



Australian Government

Defence Honours and Awards Appeals Tribunal

Baldock and the Department of Defence [2014] DHAAT 43 (11 December 2014)

File Number 2014/039

Re **Mr John Raymond Baldock**
 APPLICANT

And **Department of Defence**
 RESPONDENT

Tribunal Ms Christine Heazlewood (Presiding Member)
 Hon Peter Lindsay

Hearing Date 11th December 2014

DECISION

On 11 December 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John Raymond Baldock is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Defence Medal – enlistment period – reason for discharge.

LEGISLATION

Defence Act 1903 as amended – ss 110T, 110V(1), 110VB(2)

Defence Force Regulations 1952 - Regulation 93C and Schedule 3

Australian Defence Medal Regulations 2006

REASONS FOR DECISION

Introduction

1. The applicant, Mr John Raymond Baldock requested 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 Australian Defence Medal (ADM). Mr Baldock had lodged an application for the award of the ADM on 10 April 2006, which was rejected by the Directorate on 30 November 2006. This decision was subsequently affirmed by the Parliamentary Secretary for Defence on 23 May 2008. Mr Baldock sought review of this decision in his application to the Tribunal dated 16 April 2014.

The Tribunal's Jurisdiction

2. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act), the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence or a former Defence Minister to refuse to recommend a person for a defence award in response to an application. The Directorate and subsequently the Minister made a decision to refuse to recommend Mr Baldock for the ADM following his application. Reg 93C of the *Defence Force Regulations 1952* defines a *defence award* as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the ADM. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the Review

3. In accordance with the Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1), on 8 May 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Baldock's application for review and requesting that he provide a submission. On 18 July 2014, the Directorate on behalf of the Secretary provided the Tribunal with their response. A copy of the report of the Directorate was forwarded to Mr Baldock for comment. Mr Baldock provided an undated written response to the Tribunal, which was received on 6 August 2014.

The Australian Defence Medal

4. The ADM was instituted by Her Majesty The Queen by Letters Patent on 20 March 2006, *for the purpose of according recognition to Australian Defence Force personnel who have served for a minimum of six years since the end of World War II*. The *Australian Defence Medal Regulations 2006* (the Regulations) are set out in the Schedule attached to the Letters Patent. Those Regulations were amended between 2005 when they were originally instituted and 20 March 2006 when they came into force. As a result of that amendment the minimum period of service was changed to four years. Regulation 4 of the amended Regulations states:

(1) *The Medal may be awarded to a member, or former member, of the*

Defence Force who after 3 September 1945 has given qualifying service that is efficient service:

- (a) by completing an initial enlistment period; or*
- (b) for a period of not less than 4 years service; or*
- (c) for periods that total not less than 4 years; or*
- (d) for a period or periods that total less than 4 years, being service that the member was unable to continue for one or more of the following reasons:*
 - (i) the death of the member during service;*
 - (ii) the discharge of the member as medically unfit due to a compensable impairment;*
 - (iii) the discharge of the member due to a prevailing discriminatory Defence policy, as determined by the Chief of the defence Force or his or her delegate.*

(2) For subregulation (1), the Chief of the Defence Force or his or her delegate may determine that a period of the member's qualifying service is efficient service.

5. Following an Inquiry by the Defence Honours and Awards Tribunal in 2009 the Chief of the Defence Force (CDF) made a determination on 8 November 2009 pursuant to reg 4(2). The Determination stated that:

where a member or former member was discharged as medically unfit to serve due to a non-compensable injury or disease, and the period of service of that member or former member is less than that prescribed under regulations 4(1)(a) to (c), that lesser period may, subject to the individual circumstances, be considered as being efficient service for the award of a medal to members or former members of the Defence Force who qualify for the award of the medal under section 4 of the regulations.

Mr Baldock's service record

6. Mr Baldock's record of service shows that he enlisted in the Australian Regular Army Supplement (O) for a period of three years on 25 September 1968. As he was under the age of 21, his father's permission was required and granted. In November 1969, Mr Baldock was posted to Vietnam. He returned to Australia (Brisbane Northern Command) in November 1970. Mr Baldock has been awarded three medals for his service in Vietnam.

7. In March 1971, Mr Baldock completed the Form AAF-A196 *Application for Discharge* citing 'domestic and financial difficulties within the family that have grown out of all proportion require my immediate attention in rendering assistance in my family affairs'. His commanding officer recommended that he be posted to the Sydney Metropolitan Area (Eastern Command) followed by his discharge in September 1971 at the completion of his period of engagement.

