



## Australian Government

### Defence Honours and Awards Appeals Tribunal

## **Hanson and the Department of Defence [2015] DHAAT 13 (19 April 2015)**

**File Number** 2014/059

**Re** **Mr Trevor Hanson** on behalf of Mr Frank Hanson (deceased)  
APPLICANT

**And** **Department of Defence**  
RESPONDENT

**Tribunal** Hon. P. Lindsay (Presiding Member)  
Air Commodore M. Lax OAM, CSM (Retd)

**Hearing Date** 3 March 2015

### **DECISION**

On 19 April 2015 the Tribunal decided to affirm the decision of the Department of Defence that Mr Frank Hanson is not eligible for the award of the Australia Service Medal 1939-45.

### **CATCHWORDS**

*DEFENCE AWARD – Australia Service Medal 1939-1945*

Refusal to restore or authorise medal entitlement – discharged as incorrigible – dishonourable discharge.

### **LEGISLATION**

*Defence Act 1903 – Part VIIIIC- ss110T, 110V(1), 110VB(2)*

*Defence Amendment Regulations (No 1) 2010 – Schedule 3 Part 2*

*Commonwealth of Australia Gazette (CAG) No 91 Royal Warrant -The Australia Service Medal 1939-45*

*CAG No S309 Amendment of the Royal Warrant for Award of the Australia Service Medal 1939-45*

## **REASONS FOR DECISION**

### **Introduction**

1. On 21 February 1988, the late Mr Frank Hanson's son, Mr Trevor Hanson, wrote to Central Army Records Office (CARO) regarding his father's medal entitlements. Mr Hanson stated in correspondence that he believed his father had been 'dishonourably discharged'. Mr Frank Hanson passed away in 1983.
2. On 24 January 1989, CARO wrote to the Director of Personnel Service – Army seeking a decision on restoring Mr Frank Hanson's awards. On 19 October 1989, Army Office advised that the Assistant Chief of Personnel had approved the restoration of four medals which were issued to Mr Trevor Hanson later that year. The issue of the Australia Service Medal 1939-45 (ASM 1939-45) was denied but Army Office did not explain why.
3. On 30 September 2009, Mr Trevor Hanson wrote to CARO requesting a copy of his father's service records. Part of CARO's response included advice that he should write to the Directorate of Honours and Awards (the Directorate) regarding any further medal entitlements. The Directorate subsequently reassessed his late father's eligibility for the ASM 1939-45 but the decision was to again withhold the medal.
4. On 1 May 2014 Mr Trevor Hanson wrote to the Tribunal on behalf of his deceased father Mr Frank Hanson seeking a review of his father's eligibility for the ASM 1939-45 and the Returned from Active Service Badge.
5. On 22 May 2014 the Executive Officer of the Tribunal wrote to Mr Hanson advising him that his request for review of his father's entitlements had been accepted.

### **The Tribunal's Jurisdiction**

6. 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 a defence award or a foreign award in response to an 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 ASM 1939-45. Therefore the Tribunal has jurisdiction to review this decision.
7. The Returned from Active Service Badge is not included in Part 2 of Schedule 3 of *Defence Force Regulations 1952*. Therefore the Tribunal does not have jurisdiction to review the decision to deny Mr Frank Hanson the RASB.

### **Steps taken in the conduct of this review**

8. On 22 May 2014, in accordance with the Tribunal's Procedural Rules, the Chair of the Tribunal wrote to the Secretary of the Department of Defence advising him of Mr Hanson's application for review and requesting that he provide a report. The Directorate, on behalf of the Secretary responded on 15 December 2014.

9. On 23 December 2014 the Tribunal Secretariat wrote to Mr Trevor Hanson providing him with a copy of the Defence report and seeking his comments. He responded on 12 January 2015 explaining some of the personal background to his father's war medical conditions which he believed led to his father's 'desertion' and loss of medals.

10. The Tribunal met on 3 March 2015. During its meeting the Tribunal considered the material provided by Mr Trevor Hanson and the Directorate. It also heard oral evidence from Mr Hanson who had agreed to be available by telephone that day.

### **Mr Hanson's Service Record**

11. On 3 June 1941, Mr Frank Hanson enlisted in the Australian Imperial Force (AIF), with Service No NX27529. He embarked for overseas service on 1 November 1941 and disembarked in the Middle East on 22 November 1941. On 27 January 1943, Mr Hanson embarked in the Middle East and disembarked in Sydney on 27 February 1943.

12. According to his service records, during his period of service, he faced seven trials and was convicted of a number of offences. Four of the trials were conducted abroad. All of the charges broadly related to being absent without leave.

