



Australian Government

Defence Honours and Awards Appeals Tribunal

Holton and the Department of Defence [2015] DHAAT 09 (18 March 2015)

File Number(s) 2014/022

Re **Brigadier Michael George Holton CSC (Retd)**
Applicant

And **Department of Defence**
Respondent

Tribunal Dr J. Harte (Presiding Member)
The Hon P. Lindsay

Hearing Date 11 December 2014

DECISION

On 18 March 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Brigadier Michael Holton (Retd) is not eligible for the award of the Defence Long Service Medal.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Defence Long Service Medal – enlistment period.

LEGISLATION

Defence Act 1903 – 110T, 110V, 110VB

Defence Force Regulations 1952 Sch 3 Pt 2

Defence Long Service Medal Regulations, consolidated incorporating *Commonwealth of Australia Gazette* (CAG) No S 352 of 10 July 1998, CAG No S 160 of 30 March 2000 and CAG No S 2 of 3 January 2002.

Defence Force Service Regulations, consolidated incorporating *Commonwealth of Australia Gazette* (CAG) 78 of 27 April 1982, CAG No S 352 of 10 July 1998, and CAG No S 160 of 30 March 2000.

REASONS FOR DECISION

Introduction

1. The Applicant, Brigadier Michael George Holton CSC (Retd) (Brigadier Holton) 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 Defence Long Service Medal (DLSM) with four clasps without first surrendering his Defence Force Service Medal (DFSM) with one clasp, pursuant to Regulation 16A(6)(c) of the *Defence Force Service Awards Regulations*.
2. On 19 September 2006, Brigadier Holton applied to the Directorate concerning his entitlement to long service awards. On examination of his service record, the Directorate found that Brigadier Holton was eligible for the Australian Defence Medal, which was duly dispatched to him. He was also advised that should he wish to receive the DLSM with multiple clasps, to which he was entitled, he must first return his DFSM with First Clasp.
3. Brigadier Holton subsequently made an application to the Defence Honours and Awards Appeals Tribunal on 5 February 2014 to seek alternative recognition options for long service other than returning his DFSM.

Tribunal Jurisdiction

4. The Tribunal has jurisdiction to hear and determine Brigadier Holton's application for review (see 110VB of the *Defence Act 1903*, and *Defence Force Regulations 1952 Sch 3 Pt 2*). 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.

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 made a decision to refuse to recommend Brigadier Holton for the DLSM 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 DLSM. Therefore the Tribunal has jurisdiction to review this decision.

Steps Taken in the Conduct of the Review

5. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011* (as amended in 2013), on 20 March 2014, the Tribunal wrote to the Secretary of the Department of Defence advising him of Brigadier Holton's application for review and invited him to provide a report. A written report was received from the Directorate on 29 May 2014.

6. On 16 June 2014, Brigadier Holton 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 case. Brigadier Holton subsequently advised the Tribunal Secretariat during a phone call on 26 June 2014 that he did not wish to surrender his DFSM with Clasp and that he had no further comments on the Defence Submission.

7. The Tribunal met initially on 13 November, 2014. During this meeting the Tribunal considered the material provided by Brigadier Holton and the Directorate.

8. A hearing via telephone link was scheduled with Brigadier Holton on 11 December 2014. During the hearing, the Tribunal discussed with Brigadier Holton relevant points identified in the documentation.

Eligibility Criteria for the Defence Force Service Medal

11. The DFSM is one of a suite of awards which are collectively known as the Defence Force Service Awards (DFSA) that also include the Reserve Force Decoration (RFD) and the Reserve Force Medal (RFM). 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...¹

9. Clasps are awarded for each 5 year period additional to the 15 years already served.

Eligibility Criteria for the Defence Long Service Medal

9. The eligibility criteria for award of the DLSM are set out in the Regulations, Clause 3.

3(1) The Medal may be awarded to a member, or former member, of the Defence Force who:

(a) has given:

¹ *Defence Force Service Awards Regulations*, consolidated incorporating CAG No S 78 of 27 April 1982, No S 352 of 10 July 1998 & CAG No S 160 of 30 March 2000.

