



Australian Government

Defence Honours and Awards Appeals Tribunal

Weller and the Department of Defence [2015] DHAAT 11 (18 March 2015)

File Number(s) 2014/033

Re **Mr Peter John Weller**
Applicant

And **Department of Defence**
Respondent

Tribunal Dr J. Harte (Presiding Member)
Brigadier M. Bornholt AM (Retd)

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 Mr Peter Weller is not eligible for the award of the Long Service and Good Conduct Medal.

CATCHWORDS

DEFENCE AWARDS - Long Service and Good Conduct Medal

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)
Defence Force Regulations 1952, Part 2 Sch 3
Commonwealth of Australia Gazette No 19 dated 25 March 1954
Commonwealth of Australia Gazette No S78 dated 27 April 1982

REASONS FOR DECISION

Introduction

1. The applicant, Mr Peter Weller (Mr Weller) seeks review of a 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 Long Service and Good Conduct Medal (LSGCM). On 10 October 2007 Mr Weller made application to the Directorate for the award of the LSGCM. On 1 August 2008 the Directorate advised Mr Weller that his application for the award could not be progressed as the LSGCM was an Imperial award and that from 1992, Australian citizens would be recognised exclusively by the Australian Honours and Awards System. On 13 April 2014 Mr Weller wrote to the Tribunal seeking a review of the decision as he believed that he fulfilled the criteria for the LSGCM but had been denied “due to a Government decision even though it was a part of his then contract”.

Tribunal 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 to refuse to recommend a person for an award in response to an application. Regulation 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 Long Service and Good Conduct Medal (RAAF). Therefore the Tribunal has jurisdiction to review decisions in relation to this award. 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.

Conduct of the Review

3. In accordance with its *Procedural Rules 2011*, on 8 May 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Weller’s application for review and inviting him to provide a submission. On 17 July 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with the Defence submission in the form of a written report. In that report the Directorate confirmed its position that Mr Weller was not eligible for the LSGCM as he had not completed eighteen years of service prior to the LSGCM being replaced by the National Medal (NM) in 1975. The Tribunal forwarded a copy of the report of the Directorate to Mr Weller for comment and he provided a written rebuttal on 29 July 2014.

4. The Tribunal met on 14 November 2014 when it considered the material provided by Mr Weller and the Directorate. On 11 December 2014 the Tribunal heard oral evidence from Mr Weller who agreed to be available by telephone that day.

Long Service Awards

5. Australian service personnel have received honours and awards under two systems – the Imperial system and the Australian system. The Imperial System was used until February 1975 when the Government introduced the Australian system. The two systems – the Imperial and the Australian; then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards:

*“Her Majesty The Queen has indicated her view that it is appropriate that Australian citizens should be recognised exclusively by the Australian system of honours ... accordingly I have consulted with the Premiers of States and we have agreed that Australian Governments, both State and Commonwealth, will henceforth cease to make recommendations for British honours...”*¹

6. **The Long Service and Good Conduct Medal.** The Royal Air Force LSGCM was instituted on 1 July 1919 to be awarded to other ranks of the Royal Air Force for eighteen years of exemplary service. In 1947 the King directed that the 1919 instrument for the award be annulled in favour of regulations to govern the medal. These regulations were published in the *Commonwealth of Australia Gazette (CAG)* on 25 March 1954. The eligibility criteria for the award of the LSGCM to airmen of the Royal Australian Air Force (RAAF) included:

*“...any airman of the Permanent Air Force who completes 18 years’ qualifying service shall be eligible for the medal provided his character has not at any time been recorded on his Service documents as lower than ‘Good’ and has during the last 12 years of such service been recorded continuously as ‘Very Good’. ...”*²

7. **The National Medal and the Defence Force Service Awards.** The NM was one of the first three elements of the Australian honours system to be introduced in 1975 and was intended to replace Imperial long service medals. Regulations governing the award of the NM were published in the Commonwealth Gazette on 17 February 1975.³ The eligibility criteria for the award of the NM included a qualifying period of fifteen years of service. The regulations were silent in respect of any connection to or transitional arrangements from the LSGCM. The NM was unpopular amongst service personnel and following several representations and reviews, the Defence Force Service Awards (DFSA) Regulations were introduced by Letters Patent on 20 April 1982 for the purpose of

*“... according recognition to persons who render long and efficient service as members of the Defence Force...”*⁴

8. Three awards were established including the Defence Force Service Medal (DFSM) awarded to members of the Regular Forces who:

¹ Prime Minister of Australia Media Release 111/92 dated 5 October 1992

² *Commonwealth of Australia Gazette No 19* dated 25 March 1954

³ *Commonwealth of Australia Gazette No S28* dated 17 February 1975

⁴ *Commonwealth of Australia Gazette No S78* dated 27 April 1982

“...on or after 14 February 1975, completed the qualifying service as a member of the Defence Force...”

9. Amendments were also made in the 1982 Gazette to reflect the new DFSA and revoke and substitute conditions for the award of the NM.

Mr Weller’s Service Record

10. Mr Weller enlisted in the Permanent Air Force on 30 January 1970. He discharged at his own request on 2 April 1990 having completed 20 years of effective service. Immediately following his discharge he enlisted in the RAAF General Reserve and served for a further ten years before his discharge on 2 January 2001.

11. For his service, Mr Weller was awarded the:

- Australian Service Medal 1945-75 with Clasp ‘SE ASIA’,
- Defence Force Service Medal with First Clasp, and
- Australian Defence Medal.

