finding or recommendation might have on that system.

The Reserve Force Decoration

8. The RFD was instituted by Her Majesty The Queen by Letters Patent on 20 April 1982 ‘for the purpose of according recognition to persons who render long and efficient service as members of the Defence Force and to certain other persons who render long and efficient service in association with the Defence Force’. The Letters Patent were amended on 26 May 1998 and again on 3 March 2000. The Defence Force Service Awards Regulations were set out in the Schedule attached to the Letters Patent. Regulation 7 (as amended) states¹:

The Reserve Force Decoration may be awarded to a person who has, on or after 14 February 1975 and before 20 April 1999, completed the qualifying service as a member of the Defence Force required by regulation 8.

Furthermore, Regulation 8 states:

(1) Subject to sub-regulation (2) the qualifying service as a member of the Defence Force required for the award of the Reserve Force Decoration is efficient service as an officer of the Defence Force for a period of 15 years or for periods that, in the aggregate, amount to 15 years, being service that includes efficient service as an officer of the Reserve Forces for a period not less than 12 years or for periods that, in the aggregate, amount to not less than 12 years.

(2) Service that has been taken into account as part of the qualifying service for the award of the Defence Force Service Medal or a clasp to that decoration or medal shall not be taken into account for the purpose of sub-regulation (1).

9. On 20 April 1999, the RFD was withdrawn and replaced by the DLISM.

The Defence Long Service Medal

10. The DLISM was instituted by Her Majesty The Queen by Letters Patent on 26 May 1998, ‘for the purpose of according recognition to persons who render long and efficient service as members of the Defence Force and to certain other persons who render long and efficient service in association with the Defence Force’. The Defence Long Service Medal Regulations were set out in the Schedule attached to the Letters Patent. Regulation 3 (as amended) states:²

(1) The Medal may be awarded to a member, or former member, of the Defence Force (the member) who:

(a) has given:

(i) qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and

(ii) at least 1 day's qualifying service on or after 20 April 1994; or ...

¹ Commonwealth Gazette No. S 78 of 27 April 1982, Commonwealth Gazette S 352 of 10 July 1998 and Commonwealth Gazette No. S 160 of 30 March 2000.

² DLISM Regulations (Consolidated incorporating CAG No S 352 of 10 July 1998, CAG No S 160 of 30 March 2000 and CAG No S 2 of 3 January 2002).

Paragraph 2 provides that the medal must not be awarded to a member who has completed qualifying service for the Defence Force Service Medal (DFSM).

11. Qualifying service is defined in Regulation 5 as:

Service in the Defence Force is qualifying service if:

(a) where the service was given as a member of the Permanent Forces or the Reserve Forces - the member;

(i) fulfilled the requirements specified in directions given by the Chief of the Defence Force; and

(ii) gave efficient service; ...

Qualifying Periods for Long Service Awards

12. The Chief of the General Staff (CGS) has provided Directions under the Regulations on 'the period which a person shall be required to undergo training or render service in the capacity of a member of the Army Reserve'. On 25 November 1983, the then CGS, Lieutenant General P.H. Bennett, directed that for Army Specialist Reserve Officers, this period shall be '... 7 days, comprising such periods of continuous training and home training as are directed by the proper military authority'.³ The Tribunal is not aware of any direction by the proper military authorities. On 13 April 2000, the Chief of the Defence Force, Admiral C.A. Barrie, amended the requirement to 20 days from 20 April 2000.⁴

Efficient Service

13. The Defence Instructions (General) Personnel 31-1 of 27 February 2007⁵ defines 'efficient service' as:

Efficient service-means any service in the Permanent or Reserve Forces of the ADF as determined by the Chief of the Defence Force (CDF). Although what constitutes 'efficient service' may need to be determined on a case-by-case basis, as a guide, all service in the ADF is normally considered to be efficient except for'

The exceptions include periods of leave or suspension without pay as well as any period where a member has received a formal warning because of inefficiency concerns, or a period of service for another Australian Government body. Also a member may not be efficient if they are absent without leave for longer than 24 hours or for periods of detention.

