



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **McCauley and the Department of Defence [2015] DHAAT 05 (23 February 2015)**

File Number(s)      2014/054

Re                      **Mr John Clarke McCauley**  
Applicant

And                     Department of Defence  
Respondent

Tribunal              Dr J. Harte (Presiding Member)  
Ms N. Isenberg

Hearing Date        14 January 2015

#### **DECISION**

On 27 February 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John McCauley 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.

#### **LEGISLATION**

*Defence Act 1903* – 110T, 110VB  
*Defence Force Regulations 1952, Sch 3 Part 2*  
*Australian Defence Medal Regulations 2006*

## **REASONS FOR DECISION**

### **Introduction**

1. The Applicant, Mr John Clarke McCauley (Mr McCauley) 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 Australian Defence Medal (ADM), pursuant to subsection 110VB of the *Defence Act 1903*.

2. On 13 April 2006, Mr McCauley had applied to the Directorate concerning his entitlement to the ADM. After his application was rejected, he sought review of that decision in his application to the Tribunal dated 28 April 2014. The basis of his request is that although he did not meet the requisite time of service for the ADM, he had little choice because of demands placed upon him by his employer at the time.

### **Tribunal Jurisdiction**

3. The Tribunal has jurisdiction to hear and determine Mr McCauley's application for review (see 110VB of the *Defence Act 1903*). The role of the Tribunal is to determine whether the decision of the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

### **Steps Taken in the Conduct of the Review**

4. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 14 May 2014, the Tribunal wrote to the Secretary of the Department of Defence advising him of Mr McCauley's application for review and invited him to provide a report. A written report was received from the Directorate on 11 August 2014.

5. On 15 August 2014, Mr McCauley 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 ADM. Mr McCauley provided a written response to the Directorate's report on 22 August 2014. Mr McCauley was also invited to give oral evidence in person to the Tribunal on a date that was suitable to him and the Tribunal panel members.

6. The Tribunal met on 10 December 2014. During this meeting the Tribunal considered the material provided by Mr McCauley and the Directorate.

7. On 14 January 2015, Mr McCauley appeared before the Tribunal. At the hearing, the Tribunal discussed with Mr McCauley relevant points identified in the documentation.

## Eligibility Criteria for the Australian Defence Medal

8. The ADM was instituted by Letters Patent on 20 March 2006<sup>1</sup> '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 and were subsequently amended, notably to reduce the period of qualifying service to four years. Regulation 4 of the amended Regulations provides:

- (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.*

9. In regard to those who complete Reserve service, as per *Regulation 4*, to qualify for the ADM that service must be through the completion of an initial enlistment period or comprise four years of efficient service; specifically, the member must serve a minimum of 26 days per enlistment year<sup>2</sup>.

### Mr McCauley's Service Record

10. With a background of service in the British Army and after moving to Australia, Mr McCauley enlisted in the Citizen Military Forces (CMF)<sup>3</sup> on

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<sup>1</sup> Commonwealth of Australia Gazette No. S48, dated 30 March 2006.

<sup>2</sup> CDF Determination of 6 February 2013, Minimum Periods of Annual Qualifying Service -Australian Defence Medal, *Australian Defence Medal Regulations*

<sup>3</sup> From 1980 known as the 'Army Reserve'.

8 September 1979 for an initial enlistment period of six years. He discharged at his own request on 23 February 1981.

11. On 4 May 1982, Mr McCauley re-enlisted in the Army Reserve for an initial enlistment period of three years. He again discharged at his own request on 6 December 1983.

12. According to his service records, Mr McCauley's cumulative service included two years of efficient service, plus a third year of non-efficient service (that is, less than 26 days).

13. For his service in the British Army, Mr McCauley has been awarded the General Service Medal 1962 with Clasps 'BORNEO', 'MALAY PENINSULA' and 'NORTHERN IRELAND'. He has not been awarded any medals for his Australian Defence Force service.

### **Mr McCauley's Case**

14. In his submissions to the Tribunal on 28 April and 22 August 2014, and in the hearing on 14 January 2015, Mr McCauley stated that, although he concedes that his Reserve service was less than the requisite four years for the ADM, the reason for this was that his first employer closed down and then his second employer was not supportive of him making his Reserve commitments due to the nature of the work he was required to do.

15. At the hearing Mr McCauley told the Tribunal that in his initial engagement he made a useful contribution as a driver instructor and also in servicing and maintaining vehicles.

16. As to why he had sought discharge in 1981, he explained that the company he had worked for as an aircraft maintenance engineer closed down. He was able to obtain a position with a small helicopter operator in Tasmania. He and his family moved there so he could take up the position. He requested a discharge from the CMF in NSW, which was granted on 23 February 1981.

17. On 4 May 1982 he re-enlisted in the CMF in Tasmania. He said that his new employer was 'not happy', as he was one of only a few licensed engineers and the company needed one of its licensed engineers to 'sign off' on its maintenance jobs. He said he managed most parade nights but for the two week camp, had to take annual leave. When the company obtained a number of jobs on the mainland, it was necessary that the Applicant, a licensed engineer, attend. Ultimately he had to seek discharge.

### **The Directorate's Case**

18. In its submission of 11 August 2014, the Directorate stated that the reason for their decision not to award the ADM to Mr McCauley was that he:

- i. did not complete his initial enlistment period (on both enlistments)
- ii. did not complete four years service

- iii. was not discharged as medically unfit (due to a compensable impairment), and
- iv. was not discharged due to a prevailing discriminatory Defence policy.

### **Tribunal Consideration**

19. By reason of subsection 110VB of the *Defence Act 1903*, in conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the ADM. Accordingly, in order for Mr McCauley to be eligible for the award of the ADM, it must be established that he has completed the required service to qualify for the specific award.

20. Several questions therefore needed to be answered: Did Mr McCauley complete either an initial enlistment period or four years of efficient service? If his service was for less than a total of four years, what was the reason he was unable to continue with his service?

21. The Regulations set out the requirements to be met to be awarded the ADM. Pursuant to Reg 4(1)(a), (b) and (c) of the Regulations, Mr McCauley needed to have given qualifying service that is effective service in the Australian Defence Force by completing his initial enlistment period or serving for at least four years. While the Tribunal accepts his evidence that the demands of his job made continuing in the CMF difficult and that, as a result, he sought discharge, the facts remain that Mr McCauley did not serve for his initial enlistment period, nor did he serve for a period that totaled four years of efficient service.

22. Reg 4(1)(d) sets out only three very limited exceptions to the requirement that a person serve for a period of four years; in this regard the Tribunal has no discretion. None of those exceptions apply to the Mr McCauley's circumstances.

### **Tribunal Finding**

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

### **DECISION**

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