



Australian Government

Defence Honours and Awards Appeals Tribunal

Cunningham and the Department of Defence [2014] DHAAT 34 (8 September 2014)

File Number(s) 2014/016

Re **Major Lucien Vincent Cunningham**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal **Mr K. Woods CSC, OAM (Presiding Member)**
Dr J. Harte

Hearing Date 25 July 2014

DECISION

On 8 September 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Major Lucien Cunningham is not eligible for the award of the Fifth Clasp to the Reserve Force Decoration.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Fifth Clasp to Reserve Force Decoration.

LEGISLATION

Defence Act 1903 – ss110T, 110V(1)(a)(ii), 110VB(2) and (6)

Defence Force Regulations 1952 - reg 93C and Schd 3

Defence Force Service Awards Letters Patent and Regulations - Commonwealth of Australia Gazette No S78 dated 27 April 1982.

REASONS FOR DECISION

Introduction

1. The applicant, Major Lucien Vincent Cunningham (MAJ Cunningham), seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Fifth Clasp to the Reserve Force Decoration (RFD). MAJ Cunningham had lodged a verbal application (via telephone) for the award of the Fifth Clasp to the RFD on 15 October 2007. His application was based on his service as a member of the Australian Army Reserve.
2. The Directorate contacted MAJ Cunningham on 21 January 2014 (via email) and informed him of its decision. In that email message the Directorate explained to MAJ Cunningham that he was not eligible for the award because he did not meet the qualifying period.
3. Being dissatisfied with the decision of the Directorate, MAJ Cunningham lodged his application for review with the Tribunal. In his application for review, MAJ Cunningham said; *'I recently inquired about the issue of the Federation Star and though it was confirmed I had 40 years service, I could not be issued with it because I had a Reserve Force Decoration and only 3 Clasps hence only 31 years service, my service as a soldier and junior NCO (from April 1973 to March 1982) being irrelevant and ignored'*.

Jurisdiction

4. There is no dispute that the Tribunal has jurisdiction to review the Directorate's decision in regard to MAJ Cunningham's application for the award of the Fifth Clasp to the RFD see subsection 110V(1) and 110T of the *Defence Act 1903* and regulation 93C and Schedule 3 of the *Defence Force Regulations 1952*.

Steps taken in the conduct of the review

5. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 5 March 2014, the Tribunal wrote to the Secretary of the Department of Defence advising him of MAJ Cunningham's application for review and invited him to provide a report. A written report was received from the Directorate on 1 April 2014.
6. On 7 April 2014, MAJ Cunningham was provided with a copy of the Directorate's report and he was invited to respond and submit any further material he may have in support of his claim for the award of the Fifth Clasp to the RFD. MAJ Cunningham provided a written response to the Directorate's submissions on 1 May 2014. MAJ Cunningham was also invited to give oral evidence (by telephone) to the Tribunal on a date that was suitable to him and the Tribunal panel members.
7. The Tribunal met on 25 July 2014. During this meeting the Tribunal considered the material provided by MAJ Cunningham and the Directorate. It also heard oral evidence from MAJ Cunningham who agreed to be available, by telephone,

that morning. At the hearing, the Tribunal discussed with MAJ Cunningham relevant points identified in the documentation.

Reserve Force Decoration

8. The RFD may be awarded to an Officer who has, on or after 14 February 1975 and before 20 April 1999, completed 15 years efficient commissioned service in the ADF Reserves.

Fifth Clasp to the Reserve Force Decoration

9. The Defence Force Service Awards (DFSA) were instituted by Her Majesty the Queen by Letters Patent on 27 April 1982 for the purpose of recognising long and efficient service in the Defence Force. The eligibility criteria for the Fifth Clasp to the RFD is contained in the *Commonwealth of Australia Gazette (CAG)* No S78 dated 27 April 1982. DFSA Regulations have been amended by CAG No S352 dated 10 July 1998 and CAG No S160 dated 30 March 2000. Regulation 9 states that:

A clasp to the Reserve Force Decoration may be awarded to a person after the completion of each period of 5 years' efficient service as an officer of the Reserve Forces after the completion of qualifying service required by regulation 8.