14. Paragraphs 10, 11 and 12 of the Instructions refer to members in the Reserve. Paragraph 10 provides that, for long service awards including the RFD and the DLMS,

³ Defence Force Service Awards Regulations – Determination for the Purposes of Regulation 3 (periods of service), 25 November 1983.

⁴ Australian Military Regulation 487 – Military Service, 26 August 1993.

⁵ The Defence Instructions (General) Personnel 31-1 of 27 February 2007 was withdrawn and replaced by the Defence Honours and Awards Manual on 3 September 2012. There were no material changes to those parts of the policy relevant to this decision.

determined periods of training equate to qualifying service, and these are deemed efficient unless otherwise stated.

15. The enlistment year is defined in the Instructions as ‘means for the purposes of determining whether a member of the Permanent or Reserve Forces has rendered service throughout a year, the period of 12 months that commenced on the day that the member became a member of the Permanent or Reserve Forces or on any anniversary of that day’.

16. There are no other requirements specified for the award of the RFD or the DLSM for Reserve Forces.

Reserve Service for the Purpose of Long Service Awards

17. The Defence Instructions define Reserve Forces for the purpose of Defence Long Service Awards as:⁶

- (1) the High Readiness Active Reserve;
- (2) the High Readiness Specialist Reserve;
- (3) the Active Reserve;
- (4) the Specialist Reserve;
- (5) the Standby Reserve; and
- (6) any other categories that the Chief (Army, Navy, Air Force) establishes or may have established for the Chief’s Service.

The Tribunal determined that Major Cahill’s Army Specialist Reserve Service was Reserve Service and therefore subject to CGS Direction as defined under paragraph [12] above.

Summary of the Arguments of Major Cahill

18. In his initial letter of 17 June 2005 Major Cahill stated that he had been a member of the Australian Army Legal Corps from approximately June 1986. He had served continuously since that date. His application was for the DLSM.

19. In September 2005 the Directorate advised Major Cahill that their records indicated that he had enlisted on 29 July 1991. Following objections from Major Cahill, the Directorate conceded that he had enlisted on 9 October 1986. However the Directorate could find no records of his service during the period 9 October 1986 to 8 October 1991.

20. Following the decision to reject his application for both the DLSM and the RFD Major Cahill applied to the Tribunal for review. Major Cahill claimed he performed substantial unpaid work at both the Army Survey Regiment in Bendigo and Puckapunyal as the Reserve Legal Officer. With some difficulty he could substantiate his claim that he attended the Army Survey Regiment fortnightly and worked as a Legal Officer at least monthly on a Wednesday morning.

⁶ Defence Instruction (General) Personnel 31-1, para 4 g.

21. At the hearing Major Cahill said that he did not need the money, but that he ‘enjoyed the work and the break from his usual civilian legal practice’. He further claimed that for each year he was an Army Specialist Reserve member, his paid and unpaid attendance to provide legal advice to Army personnel at Bendigo and Puckapunyal would be far in excess of the minimum annual attendance requirements. This work involved preparing Wills and Powers of Attorney for members, advising on charges and assisting at Courts Martial.

22. Major Cahill implied that this unpaid time should be recognised as service for the purpose of qualifying for the award of the RFD or DLSM. In a further letter to the Tribunal dated 16 May 2011, Major Cahill conceded that he was not eligible for the RFD as the medal was withdrawn before he had time to complete the eligibility requirements.

23. Following the hearing, Major Cahill provided copies of his claims to Defence for the legal work he had undertaken during 1994/95, 1996/97, 1997/98 and 1998/99. Also provided were copies from Major Cahill’s diary from 1998 and copies of the accounts for the years 1996/97 and 1997/98. He did not provide copies of the accounts for the year 1994/95.

