



Australian Government

Defence Honours and Awards Appeals Tribunal

**APPLICATION BY MR DONALD MCDONALD SEEKING REVIEW
OF A REVIEWABLE DECISION OF THE
DEPARTMENT OF DEFENCE**

DECISION UNDER REVIEW

The decision of Naval Personnel Services (NPS) of the Department of Defence on 2 September 1993 that Mr Donald John McDonald is not eligible for the Republic of Vietnam Campaign Medal.

DECISION OF THE TRIBUNAL

The decision of the Department of Defence that Mr Donald McDonald is not eligible for the award of the Republic of Vietnam Campaign Medal is affirmed.

DATE OF DECISION

28 June 2012.

THE TRIBUNAL

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

Mr John Jones AM

REASONS FOR DECISION

Introduction

1. The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the Defence Act 1903. Its functions are set out in Section 110UA of the Act. Those functions include reviewing a decision refusing to recommend a person or group of 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.

2. In August 1993, Mr McDonald, who was a member of the Royal Australian Navy (RAN) from 10 October 1965 until 6 March 1979, applied to the Naval Personnel Services (NPS) of the Department of Defence (Defence) for the award of the Republic of Vietnam Campaign Medal (RVCM). In response to this application, Defence determined that Mr McDonald did not meet the eligibility criteria for the award of the RVCM because he had not served for the period prescribed in the applicable medal regulations. The decision in regard to Mr McDonald's application for the RVCM was notified to him in a letter from NPS dated 2 September 1993.

3. On 12 August 2011, Mr McDonald wrote by email to the Tribunal requesting review of the decision of Defence. In his application to the Tribunal, Mr McDonald stated that his service as a crew member of HMAS *Sydney* from 11 November 1966 and 16 July 1967 makes him eligible for the RVCM. Mr McDonald believes that Defence erred in making the decision because they did not properly apply the eligibility criteria relating to the Medal.

4. The Tribunal's role is to conduct a merits review of Defence's decision, to consider Mr McDonald's application for the medal afresh and to make a decision as to his eligibility for the RVCM. The Defence honours and awards which the Tribunal can review are set out in the Defence Force Amendment Regulations 2011.

5. The Tribunal had before it Mr McDonald's application for review as well as the correspondence which took place between Mr McDonald and the Directorate of Honours and Awards leading to his application. The Tribunal also had before it the written submission from Defence dated 29 September 2011, which was provided to Mr McDonald by the Tribunal. Mr McDonald responded by email to the Defence submission on 18 October 2011.

6. On 16 December 2011 the Tribunal commenced its review by contacting Mr McDonald by email. This initial contact was followed by a telephone conversation with Mr McDonald on 20 December 2011. Further communication between the Tribunal and Mr McDonald, by exchange of email and by telephone continued until 5 June 2012.

Mr McDonald has frequently sent additional documentation to the Tribunal to supplement his original submission.

Defence Records of Mr McDonald's Service

7. Defence records show that Mr McDonald served in the RAN from 10 October 1965 until 6 March 1979 and that he was posted to the fast troop transport HMAS *Sydney* from 11 November 1966 until 16 July 1967. HMAS *Sydney* made 3 trips to Vietnam while Mr McDonald was posted to the ship.

8. Mr McDonald served in Vietnam for a total of three days.

Summary of the Arguments of Mr McDonald

9. Mr McDonald told the Tribunal that he believes that he is eligible for the RVCMB because he served on HMAS *Sydney* for a period in excess of six months and HMAS *Sydney* 'contributed direct combat support to the RVNAF in their struggle against an armed enemy', thereby satisfying the requirement of the amended Article 3 of the Vietnamese Directive.

10. Mr McDonald also argues that the Australian Government materially changed the criteria which were set out in the Vietnamese Directive by including a requirement that Australian service personnel be allotted for special service in order to qualify for the medal and that this change was made without the approval of Australia's Head of State.

Summary of the Arguments of Defence

11. Defence argues that Mr McDonald is not eligible for the RVCMB because he did not serve for a sufficient period of six months in the operational area of Vietnam and that none of the criteria from exemption of that requirement apply to his case.