8. In April 1971 an investigation for 'alleged compassionate circumstances' was carried out by Lt M. Yon who was appointed to investigate and report on the circumstances surrounding Mr Baldock's application for discharge on compassionate

grounds. The recommendation resulting from this investigation was that Mr Baldock 'be transferred to a unit in E Comd near his parents' home, rather than be discharged from the Army'. The recommendation was not acted upon and a transfer was not recommended.

9. On 11 June 1971, Mr Baldock was discharged from the Army at his own request under AMR&O 176-1(a) having served two years, eight months and 16 days of his enlistment period.

Mr Baldock's Submission

10. On 16 April 2014 Mr Baldock wrote to the Tribunal seeking a review of the decision of the Directorate not to award him the ADM.

11. Mr Baldock wrote that he had requested a discharge on hardship grounds, as his father was unable to work to support his six siblings. He said he would be able to earn more money if he left the Army and help out his father and mother. Mr Baldock stated that he now realised that he had begun to develop the first symptoms of Post Traumatic Stress Disorder and this might have influenced his decision to apply for an early discharge.

12. In response to the Directorate's submission to the Tribunal, Mr Baldock wrote that he understood that a just society must have rules. If he had known the rules governing the award of an ADM, he would never have applied for the medal in the first place.

13. At the hearing Mr Baldock told the Tribunal that he had sought early discharge at his own request on hardship grounds. He had five brothers and one sister. His father was unable to work because of a disability and his younger brothers were causing problems for his parents. His mother wanted him home to help out with these younger brothers. He wanted to earn extra money that he could do as a civilian to help out his mother and father. Following his discharge, he had a successful career as a cook.

14. Mr Baldock said that he was not aware of the investigation into his reason for requesting a discharge. He would have accepted a transfer to Sydney if it had been offered and then stayed in the Army until his discharge date in September 1971.

The Directorate's Submission

15. The Directorate noted in its submission that Mr Baldock had been discharged from the Defence Force at his own request. There was no mention of a discharge on medical grounds in his service records. Those records showed that Mr Baldock had served for two years, eight months and 16 days. His initial enlistment period was three years. According to the Regulations Mr Baldock must serve his initial enlistment period of three years to be eligible for the ADM. Mr Baldock did not serve his initial enlistment period and so he was not eligible for the ADM. None of the exceptions set out in reg 4(1)(d) applied.

Conclusion

16. The Tribunal finds that Mr Baldock enlisted in the Australian Regular Army Supplement (O) for a period of three years on 25 September 1968. Mr Baldock applied for a discharge in March 1971 and was formally discharged at his own request on 11 June 1971. He did not serve his initial enlistment period having served two years, eight months and 16 days.

17. The Regulations set out the requirements to be met to be awarded the ADM. Pursuant to reg 4(1)(a), (b) and (c) Mr Baldock needed to have given qualifying service that is effective service in the Defence Force by completing his initial enlistment period. Alternatively Mr Baldock would have needed to serve for at least four years. Mr Baldock did not serve for his initial enlistment period and nor did he serve for a period that totaled four years.

18. Reg 4(1)(d) sets out three exceptions to the requirement that a person serve their initial enlistment period or a period totaling four years. None of those exceptions apply to Mr Baldock's circumstances.

19. Pursuant to reg 4(2) the CDF made a Determination that a member might be entitled to the ADM even if their service was for less than four years or less than their initial enlistment period, if the member was discharged from the Defence Force because of a non compensable injury or disease. In his application for review Mr Baldock referred to developing the early symptoms of PTSD at the time of his request for discharge. Mr Baldock did not raise this issue at the hearing. The Tribunal notes that the reason for discharge recorded on Mr Baldock's service record is 'having requested his discharge'. For the Determination to apply Mr Baldock would have to have had recorded in his service record that he was discharged as medically unfit.

20. Mr Baldock's service record states that his discharge was at his own request and there is no evidence that any of the exceptions set out in reg 4(1)(d) applied. Because Mr Baldock has not given qualifying service that is effective service for his enlistment period of three years, he is not eligible for the ADM.

DECISION

21. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John Raymond Baldock is not eligible for the award of the Australian Defence Medal.