



Australian Government

Defence Honours and Awards Appeals Tribunal

Collins and the Department of Defence [2013] DHAAT (4 July 2013)

File number 2012/021

Re **Geoffrey George Collins**
Applicant

And **The Department of Defence**
Respondent

Tribunal J Jones AM (Chair)
C Heazlewood

Hearing Date 19 March 2013

DECISION

On 4 July 2013 the Tribunal decided to recommend to the Minister for Defence that Mr Geoffrey George Collins should not be awarded a defence honour.

CATCHWORDS

DEFENCE HONOUR – Defence honour Military Medal - whether the service rendered by Mr Collins as a sapper in Vietnam on 9 March 1969 should be recognised with a Defence honour.

LEGISLATION

Defence Act 1903 - ss 110V(1), 110VB(1)

REASONS FOR DECISION

Introduction

1. On 10 August 2012 Mr Geoffrey George Collins requested that the Tribunal review the refusal by the Directorate of Honours and Awards of the Department of Defence (the Directorate) to recommend him for a defence honour for his service in Vietnam in 1969.
2. Mr Collins lodged an Application for the Issue of Medals and/or Clasps with the Directorate on 5 October 2010, which was treated by the Directorate as an application for the Military Medal. On 12 November 2010 the Directorate advised Mr Collins that “the Australian Government does not support retrospective assessment of gallantry awards”.
3. On 8 April 2011 Mr Collins wrote to the Directorate requesting a response to his application. On 12 April 2011 the Directorate advised him that his application continued to be assessed and that he would be informed when the assessment had been completed. Mr Collins has interpreted this correspondence as a decision not to recommend him for the award of a defence honour.
4. Mr Collins wrote to the Directorate on 10 July 2012 requesting that the matter be referred to the Tribunal for review of the Directorate’s decision not to recommend that he be awarded the Military Medal. Mr Collins attended the Tribunal hearing and gave evidence.

Background

5. Mr Collins served as a National Serviceman in the Australian Army from 4 October 1967 until 3 October 1969 and served in Vietnam from 11 February 1969 until 30 August 1969 as a sapper with 1 Field Squadron, Royal Australian Engineers.
6. On 9 March 1969 Sapper Collins was involved in an operation as a member of an engineering party that was attached to D Company of the 5th Battalion of the Royal Australian Regiment (5 RAR). Early on the morning of 9 March 1969 members of 10 Platoon of D Company 5 RAR entered a minefield near a South Vietnamese Regional Force Post near the village of Hoa Long. Tragically a fire-fight was initiated with South Vietnamese troops and mines were detonated resulting in three Australian soldiers being killed and a further seven being wounded. Sapper Collins and Sapper Ray Ryan were called forward to assist in making the minefield area safe, thereby allowing the evacuation of the dead and wounded soldiers. In this process Sapper Ryan, who was the nominated leader of the engineer team, was himself wounded by a mine and evacuated. Sapper Ryan was subsequently awarded the Military Medal for his actions at the minefield.
7. Mr Collins was unaware that Sapper Ryan had been awarded the Military Medal until he came across the information on a website of the Department of Veterans Affairs more than 40 years later. On 27 September 2010 Mr Collins submitted an application form for the issue of Medals and Clasps to the Directorate. Mr Collins attached to that form his account of the action at Hoa Long in March 1969 for which Sapper Ryan received the Military Medal as well as a copy of a newspaper article written shortly after the event about Sapper Ryan and his wounding.

The Incident at Hoa Long on 9 March 1969

8. In its submission to the Tribunal, the Directorate included a copy of the report of the investigation which was carried out into the events of 9 March 1969 at Hoa Long. Major Henry Bell was appointed by the Commander of the 1st Australian Task Force to conduct the investigation on 9 March 1969, the day of the incident. Major Bell’s report provides considerable detail of the preparation and conduct of the operation by D Company 5 RAR

and makes findings as to the cause of the high casualty rate among the Australian troops. Major Bell lays the blame for the disastrous outcome of the incident solely upon the commander of the leading platoon of D Company. In the body of his report Major Bell makes several references to Sapper Ryan and his actions and to Sapper Ryan's party, but Sapper Collins is not mentioned by name and there is no reference to any particular action by him.

9. Major Bell's report also provides statements from 25 people who were either present at the action on 9 March or provided information or comment about it. Sapper Ryan is mentioned by name in several statements and his work in the minefield is praised in a number of statements. In his statement Sapper Ryan mentions Sapper Collins and the medical orderly, Corporal Jones as entering the minefield behind him. Sapper Collins is referred to in several other statements, including the statement of Corporal Jones, but not named. In some statements, Sapper Ryan is described as being alone, or with a medic. An overall picture is painted of Sapper Ryan leading and searching for mines and Sapper Collins and Corporal Jones being behind him.

10. In his report Major Bell recommends that consideration be given, by the respective parent units, to recognition of gallantry of four soldiers involved in the incident. Sapper Ryan is one of these four, along with Sergeant B.L. Smith (deceased), Corporal P.M. Jones, the medical orderly, and Private D.J. Page. Sapper Collins was not recommended for recognition for gallantry. Sapper Ryan was the first soldier mentioned by Major Bell and was the only one of the four to be recognised with a gallantry decoration, the Military Medal.

11. In his report, Major Bell recommended that consideration be given to recognition of gallantry in relation to Sapper Ryan with the following justification:

1733866 Spr R. F. Ryan, 1 Fd Sqn RAE, who:

(1) Worked for four (4) hours, single-handed, prodding through a known minefield with bayonet and torch;

(2) Placed his assistant and the medical orderly behind him, so as to reduce the chance of more casualties occurring;

(3) Continued to search for the missing Pte MITCHELL even when it became obvious that he had disappeared;

(4) Displayed the same coolness and cheerfulness throughout, even after he lost his left foot.