12. Defence argues that the amendment to the criteria to include areas outside Vietnam was made at the request of the United States Government and only applied to those who rendered qualifying service **within** the area of operation – that is members of the United States Seventh Fleet and the United States Air Force.

CONSIDERATION BY THE TRIBUNAL

The Republic of Vietnam Campaign Medal

13. The RVCMB was created in 1964 by the then Government of the Republic of Vietnam.

14. The Directive (HT. 655 – 430 dated 1 September 1965) of the Government of the Republic of Vietnam, which prescribed the “eligibilities, authorities, and procedures for awarding Campaign Medal”, stipulated “12 months service in the field during war time” for members of the Republic of Vietnam Armed Forces (RVNAF) in Article 1. A copy of the Directive is at Appendix 1.

15. The Government of the Republic of Vietnam offered the campaign medal to the countries which contributed forces to the Free World Military Forces who participated in the Vietnam War.

16. Article 3 of the Directive set the length of service requirement for allied service personnel at six months rather than the 12 months prescribed for members of the RVNAF. Article 3 reads:

Allied soldiers assigned to the Republic of Vietnam after 6 months in war time with mission to assist the Vietnamese Government and the RVNAF to fight against armed enemies, are eligible for Campaign Medal decorations; they would be awarded with Campaign Medal under conditions anticipated in Article 2 of this Directive.

17. Article 2 of the Directive detailed circumstances which would provide grounds for exemption from the 12 month requirement for RVNAF members. They were described as:

WIA (wounded in action)

Captured in action by enemies or missing while performing his missions, but released later, or an escape has taken place.

KIA or die while performing a mission entrusted.

18. These three grounds for exemption, and no others, were retained in the Australian regulations for the award of the medal (Australian Naval Order (ANO) 516/70 and Military Board Instruction (MBI) 102-4 of 23 December 1968 refer).

19. Article 3 was amended by the Government of the Republic of Vietnam on 22 March 1966 to read:

Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign Medal. (emphasis added)

20. In June 1966 Her Majesty the Queen granted approval for Australian Defence Force members to accept and wear the RVC. The Australian Government accepted the qualifying criteria specified by the Government of the Republic of Vietnam in its Directive HT. 655 – 430 dated 1 September 1965. These criteria were included in

paragraph 5 of a memorandum entitled 'Vietnamese Campaign Medal' of 16 September 1966 from the Secretary of the Department of Defence to the Secretaries of the Departments of the Navy, Army and Air Force. A copy of the Memorandum is at Appendix 2.

21. In the memorandum it was explained that the amendment to Article 3 (paragraph 13 above refers) of the Vietnamese Directive dated 1 September 1965 "*was specifically requested by the United States authorities to cover those United States servicemen in the Seventh Fleet, Thailand and Guam, who are participating in the present conflict. The United States interpretation of this amendment is that it covers all members of the Seventh Fleet serving in waters off the coast of Vietnam, as well as the aircrews of aircraft operating out of Thailand and Guam. The Americans do not interpret the amendment to cover ground support staff in Thailand and Guam.*"

22. The memorandum went on to say "*Our interpretation is the same as that of the United States. At present no Australians serving with Australian units outside the Vietnamese theatre would be eligible for the award.*"

Consideration of the Arguments and Evidence Presented

23. Mr McDonald submitted many documents to the Tribunal for consideration. 18 documents accompanied his initial submission and he has subsequently sent a further seven submissions including 12 additional documents.

24. Much of the documentation presented by Mr McDonald was correspondence from a number of ministers serving the Defence Department, both as Minister for Defence (the Honourable Kim Beazley MP) as well as supporting ministers (the Honourable Bruce Scott MP, the Honourable Gary Punch MP, the Honourable Ros Kelly MP and the Honourable Bronwyn Bishop MP). Although most of this correspondence was not addressed directly to Mr McDonald, much of it does relate directly to the service of sailors who served in HMAS *Sydney* during the period of the Vietnam War and is therefore relevant to Mr McDonald's own situation.