Defence’s Submission

12. The Defence submission confirms that the LSGCM is an Imperial award that was provided to eligible members of the RAAF prior to the establishment of the Australian Honours System on 14 February 1975. The submission confirms that after this date, the long service of all eligible permanent ADF members was recognised by the NM until it was replaced by the DFSM in 1982. In relation to transition, the submission points to a letter from the Prime Minister to the Minister for Defence dated 28 July 1975⁵ which concurs with the recommendation from the Minister that the LSGCM should only be awarded to:

“...those members of the Defence Forces who have completed the qualifying period of service prior to 14 February 1975...”

13. The Defence Submission concluded that as Mr Weller had only completed five years of service when the NM was introduced on 14 February 1975, he had not completed the necessary eighteen years of service required for the LSGCM and was therefore not eligible for the award. The submission noted that Mr Weller had in fact received the DFSM with First Clasp in recognition of his 20 years of long service.

Mr Weller’s Submission

14. Mr Weller contends in his initial application that when he enlisted in the RAAF “it was a condition of service that if you maintained a good service record and served eighteen years you were entitled to the LSGCM”. He regarded receipt of this award would be the pinnacle of his career and stated that he was disappointed when it was abolished. He does not consider that the DFSM has as much prestige as the LSGCM as “every serving member received the medal after fifteen years regardless of their Service record”.

⁵ Letter from the Prime Minister to the Minister for Defence 009462 dated 28 July 1975.

15. In his written rebuttal of the Defence submission, Mr Weller contends that when he enlisted he swore allegiance to the Queen and that if the Queen had initiated an award (the LSGCM), only She could revoke it. He further contends that it was a condition of service that after eighteen years of conspicuous service he would be awarded the LSGCM therefore “was it not a breach of contract by the Government of the day to cancel this award during his period of enlistment”. He stated that he had believed that he “was well on the way to being awarded the LSGCM only to be told by an Administrative Officer in 1988 that the LSGCM was scrapped years ago and it’s too late to try to do anything now”. He stated that he and many others were not aware that there was any change to the LSGCM eligibility and that they expected to be given the award when they completed eighteen years of service with good conduct (in 1988 in Mr Weller’s case).

16. During the hearing with Mr Weller he confirmed the basis of the contentions made in his written submissions. In response to his contention that only the Queen could revoke the LSGCM, the Tribunal referred him to *Commonwealth of Australia Gazette No S78* dated 27 April 1982 and the related Letters Patent that established the Defence Force Service Awards. Mr Weller agreed during the hearing that he received the DFSM for his long service but continued to contend that this was an award of less prestige than the LSGCM as it did not recognise good conduct and exemplary service. He reiterated his concern that he had never been made aware of the changes to the honours and awards system and that he felt great disappointment as a result. He agreed with the Tribunal view that he had not in fact been under a specific “contract” on enlistment that bestowed any particular right to medallic recognition and that such recognition could only be made in accordance with lawful regulations.

Tribunal Consideration

17. There is no dispute about Mr Weller’s service record. The Tribunal reviewed Mr Weller’s Annual Evaluation Reports from 1971 to 1990 and his Service Conduct Record. There is no question that Mr Weller rendered very good service showing steady improvement as he matured, developed and was provided with increasingly greater responsibility as he progressed through the ranks to Flight Sergeant in 1990. The Tribunal noted that Mr Weller was the recipient of a Certificate of Outstanding Service for his work as a Junior Non-Commissioned Officer in 1982 whilst posted to Base Squadron Darwin.

18. The Tribunal carefully considered the eligibility criteria for the LSGCM and particularly the requirement that to be eligible for the award, one needed to render qualifying service of eighteen years. The Tribunal noted that at the time the LSGCM was replaced by the NM on 17 February 1975, Mr Weller had completed five years of qualifying service.

19. The Tribunal reviewed regulations and supporting documentation related to the introduction and eventual revocation of the NM and concluded that there was a considerable amount of discontent and differing opinions regarding the appropriateness of the award. The Tribunal noted the requirement that to remain eligible for the award of the LSGCM, individuals were required to have completed the qualifying period of service (eighteen years) prior to 14 February 1975. The Tribunal

gave great weight to the letter from the Prime Minister dated 28 July 1975 which stipulated this requirement and further noted that the Prime Minister's direction was well known by the RAAF as evidenced by a letter that was written by the Director General Personnel Services – Air Force on 17 August 1978:

“...Reference B stated that the Prime Minister had agreed that members who had completed qualifying service for Imperial long service awards before 14 Feb 75 should be allowed to receive those awards should they so wish...”

20. The Tribunal was sympathetic to Mr Weller's contention that he had not been informed about the various changes to the honours and awards system and the impact that these changes had on his eligibility for the LSGCM. The Tribunal agreed with Mr Weller's contention that this was most likely caused by a breakdown in the passage of information through his chain of command at the time. However, the Tribunal is unable to effect remedial action as the regulatory changes are lawful.

21. The Tribunal concluded that Mr Weller had completed five years of qualifying service for the LSGCM and that this service was well short of the necessary eighteen years of qualifying service. The Tribunal noted that Mr Weller's service was commendable and that for his long service he was appropriately recognised with the DFSM and Clasp.

Finding

22. For the reasons set out above, the Tribunal finds that Mr Weller is not eligible for the LSGCM as he had not completed eighteen years of service prior to 14 February 1975. Accordingly the Tribunal finds that the decision of the Directorate is correct and is therefore affirmed.

DECISION

23. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Peter Weller is not eligible for the award of the Long Service and Good Conduct Medal.