- (i) *qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and*
 - (ii) *at least 1 day's qualifying service on or after 20 April 1994; or*
- (b) *has given:*
 - (i) *qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and*
 - (ii) *at least 1 day's qualifying service on or after 14 February 1975; and*
 - (iii) *all of the qualifying service before 20 April 1994; and*
 - (iv) *qualifying service, none of which can be recognised for the Defence Force Service Awards Regulations, either by reason of its length or its character.*²

10. Clasps are awarded for each 5 year period additional to the 15 years already served. Further, DLSM Regulation 6 states that:

a person is not eligible to be a holder of both an award under Defence Force Service Awards Regulations and an award under these Regulations...

11. A person may elect to exchange the Defence Force Service Award for the DLSM to recognise the total period of qualifying service, however according to Regulation 16A(6)(c), the member must return all medals and clasps that have been awarded previously for the same qualifying service.

Brigadier Holton's Service Record

12. Brigadier Holton enlisted in the Australian Regular Army on 2 October 1957 and served for 24 years, 6 months and 18 days until transferring to the Army Reserve on 18 February 1982. He served as a Reservist until his resignation on 4 July 1993.

13. For his service, Brigadier Holton has been awarded the following medals:

The Conspicuous Service Cross
The Australian Active Service Medal 1945-75 with Clasp 'VIETNAM'
The Vietnam Medal
The Australian Service Medal 1945-75 with Clasp 'PNG'
The Defence Force Service Medal with First Clasp
The National Medal
The Australian Defence Medal, and
The Republic of Vietnam Campaign Medal.

² *Defence Long Service Medal Regulations*, consolidated incorporating CAG No S 352 of 10 July 1998, CAG No S of 30 March 2000 and CAG No S 2 of 3 January 2002.

14. The DFSM was awarded to Brigadier Holton on serving an initial 15 years in the Regular Army and the First Clasp after serving 20 years. There are subsequently four and a half years of Permanent Force service that has not been recognised with a long service award.

15. Brigadier Holton's Reserve service is not long enough to qualify for the RFD³. However, he is eligible to be awarded the DLSD with four clasps, thus recognising a combination of his Regular and Reserve service. However, according to the Regulation 16A(6)(c), he must first surrender his DFSM with First Clasp.

Brigadier Holton's Case

16. In his application to the Tribunal on 5 February 2014 and during the hearing on 11 December 2014, Brigadier Holton expressed his disappointment that he should have to surrender his DFSM with First Clasp to receive the DLSD with four clasps. Consequently he has no intention of doing this. Instead, he suggests some alternatives for consideration:

- (a) to permit both medals to be awarded and worn as is the case of those awarded the National Medal and the Australian Defence Medal,*
- (b) to award both medals with the stipulation that either may be worn but not both, or*
- (c) to acknowledge the service that would have justified the award of the DFSM with an appropriate certificate if the DFSM is not surrendered.⁴*

The Directorate's Case

17. In its submission of 29 May 2014, the Directorate stated that they have previously advised Brigadier Holton that to receive the DLSD he must first surrender his DFSM with First Clasp according to the regulations. In not electing to do this, Brigadier Holton is therefore not eligible for the DLSD.

Tribunal Consideration

18. 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 DFSM and the DLSD. Accordingly, in order for Brigadier Holton to be eligible for the award of the DLSD with four clasps, he must surrender his DFSM with First

³ Confirmed in a letter to Brigadier Holton from Warrant Office C.J. King for the Director General of Personnel Management -Army on 14 January 1997.

⁴ Brigadier Holton's Application for Review of 5 February 2014.

Clasp. Because he is not willing to do this, the Tribunal must conclude that he is not eligible for the DSLM.

19. In regard to Brigadier Holton's suggestions for alternative measures, these suggestions are outside the jurisdiction of the Tribunal to consider.

Tribunal Finding

23. For the above reasons, the Tribunal finds that the decision of the Directorate is the correct 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 Brigadier Michael Holton (Retd) is not eligible for the award of the Defence Long Service Medal.