13. His last two trials were conducted as formal Courts-Martial. On 7 September 1943, Mr Hanson faced the Court charged with Desertion from 4 April 1943 to 21 August 1943. He was found not guilty of desertion but guilty of being absent without leave and sentenced to six months detention. On 27 October 1944, Mr Hanson again faced the Court charged with desertion in that he was absent without leave from 3 January 1944 to 21 October 1944. The Court found him guilty of desertion and sentenced him to two years detention.

14. After the Judge Advocate General (JAG) reviewed the proceedings of the court-martial of 27 October 1944, he wrote to the Adjutant-General on 21 November 1944 suggesting that Mr Hanson 'be discharged at once but serve 12 months detention'. The JAG's letter was annotated 'To be discharged 253A(K)'.

15. On 13 November 1944, Mr Hanson was marched in to 6 Australian Detention Barracks to serve his sentence. On 15 December 1944, he was discharged from the AIF (but remained in detention) under the provisions of Australian Military Regulations and Orders (AMR&O) 253A(1)(k) – that by reason of numerous convictions, he is deemed to be incorrigible. At the time of his discharge, the

discharge of an AIF member on this ground was regarded by Army as a dishonourable discharge.<sup>1</sup>

16. Due to the nature of Mr Hanson's discharge, his medal entitlement was withheld pursuant to Army policy and instructions at the time issued under the authority of the Director of Personnel Services.<sup>2</sup> However, in 1989, the Assistant Chief of Personnel – Army restored the following awards:

- the 1939-45 Star;
- the Africa Star with 8<sup>th</sup> Army Clasp;
- the Defence Medal; and
- the War Medal 1939-45.

### **Eligibility Criteria for the Australia Service Medal 1939-1945**

17. Following the conclusion of the Second World War in 1945, the Australian Defence Committee recommended that Australia institute a medal of its own in connection with the war, and that such a medal be awarded, not only to members of the Australian Forces, but also to selected civilian organisations. An 18 month qualifying period for full time personnel was recommended for those who served between 3 September 1939 and 15 August 1945.

18. On 17 January 1946 Cabinet approved that a 'medal be instituted for all members of the Defence Forces of the Commonwealth of Australia who participated in the 1939-1945 war; these to include members of the Mercantile Marine, Civil Air pilots, members of the Comforts Funds and Red Cross Funds, and to include both men and women'.<sup>3</sup> Subsequently His Majesty King George VI instituted the Australia Service Medal 1939-45 by Royal Warrant on 30 August 1949. The Royal Warrant was published in the *Commonwealth of Australia Gazette* in November that year.<sup>4</sup> There is provision in the Warrant for the Governor-General to make Regulations to carry out the purposes of the Warrant, but no Regulations have ever been made. Pertinent to this Review, the Warrant in part states:

3. The persons eligible for the Medal shall be those of Our faithful subjects and others, male and female, who between the 3<sup>rd</sup> September 1939 and the 2<sup>nd</sup> September 1945, rendered the required service in the Australian Armed Forces, in the Australian Mercantile

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<sup>1</sup> Australian Army General Routine Order 65, 15 February 1946, Australian Army Military Board Instruction 187/1948.

<sup>2</sup> 81/1/760 War Medals (in Commemoration of a Campaign): Withholding of Grant: Forfeiture and Restoration, 9 July 1946. Defence Submission.

<sup>3</sup> Cabinet Agendum No 1002A: Proposal for an Australian Decoration, National Archives of Australia (NAA): A816, 66/301/251.

<sup>4</sup> *Commonwealth of Australia Gazette* No. 91 dated 30 November 1949.

Marine or as civil members of the Royal Australian Air Force Reserve who served as aircrew in civil aircraft in operational areas.

4. Representatives of philanthropic bodies, official press correspondents, official photographers and other civil personnel attached to the Armed Forces in an official capacity for full-time duty in uniform shall also be eligible.

5. Eligibility shall not be affected by the grant of any other general award for service in the war of 1939-45...

6. Only those who have received, or would be entitled to receive, **an honourable discharge** [*emphasis added*] shall be eligible.

7. The period of qualifying service for full-time duty shall be eighteen months at home or overseas.

...

19. The power to vary the conditions of the 1949 Royal Warrant was delegated to the Governor-General in 1995 by way of an exchange of letters between Prime Minister Paul Keating and Her Majesty the Queen. This delegated power was used in 1996 to reduce the qualifying period for the Australia Service Medal 1939-45 from eighteen months to 30 days for full time service; and from three years to 90 days for part-time service.<sup>5</sup>

### **Mr Trevor Hanson's Submission**

20. In his request for a Tribunal review, Mr Trevor Hanson noted that his father had served with the 2/3<sup>rd</sup> Pioneers A Coy, 9<sup>th</sup> Division at El Alamein in Egypt and Tobruk in North Africa before being sent home to recover from injuries sustained in a battle on 7 November 1942. This was confirmed by his father's service record.