25. The Tribunal notes that in every instance the ministerial correspondence states clearly that service in HMAS *Sydney* did not lead to eligibility for either the Vietnam Medal or the RVCM. In several of these items of correspondence it is explicitly stated that HMAS *Sydney* was not involved in combat operations and provided logistic support and not combat support.

26. Mr McDonald submitted a paper¹, which is not dated but is apparently written by Mr Frederick McLeod-Dryden, which declares an intent "...to prove that HMAS *Sydney* III provided continuous service in direct support of the Republic of Vietnam Armed Forces whilst in Australia between trips to Vietnam and therefore fulfilling the criteria of the Vietnam Campaign Medal. The South Vietnam Government requirement that 'Those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months' also qualifies HMAS *Sydney* for the Vietnam Campaign Medal".

27. The paper briefly describes the whereabouts and activities of HMAS *Sydney* from May 1965 until November 1972. In relation to the period of Mr McDonald's service with HMAS *Sydney*, which is from November 1966 until July 1967, the paper notes that the ship returned from a trip to Vietnam in June of 1966. The ship then participated in training and exercises in Australia and Australian waters until April 1967. On 8 April 1967 HMAS *Sydney* proceeded to Vietnam, arriving back in Sydney on 12 May 1967 and then departed Brisbane on 19 May for a second trip to Vietnam arriving back in Brisbane on 14 June 1967 after which the ship went into refit until November 1967.

28. It is agreed that HMAS *Sydney* was in the Vietnam operational area on each of three days within the period in which Mr McDonald served on the ship.

29. Nevertheless, Mr McLeod-Dryden concludes that, "There can be no dispute that HMAS *Sydney* III's primary role during the period 1965 to 1973 was dedicated to providing continual support to the South Vietnamese Government. Based on the proceeding (sic) evidence, it can therefore be seen that HMAS *Sydney* III was either in Vietnamese waters or engaged in exercises in readiness for the majority of the calendar year between 1965 and 1973".

CONCLUSIONS

30. The Tribunal does not share Mr McLeod-Dryden's certainty that HMAS *Sydney* contributed 'direct combat support' to the Vietnamese armed forces.

31. The Tribunal is satisfied that the circumstances of Mr McDonald's service do not meet the criteria for eligibility for the RVCMB. He did not serve in Vietnam for the prescribed six month period, nor did he contribute direct combat support to the RVNAF for a six month period while serving outside the geographic limits of South Vietnam.

¹ This paper by Frederick McLeod-Dryden was attached to a submission dated 16 May 2012 from Mr McDonald to the Tribunal. Mr McDonald has explained that Mr McLeod-Dryden was the founding President of the HMAS SYDNEY and Vietnam Logistical Support Veterans Association.

None of the specified conditions for exemption from the six month requirement apply to his case.

DECISION

32. The decision of the Department of Defence that Mr McDonald is not eligible for the Republic of Vietnam Campaign Medal is affirmed.

APPENDIX 1 - Directive HT. 655 – 430 dated 1 September 1965. The Tribunal's Secretariat has confirmed that this document has been declassified.

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REPUBLIC OF VIETNAM
DEPARTMENT OF NATIONAL DEFENSE
JOINT GENERAL STAFF
REPUBLIC OF VIETNAM ARMED FORCES

D I R E C T I V E

Pertaining to awarding of
Campaign Medal.

DECORATION OFFICE

HT. 655 - 430

Reference to Decree No. 149/SL/CT dated May 12, 1964 creating
"Campaign Medal"

Decree No. 332/Q.L dated Nov 11, 1964 prescribing
the decoration awarding authority.

①

This directive has a purpose to prescribe the eligibilities
authorities, and procedures for awarding Campaign Medal.

The directive consists of 4 chapters:

- Chapter 1 : Eligibilities
- Chapter 2 : Authorities
- Chapter 3 : Procedures
- Chapter 4 : Miscellaneous

CHAPTER 1 : ELIGIBILITIES

Article 1 : All military personnel of the RVNAF who
have 12 month service in the field during war time, may claim
for Campaign Medal award.