24. The diary extracts for 1998 showed that Major Cahill had worked for two half-days and one full day in February, three half-days in April, two half-days in June and three half-days in July (a total of 6 days). The accounts for 1996/97 showed that Major Cahill had worked on approximately 139 days for varying periods. The accounts for 1997/98 showed that Major Cahill had worked on approximately 62 days for varying periods. The Tribunal asked Major Cahill whether he intended to claim payment for the unpaid work he had performed. Major Cahill did not reply to the Tribunal’s request.

Summary of the Arguments of Defence

25. The Directorate submitted that Major Cahill had not completed 15 years qualifying service or periods that, in total, amount to 15 years as required by the RFD Regulations, because the RFD was withdrawn before Major Cahill met the eligibility criteria.

26. The Directorate referred to Major Cahill’s service and pay records and argued that these records showed that he did not have sufficient qualifying service to be awarded the DLSM. While Defence acknowledged that some of Major Cahill’s service and pay records were incomplete for years 1986-1987 and 1988-1990, even allowing that he completed the required number of days in those years, he still fell short of the requirement.

27. In response to Major Cahill’s claim that he undertook ‘substantial unpaid work’ at Army units in Bendigo and Puckapunyal, the Directorate submitted that unpaid work, while noble and much appreciated, did not count towards a Service Award.

Voluntary Service

28. Defence Instructions (Army) Personnel 116-12 of 17 July 2000 entitled ‘Voluntary Unpaid Attendance by Members of the Army Reserve’ at paragraph 24 specifically states:

VUP [Voluntary Unpaid Service] does not contribute towards attendance criteria for minimum training obligation, Service Awards or promotion criteria.

The Tribunal determined that Major Cahill could not include his voluntary unpaid service towards either his required number of attendance days, or the award of the DLSM.

The Service and Pay Records

29. Major Cahill's service record shows that he completed four Reserve service periods commencing on 9 October 1986. The number of day's service for which he was paid are shown in the table below against days required to be deemed by the CGS (later Chief of the Defence Force) to be efficient for the appropriate year. It was also recorded that Major Cahill had attended a Direct Entry Officer Course in October 1987, evidence that he had efficient service in that year.

First Enlistment - 09 Oct 1986 to 30 June 1990

Date from	Date to	Total Completed	Total Required	Deemed Efficient
9 Oct 1986	8 Oct 1987	Nil records	7	?
9 Oct 1987	8 Oct 1988	15	7	Yes
9 Oct 1988	8 Oct 1989	Nil records	7	?
9 Oct 1989	30 Jun 1990	Nil records	7	?

Second Enlistment - 01 Jul 1990 to 29 Jul 1991

Date from	Date to	Total Completed	Total Required	Deemed Efficient
1 Jul 1990	1 Jul 1991	12	7	Yes
2 Jul 1991	29 Jul 1991	0	Included in 2 nd enlistment period	No

Third Enlistment - 29 Jul 1991 to 16 Dec 2002

Date from	Date to	Total Completed	Total Required	Deemed Efficient
29 Jul 1991	29 Jul 1992	3	7	No
30 Jul 1992	29 Jul 1993	2	7	No
30 Jul 1993	29 Jul 1994	1	7	No
30 Jul 1994	29 Jul 1995	15	7	Yes
30 Jul 1995	29 Jul 1996	0	7	No
30 Jul 1996	29 Jul 1997	1	7	No
30 Jul 1997	29 Jul 1998	4	7	No
30 Jul 1998	29 Jul 1999	14	7	Yes
30 Jul 1999	29 Jul 2000	14	7	Yes
30 Jul 2000	29 Jul 2001	16	20	No
30 Jul 2001	29 Jul 2002	9	20	No
30 Jul 2002	16 Dec 2002	0	20	No

Fourth Enlistment - 21 Jan 2002 to 16 Dec 2007

Date from	Date to	Total Completed	Total Required	Deemed Efficient
21 Jan 2002	21 Jan 2003	9	20	No
22 Jan 2003	21 Jan 2004	5	20	No
22 Jan 2004	21 Jan 2005	5	20	No
22 Jan 2005	21 Jan 2006	0	20	No
21 Jan 2006	21 Jan 2007	0	20	No
21 Jan 2007	21 Jan 2008	0	20	No
21 Jan 2008	21 Jan 2009	0	20	No
21 Jan 2009	21 Jan 2010	0	20	No
21 Jan 2010	Present	0	20	No

