



Australian Government

Defence Honours and Awards Appeals Tribunal

Applicant and the Department of Defence [2014] DHAAT 35 (8 September 2014)

File Number(s) 2014/005

Re **The Applicant**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Dr J. Harte (Presiding Member)
Professor D. Horner AM

Hearing Date 23 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 the Applicant is not eligible for the award of the Defence Long Service Medal (DLSM), Australian Service Medal (ASM) 1945-75 with Clasps 'SPECIAL OPS', 'SURVEY' and 'GADANG,' and the General Service Medal (GSM) 1962 with Clasp 'MALAY PENINSULA'.

CATCHWORDS

DEFENCE AWARD – Refusal to award the Defence Long Service Medal (DLSM) Australian Service Medal (ASM) 1945-75 with Clasps 'SPECIAL OPS', 'SURVEY' and 'GADANG' and the General Service Medal (GSM) 1962 with Clasp 'MALAY PENINSULA' for RAAF service between 1965 and 1980.

LEGISLATION

Defence Act 1903 – ss 110T, 110V, 110VA and 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
Defence Long Service Medal Regulations
Defence Force Service Awards Regulations
Australian Service Medal 1945-75 Declaration and Determination
United Kingdom Command Paper 3432

REASONS FOR DECISION

Introduction

1. The applicant, a former member of the Royal Australian Air Force (RAAF), seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the award of the Defence Long Service Medal (DLSM), Australian Service Medal (ASM) 1945-75 with Clasps 'SPECIAL OPS', 'SURVEY' and 'GADANG', and the General Service Medal (GSM) 1962 with Clasp 'MALAY PENINSULA'. The Applicant's application for the awards had been made on the basis of his service in the RAAF between 1965 and 1980.
2. The Applicant had previously unsuccessfully applied to the Directorate for these medals and consequently applied to the Tribunal on 13 and 24 January 2014 for a review of these decisions.
3. There is no dispute that the Tribunal has jurisdiction to hear and determine the Applicant's application for review (see ss 110V, 110VA and 110VB(2) of the *Defence Act 1903* and reg 93C of the *Defence Force Regulations 1952*). The role of the Tribunal is to determine whether the decision of the Directorate is the correct and preferred decision having regard to the applicable law and the relevant facts.
4. In accordance with its *Procedural Rules 2011*, on 12 February 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of the Applicant's application for review and requesting that he provide a report. On 27 March 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that the Applicant's service did not meet the eligibility criteria for the awards he sought. On 7 April 2014, a copy of the report of the Directorate was forwarded to the Applicant for comment. The Applicant made comment on the Defence submission on 21 April 2014.
5. The Tribunal met on 1 July 2014 to consider the material provided by the Applicant and the Directorate. On 23 July 2014 the Tribunal heard oral evidence from the Applicant via telephone, and then completed its consideration.

Eligibility criteria for the award of the Defence Long Service Medal

6. The relevant eligibility criteria for the DLSM are stated as follows in Clause 3 of the DLSM Regulations:
 3. *Award of the Medal:*
 - (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 period that, in total, amount to at least 15 years; and*
 - (ii) *at least 1 day's qualifying service on or after 20 April 1994 ...*

*(2) The Medal must not be awarded to a member who:
(a) has completed the qualifying service required for the award of a medal under the Defence Force Service Award Regulations regardless of whether the member has received the award...¹*

Eligibility criteria for the award of the Defence Force Service Medal

7. The eligibility criteria for award of the DFSM are set out in the Regulations, Clauses 4 and 5:

4. The [DFSM] 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 5.

5. (1) Subject to sub-regulation (2), the qualifying service as a member of the Defence Force required for the award of the [DFSM] is efficient service as a member of the Defence Force for a period of 15 years or for periods that, in the aggregate, amount to 15 years ...²

Eligibility criteria for the award of the Australian Service Medal 1945-75 with Clasp 'SPECIAL OPS', 'SURVEY' or 'GADANG'

8. Conditions for the award of the ASM 1945-75 with Clasp 'SPECIAL OPS' are set out in the Declaration and Determination under the Australian Service Medal 1945-75 Regulations.³ The conditions for the award of the ASM 1945-75 with Clasp 'SPECIAL OPS' include service during prescribed operations between 3 September 1945 and 13 February 1975 for a minimum qualifying period.

9. Under the determination, a person is not eligible for this award where a separate award of the ASM with Clasp 'SPECIAL OPS' has been awarded.

10. The Tribunal notes that according to advice provided by Defence, the Clasps 'SURVEY' and 'GADANG' do not exist in the Australian Honours and Awards system.