Article 2 : The RVNAF personnel, who don't possess the
eligibilities prescribed in Art.1, but happen to be under one of
the following circumstances, are qualified for Campaign Medal
award:

- WIA (wounded in action)
- Captured in action by enemies or missing while
performing his missions, but released later, or an escape has
taken place.
- KIA or die while performing a mission entrusted.

The above anticipated cases must take place during the
war.

Article 3 : Allied soldiers assigned to the Republic
of Vietnam after 6 months in war time with mission to assist the
Vietnamese Government and the RVNAF to fight against armed
enemies, are eligible for Campaign Medal decorations; they would
be awarded with Campaign Medal under conditions anticipated in
Article 2 of this Directive.

CHAPTER 2 : AWARDING AUTHORITIES

Article 4 : The Chief of Joint General Staff of the
Republic of Vietnam Armed Forces is authorized to issue Campaign
Medal awarding decision to all eligible military personnel.

Article 5 : If need be, the Chief of Joint General Staff of
the RVNAF may delegate awarding authority to his subordinate
troop commandants.

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Article 6 : The Chief of Joint General Staff of the RVNAF has to confer with various friendly countries before awarding Campaign Medal to the troops of respective nations.

Campaign Medal awarding decision can only be made when an agreement between the host government and the respective government has been reached on prescribed principles.

In case troops from a friendly country participate in the Vietnam conflict in great numbers, the Chief of Joint General Staff of the RVNAF may issue a Campaign Medal general awarding decision for these troops.

Awarding procedures applied for each individual who possesses appropriate eligibilities will be accordingly made by various military authorities from the respective country.

CHAPTER 3 : PROCEDURES

Article 7 : Campaign Medal is awarded according to unit commander's proposal.

Article 8 : Campaign Medal award proposal is made by using one of these two following forms:

- One form used for military personnel having requirements prescribed in Art. 1.
- Another form used for military personnel possessing requirements prescribed in Article 2.

Article 9 : Recommendations are made monthly and forwarded to respective awarding authorities through channel by using either forms as prescribed in Article 8.

Military personnel proposed for decorations must possess all prescribed eligibilities as of the last day of the preceding month.

Each recommendation must contain unit commander's signature and the signature of the NCO who administers the military personnel's records.

Article 10 : All recommendations established for eligible military personnel as prescribed in Article 2 of this Directive must be supported by following documents:

- A copy of Awarding decision of the Order of Purple Heart.
- A copy of unit commander's report concerning circumstances relating to imprisonments, escapes or releases made by enemies.
- A copy of death certificate if the respective soldier was killed in action or die as the nature of his mission dictated.

Article 11 : Allied soldiers who have all conditions required will be recommended for Campaign Medal awarding as mentioned in Articles 7, 8 and 9 or particularly required by Article 8 of this note.

As to allied soldiers eligible for decorations as required by Article 2 of this Directive, the recommendations do not need supporting documents as prescribed in Article 10.

Campaign Medal awarding recommendations for eligible allied soldiers will be formed by various respective friendly countries and submitted directly to JGS/RVNAF.

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Article 12 : Upon reception of recommendations, awarding authority begins to conduct a study for each recommendation, discards the recommendations which do not meet requirements as prescribed as in Article 2 of this Directive, issues awarding decisions for those who possess all prescribed requirements, and returns approved recommendations to original units with awarding decisions attached hereto for filling in the recipient's records.

Article 13 : The recipients may wear the medal upon his formal reception of awarding decision.

Premature and unofficial awardings subject to final certifications shall not be approved.

Article 14 : All military personnel eligible for Campaign Medal Decorations who have not been awarded, may claim for their rights by submitting demands to their respective authorities through appropriate channels.

CHAPTER 4 : MISCELLANEOUS

Article 15 : Campaign Medal decorations may be awarded to military personnel in different wars.

Article 16 : Each soldier can be awarded one time in each war.

Article 17 : Each period of war has a different annual inscription cluster which shows the year in which the war takes place and that in which the war ends.

Article 18 : Annual inscription is engraved in relief on a rectangular cluster. The cluster is obliquely pinned either on the cloth with pendant or on the ribbon w/o pendant.