Major Cahill was sent a copy of these Tables and asked to comment. On 23 April 2012 Major Cahill replied and argued strongly that he had been actively involved as a Reserve Legal Officer during that period and there must be proof. However Major Cahill did not provide any evidence supporting his claim that he had been actively involved as a Reserve Legal Officer over the period in spite of the Tribunal's invitation to do so. An examination of Major Cahill's service file revealed no further evidence in support of his claim.

Reserve Force Decoration

30. To be eligible to receive the RFD Major Cahill must serve 15 years qualifying service as a member of the Defence Force between 14 February 1975 and 20 April 1999. It is not an issue that Major Cahill was a member of the Defence Force from 9 October 1986. Therefore by 20 April 1999 Major Cahill had served as a member of the Defence Force for 13 years, not the 15 years required by the Regulations.⁷

31. Major Cahill has conceded that he is not eligible for the RFD and the Tribunal agrees. The Tribunal finds that Major Cahill cannot be awarded the RFD.

Defence Long Service Medal

32. To receive the DLSM Major Cahill must have served 15 years qualifying service as a member of the Defence Force with at least one day's qualifying service on or after 20 April 1994. Major Cahill served as a member of the Defence Forces from 9 October 1986 and served a number of days service in the period after 20 April 1994. Qualifying service must be efficient service. Given the definition of efficient service set out above, the Tribunal is satisfied that Major Cahill's service was efficient service for the periods he received payment. Thus Major Cahill satisfies the requirement that he serve one day qualifying service on or after 20 April 1994.

33. The Table above sets out the days of efficient service Major Cahill served in each enlistment year since his enlistment on 9 October 1986. Unfortunately the records for Major Cahill's service for the periods 9 October 1986 to 8 October 1987 and 9 October 1988 to 30 June 1990 could not be located.

⁷ Regulation 7, *Defence Force Service Awards Regulations*.

34. Major Cahill was a member of the Australian Army Legal Corps and so he was an Army Specialist Reserve Officer, which required him to serve seven days per enlistment year up to 20 April 2000 to be qualifying service for a long service award. After 20 April 2000 the member must serve 20 days per enlistment year. The Tables shows that Major Cahill served seven or more days of qualifying service in five enlistment years up to 20 April 2000 and less than 20 days service in each enlistment year after that date.

35. The diary records provided by Major Cahill support his claim that he had provided qualifying service for at least seven days in the enlistment years 30 July 1996 to 29 July 1997 and 30 July 1997 to 29 July 1998. However the Tribunal notes that these records are simply diary entries of the names of service members with various times allocated. It was not clear whether these diary entries referred to Major Cahill's service as a member of the Australian Army Legal Corps or his private practice as a solicitor. Included in the copies of the diary entries were letters acknowledging Major Cahill's claims and approving payment.

36. The pay records for three enlistment years could not be located. The pay records for the enlistment years 1996/1997 and 1997/1998 did not support Major Cahill's claim that he gave efficient service in those years. However even if the Tribunal allowed that Major Cahill gave efficient service in the three enlistment years which could not be located and in the two enlistment years for which he provided diary entries, this would add only an extra five years efficient service.

37. The Tribunal finds that even allowing for those periods in the 1980's and 1990's when the pay records were not available or did not support his claim, Major Cahill would have provided qualifying service in ten of his 23 years Reserve service. Major Cahill requires 15 years qualifying service to be eligible for the award of the DLSM.

The Finding

38. The Tribunal finds that Major Cahill did not complete 15 years of qualifying service for the award of the RFD or DLSM and appropriate clasps.

DECISION

39. The decision of the Directorate of Honours and Awards of the Department of Defence that Major Cahill is not eligible for the Reserve Force Decoration or Defence Long Service Medal is affirmed.