¹ *Defence Long Service Medal Regulations*, consolidated incorporating *Commonwealth of Australia Gazette (CAG)* No. S352 of 10 July 1998, CAG No. S160 of 30 March 2000, and CAG No. S2 of 3 January 2002.

² *Defence Force Service Awards Regulations*, consolidated incorporating CAG No. S352 of 10 July 1998, and CAG No. S160 of 30 March 2000.

³ *Australian Service Medal 1945-75 Declaration and Determination* in CAG No S102 of 27 March 2001.

Eligibility criteria for the award of the General Service Medal 1962 with Clasp 'MALAY PENINSULA'

11. Conditions for the award of the GSM 1962 with Clasp 'MALAY PENINSULA' are set out in *United Kingdom Command Paper 3432*⁴. The relevant Paragraph 3 (i) states that:

3. *The qualification will be:*

(i) Service of 30 days or more, not necessarily continuous, on land in the Malay Peninsula/Singapore between 17 August 1964 and 12 June 1965 while on the posted or attached strengths of any unit or formation in these areas, or while attached to the Malaysian Forces in the qualifying area.

The Applicant's Service Record

12. The Applicant enlisted in the Permanent Air Force on 24 June 1965. On 10 April 1980, he discharged at his own request, stating that he did not want to serve in the Reserve. In total, the Applicant completed 14 years, 9 months and 18 days in the Permanent Air Force.

13. During his time with the RAAF, the Applicant was awarded the following medals:

Australian Active Service Medal 1945-75 with Clasps 'VIETNAM' and 'THAILAND'
Vietnam Medal
ASM 1945-75 with Clasps 'PNG' and 'SE ASIA'
ASM with Clasps 'MIDDLE EAST', 'SPECIAL OPS' and 'IRIAN JAYA' and
Australian Defence Medal

The Directorate's Case

14. In its written submission to the Tribunal, the Directorate responded to the Applicant's claim for the awards.

15. Defence contend that because all of the Applicant's service was before 20 April 1999, the appropriate long service medal he should be assessed for is the Defence Force Service Medal (DFSM) and not the DLSM which replaced the earlier medal from this date. Further the Directorate advised that the Applicant does not qualify for the DFSM because he did not meet the 15 year eligibility criteria specified in the Regulations.

16. The Directorate also advised that the Applicant does not qualify for the ASM 1945-75 with Clasp 'SPECIAL OPS' because he already holds the ASM with Clasp

⁴ *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, of October 1967

'SPECIAL OPS', and according to the Regulations a person cannot be awarded both medals. In relation to the Clasps 'SURVEY' or 'GADANG', the Directorate pointed out that these clasps do not exist within the Australian Honours and Awards System.

17. The Directorate further advised that the Applicant does not qualify for the GSM 1962 with Clasp 'MALAY PENINSULA' because he enlisted in the Permanent Air Force after the qualifying dates for the award.

The Applicant's Case

18. With regard to his eligibility for either the DLSM or DFSM, the Applicant, in his response to the Defence submission, and again during his hearing, set out a number of reasons for his resignation from the Air Force which he believes was a decision enforced upon him due to a prejudicial Fitness Report (PP29) which resulted in adverse career consequences for him. Had he not felt forced to resign when he did, he would have served the minimum eligible time for the award of a long service medal.

19. With regard to his eligibility for the ASM 1945-75 with Clasp 'SPECIAL OPS', the Applicant agrees that as he already holds the ASM with Clasp 'SPECIAL OPS' he accepts that, according to the Regulations, he is not eligible to be considered for it. He also does not dispute that the clasps 'SURVEY' and 'GADANG' do not exist.

20. In relation to his eligibility for the GSM 1962 with Clasp 'MALAY PENINSULA', the Applicant accepts that as he enlisted in the Permanent Air Force after the qualifying dates for this medal and clasp, he not does qualify for them.

Tribunal Consideration

21 The Tribunal noted the Applicant's claim that he felt forced to resign because of an unfavourable Fitness Report, but also noted that in doing so he stated that he did not wish to serve in the Reserve. For this reason, his service was less than the 15 years required for the award of the DFSM.

22. The Tribunal carefully considered all the material before it and considered the criteria for the DLSM, DFSM, ASM 1945-75 with Clasp 'SPECIAL OPS' and the GSM 1962 with Clasp 'MALAY PENINSULA'. According to the legislation as set out in the relevant regulations, the decision to not award the medals is correct.

DECISION

23. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that the Applicant is not eligible for the award of the DLSM, ASM 1945-75 with Clasps 'SPECIAL OPS', 'SURVEY' and 'GADANG', and the GSM 1962 with Clasp 'MALAY PENINSULA'.