Article 19 : The Chief Joint General Staff of the RVNAF prescribes the lengths of time which will be called periods of wartime.

Article 20 : Military personnel eligible for decorations will be offered a ribbon of Campaign Medal w/o pendant.

Ribbons with pendant will be procured by the recipients themselves.

Article 21 : Campaign Medal is awarded w/o certificate.

Article 22 : Under no circumstance should the Campaign ribbons awarded in a ceremony; upon reception of the awarding decisions the Campaign Medal is automatically worn by the recipients w/o further orders.

Article 23 : Campaign Medal conformation and methods applied for medal wearing will be prescribed by a Directive the issuance of which will be coming soon.

Article 24 : This Directive will take retroactive effect starting from March 8 1949 and the same time rescind or replace Directive No. HT. 655/430 dated June 23rd 1965.

Saigon September 1 1965
Major-General NGUYEN-HUU-CO
Chief of Joint General Staff of the
Republic of Vietnam Armed Forces

(signed and sealed)

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Appendix 2 – Memorandum from the Secretary of the Department of Defence dated 16 September 1965

133. 4. 19 (51)

MEMORANDUM FOR :

16 SEP 1965

The Secretary,
Department of the Army,
CANBERRA. ... A.C.T.

The Secretary,
Department of Air,
CANBERRA. .. A.C.T.

The Secretary,
Department of the Navy,
CANBERRA. ... A.C.T.

VIETNAMESE CAMPAIGN MEDAL

As announced by the Prime Minister, members of the Australian forces who comply with the conditions laid down by the Vietnamese authorities may qualify for the Campaign Medal issued by the Vietnamese Government for service in the Vietnam war.

2. A copy of a Directive dated 1st September, 1965 issued by the Vietnamese Department of National Defense on the institution of the Campaign Medal is attached. Article Three of the Directive was subsequently amended on 22nd March 1966 and now reads as follows :-

* ³ Article Three : Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign Medal.

Foreign authorities will determine eligibility of their personnel for this award. Foreign military personnel are also entitled to this award under the special conditions provided for in article two of this Directive."

3. This amendment was specifically requested by the United States authorities to cover those United States servicemen in the Seventh Fleet, Thailand and Guam, who are participating in the present conflict. The United States interpretation of this amendment is that it covers all members of the Seventh Fleet serving in waters off the coast of Vietnam, as well as the aircrews of aircraft operating out of Thailand and Guam. The Americans do not interpret the amendment to cover ground support staff in Thailand and Guam.

4. Our interpretation is the same as that of the United States. At present no Australians serving with Australian units outside the Vietnamese theatre would be eligible for the award.

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5. The conditions for the grant of the award of the Vietnamese Campaign Medal to Australian servicemen, which are in line with those laid down by the United States authorities, are as follows :-

- (a) "Special service" (as defined by the Repatriation (Special Overseas Service) Act) of a minimum of 6 months duration, either continuous or aggregated, in Vietnam with retrospective effect to 31st July, 1962;
- (b) "Special service" in Vietnam of less than six months' duration since 31st July 1962 if
 - (i) killed on active service or wounded in action and evacuated,
 - (ii) captured and later released or escaped.

6. No provision, such as that provided for in British campaign medals, is made for the award to be granted immediately to personnel awarded a decoration for gallantry or bravery in action prior to completion of the minimum qualifying period.

7. Arrangements are being made with the Vietnamese authorities for the Commander, Australian Force Vietnam or his Deputy to be delegated authority to determine the grant of the award to members of the Australian Task Force. The New Zealand authorities will be asked if they wish to agree with this procedure in respect of the award of the Vietnamese Campaign Medal to members of their element of the Task Force.

8. Arrangements are also being made with the Vietnamese authorities for a bulk allocation of medal ribbons to be furnished to the Commander, Australian Force Vietnam with replenishments of stocks at quarterly intervals.

9. The question of a bulk allocation of medals will also be taken up with the Vietnamese authorities.

W
Secretary

*upon discussion with EOD, advised Major
Hickling that we would envisage the
period in para 5.2 as being a minimum of continuous
service, or 182 days for aggregated service.*