12. The recommendation to award Sapper Ryan the Military Medal was raised on 6 June 1969 by Major John Morphet, the Officer Commanding 1st Field Squadron. The Commander of the 1st Australian Task Force, Brigadier Cedric Pearson and the Commander of Australian Forces in Vietnam, Major General Robert Hay both endorsed the recommendation. The award of the Military Medal to Sapper Ryan was gazetted on 19 September 1969.

Mr Collins's Submission

13. Mr Collins has argued in his written submissions and in his appearance before the Tribunal that his role and performance at Hoa Long on 9 March 1969 were the same as the role and performance of Sapper Ryan. Sapper Collins believes that he was equally exposed to danger, and should therefore be accorded the same recognition as Sapper Ryan. He explained to the Tribunal that he and Sapper Ryan were the same rank and there was no formal statement of who of the two sappers was responsible for leading the engineer team.

14. In his submission Mr Collins stated that he was extremely critical of the actions of the officer who led 10 Platoon disastrously into the minefield at Hoa Long and he made his views known to those around him. Mr Collins suggests that his outburst might have contributed to him not being recommended for any recognition for gallantry.

15. Mr Collins was disappointed that he was not interviewed by Major Bell as part of the investigation into the action at Hoa Long on 9 March 1969.

Arguments of Defence

16. In its submission Defence puts two main arguments:

a) there is no record of Mr Collins being recommended for an award for his actions on 9 March 1969; and

b) that Defence does not support retrospective assessment of gallantry awards. In its response to Mr Collins's initial correspondence, Defence informed Mr Collins in a letter dated 12 November 2010 that the Australian Government does not support retrospective awards.

The Tribunal's Consideration

17. According to s.110VB of the *Defence Act 1903* the Tribunal must review a *reviewable decision* relating to a defence honour. A *reviewable decision* is defined in s110V(1) as one, made on behalf of the Minister for Defence by the Directorate in response to an application, to refuse to recommend a person for a defence honour. Pursuant to s110VB(1)(b) the Tribunal may make any recommendations to the Minister that the Tribunal considers appropriate.

18. The Directorate argued that it does not support retrospective assessment of gallantry awards and for this reason it would not recommend Mr Collins for a defence honour. The Tribunal understands that the Department of Defence has a policy, which provides that it does not support retrospective assessment of gallantry awards. That policy does not appear to have been reduced to writing but has guided the decision making in this area. The application of policy in administrative decision-making has been considered many times by the courts. In particular in *Re: Peninsular Anglican Boys School v The Honourable Susan Ryan and Commonwealth Schools Commission* (1985) 7 FCR 415 Wilcox J concluded that providing the policy was not inconsistent with the law, it may be followed by the decision maker. However the *decision maker may not lawfully refuse to entertain applications inconsistent with the adopted policy ... He or she may adopt the approach that, in the absence of exceptional circumstances, the policy will be applied.*

19. In this matter the Directorate could not refuse to entertain Mr Collins' application and if it did so this was not lawful. However the Directorate may decide that in Mr Collins' case no exceptional circumstances applied and they should follow the policy. It would be of great assistance to this Tribunal and to applicants if this policy could be reduced to writing. This would lead to greater certainty and transparency when decisions are made. The Tribunal noted the policy but considered that it was necessary to consider the factual context when considering whether or not the policy should be applied.

20. The Tribunal notes Mr Collins's disappointment that Major Bell did not interview him. However it does not appear to be unreasonable considering Mr Collins did not belong to D Company and, as he himself explained, he was redeployed to another operation with a

different unit very soon after the incident. It seems unlikely that Mr Collins could have provided any significant information that was not already available to Major Bell from other witnesses including Sapper Ryan, who was designated as leader of the engineering team.

21. Mr Collins provided neither new evidence nor any witnesses in relation to his own actions on 9 March 1969. He agreed that Sapper Ryan was deserving of an honour and argued that because he and Sapper Ryan had carried out the same gallant service on 9 March, they should both receive the same honour.

22. The Tribunal finds that Major Bell did not recommend that Sapper Collins should be recommended for an award for gallantry. Major Bell conducted a comprehensive investigation and produced a detailed report shortly after the incident on 9 March 1969. He found that Sapper Ryan's actions were significant and worthy of consideration of an award for gallantry. According to Major Bell, Sapper Ryan placed Sapper Collins behind him so that the chances of Sapper Collins being wounded were reduced. Mr Collins told the Tribunal that, although he was behind Sapper Ryan, he was none the less still checking for land mines and ensuring that the path around Sapper Ryan was safe for the medical orderly. He disagreed with Major Bell's conclusion that Sapper Ryan alone performed this task. Unfortunately for Mr Collins the statements of others present on that night supported Major Bell's conclusions. Given the passage of time Mr Collins was not able to provide any supporting evidence.

23. The Tribunal concluded that Sapper Ryan was recommended for an honour based on the findings of Major Bell and that this recommendation was justified based on the evidence he gathered. That evidence did not support Mr Collins' claim that he should also have been recommended for an honour. In coming to this conclusion the Tribunal acknowledges Mr Collins' bravery on that night but notes that his bravery was similar to the bravery of the medical orderly and a number of participants who assisted with evacuating the wounded and the dead. Given this finding the Tribunal did not find it necessary to consider whether the policy referred to above should be applied in this case.