10. Non-commissioned or Other Rank service cannot be used as qualifying service towards the RFD.

Federation Star

11. The award of a clasp to the RFD is denoted by a gilt bar surmounted by the Royal Cypher flanked by sprigs of wattle. When the ribbon bar is worn alone, the award of a clasp is indicated by a ribbon bar emblem in the form of an oval cupro-nickel rosette. A total of four rosettes can be worn on the ribbon bar. When a member is awarded the fifth clasp to the RFD the four rosettes on the ribbon bar are replaced by a single cupro-nickel Federation Star. Subsequent clasps are indicated by additional Federation Stars.

Defence records of MAJ Cunningham's service

12. Defence records of MAJ Cunningham's service state that he enlisted in the Australian Army Reserve on 16 April 1973. On 20 March 1982 MAJ Cunningham was commissioned to the rank of Second Lieutenant. MAJ Cunningham has served in various appointments throughout his career. He was promoted to Major on 29 September 1996. To date, MAJ Cunningham has been awarded the following:

Australian Service Medal with Clasp 'TIMOR LESTE'
Reserve Forces Decoration with three Clasps
Australian Defence Medal
Medalha Solidariedade de Timor Leste

Summary of the Arguments of MAJ Cunningham

13. In his written submissions MAJ Cunningham stated:

I recently inquired about the issue of the Federation Star and thought it was confirmed I had 40 years service. I could not be issued with it because I had a Reserve Force Decoration and only 3 clasps hence only 31 years service, my service as a soldier and junior NCO (from April 1973 to March 1982) being irrelevant and ignored. Because I and others, have wanted to retain recognition of their service they are disadvantaged and have no recognition that they have achieved 40 years Defence service to our nation. Currently I consider this an inequity and a prejudice to these soldiers and officers.

14. In his oral evidence MAJ Cunningham held that the RFD should recognise total service, not just commissioned reserve service. During the hearing, MAJ Cunningham underlined his belief that such reserve service should be recognised with a reserve-specific decoration. The Tribunal explained to MAJ Cunningham that the Federation Star may only be worn on the Ribbon Bar once he has been awarded his Fifth Clasp to the RFD. In his written submission and during the hearing MAJ Cunningham made a complaint that throughout his career he had suffered and witnessed prejudice inflicted on reservist. The Tribunal advised MAJ Cunningham that his complaint was not a matter for the Tribunal and that he should pursue the matter through his chain of command.

15. The essence of MAJ Cunningham's written and oral submission is that he believes that as his total reserve service was over 40 years, he should be eligible for the Federation Star (that is, Fifth Clasp) of the RFD.

Summary of the Arguments of the Directorate

16. In its written submissions, the Directorate reiterated that which it had said in its decision, namely not to recommend MAJ Cunningham for the Fifth Clasp to the RFD because he was not eligible for the award as he had not completed 40 years efficient, remunerated, commissioned service in the Reserve Forces. The Directorate also advised MAJ Cunningham that he could elect to return his RFD with three clasps and have it replaced with the Defence Long Service Medal (DLSM)¹ with five clasps, represented on the ribbon bar by the device known as the 'Federation Star'.

Tribunal Consideration

17. By reason of subsection 110VB(6) of the *Defence Act 1903*, in conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the Fifth Clasp to the RFD. These criteria are found in the *Defence Force Service Awards*

¹ The DLSM was established in 1998 (CAG S352 dated 10 July 1998), replacing the RFD. The medal is able to be issued for both reserve and/or regular ADF service.

CAG No S78 dated 27 April 1982. Accordingly, in order for MAJ Cunningham to be eligible for the award of the Fifth Clasp to the RFD it must be established that he has completed the required service to qualify for the specific award.

18. There is no dispute that MAJ Cunningham has completed over forty years service since joining the Australian Army Reserve in 1973. However, as stated in paragraph [10] above, Non-commissioned or Other Rank service cannot be used as qualifying service towards the RFD. Accordingly, MAJ Cunningham's application for the award of the Fifth Clasp to the RFD must be determined on the basis of his period of service (31 years) as a commissioned officer in the Reserve Forces. As this period of service is short of the prescribed period of service (40 years) there can be no finding other than that his period of service does not meet the eligibility criteria for the award of the Fifth Clasp to the RFD.

19. MAJ Cunningham's quest for recognition of his 40 years of reserve service can be achieved if he were to return his RFD and be issued with the DLSM with Federation Star. He has not elected to do this.

Tribunal Finding

20. For the above reasons, the Tribunal finds that the decision of the Directorate is the correct and preferred decision and should be affirmed.

DECISION

21. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Major Lucien Cunningham is not eligible for the award of the Fifth Clasp to the Reserve Force Decoration.