21. Mr Hanson stated at the oral hearing that he was advised by CARO that sometime in 1944 his father was deemed to have forfeited his medal entitlements by reason of his discharge 'that by reason of numerous convictions, he was deemed to be incorrigible'. He was provided some of his father's service records at the time, but not all. He further stated that until he received a copy the Defence submission provided to him by the Tribunal, he 'had no idea' of the number of charges and the Courts-Martial that his father faced. He said that explained why when he asked his father about his medals, he was told 'you'll get them after I die'.

22. Mr Hanson stated that he was a Vietnam Veteran and understood the value of medals to families. While he received four of his father's medals in 1989, he now sought the ASM 1939-45 and the RASB.

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<sup>5</sup> *Commonwealth of Australia Gazette* No. S 309 dated 21 August 1996.

23. Mr Hanson stated in written correspondence to the Tribunal on 10 January 2015, that he strongly believed ‘my father was suffering from shell shock’. He also advised that his father had made a full recovery after the war and became a respected citizen with a family of ten.

24. Mr Hanson told the Tribunal he was happy for his family’s sake that he had tried as hard as he could to get his father’s full set of medals. He stated that he now understood why his father’s medals were withheld. The Tribunal commended him for his efforts.

### **The Defence Submission**

25. The Defence Submission provided by the Directorate confirmed that Mr Frank Hanson qualified for the award of the 1939-45 Star, the Africa Star with 8<sup>th</sup> Army clasp, the Defence Medal, the War Medal 1939-45 and the ASM 1939-45.

26. However, Mr Hanson’s service record also confirmed that he was discharged from the AIF under the provisions of AMR&O 253A (1)(k) – that by reason of numerous convictions, he is deemed to be incorrigible. Defence provided a copy of the convictions and the transcripts of the two Courts-Martial that tried Mr Hanson and the punishments.

27. Because the reason for Mr Hanson’s discharge constituted under Army policy at the time a dishonourable discharge, he did not meet the eligibility criteria for the ASM 1939-45 as specified in the Royal Warrant. Under Regulation 6, only those who received, or would have been entitled to receive, ‘an honourable discharge’ are eligible for the award. As Mr Frank Hanson did not receive an honourable discharge, he is not entitled to the ASM 1939-45.

### **Tribunal Consideration**

28. The Tribunal carefully considered all the material before it and considered the eligibility criteria for the ASM 1939-45.

29. The Tribunal first examined the law as it applied to discharges at the time. Mr Hanson was discharged under the provision of Australian Military Regulation 253A(1)(k) which also refers to Statutory Rules No. 249 of 1943, Regulation 184A(k). The provision states:

A soldier on war service, whether enlisted voluntarily or in pursuance of Part IV of the DA [Defence Act] ... may be discharged under this regulation from the Military Forces for any of the following reasons, that is to say:-

...

(k) that, by reason of numerous convictions, he is deemed to be incorrigible;

30. The Tribunal made every effort to understand the status of ‘incorrigible’ and why Defence determined that this was a dishonourable discharge. It was further noted

that, at the time of Mr Hanson's discharge, it was the practice not to endorse a soldiers' service record with either the term 'honourable' or 'dishonourable' discharge, nor was it deemed necessary to state the reason for the discharge.<sup>6</sup>

31. A considerable body of work has been done on what constituted dishonourable and how the definition changed over time. Analysis of the findings of the Tribunal's *Stephens Report*<sup>7</sup> and an examination of historical records identified a significant gap in the broader understanding of Service discharge policies and practices. These gaps concern what constituted a dishonourable discharge. However Mr Hanson's discharge was not of an administrative nature so the questions raised in the Stephens case do not apply.

32. The Tribunal next examined Army General Routine Order (GRO) 65 of 15 February 1946 which outlines the reasons for a soldier's discharge which were deemed to constitute a dishonourable discharge. Paragraph 2(ii)(b) provides, *inter alia*, that a member discharged for the reason 'that, by reasons of numerous convictions, he is deemed to be incorrigible', is deemed to have been dishonourably discharged.

33. Military Board Instruction (MBI) 187/1948 2(b)(iii)(a) also confirms that a member discharged for being incorrigible is deemed to have been dishonourably discharged. As the GRO 65 and MBI 187/1948 pre-date the Royal Warrant, the instruction applies to the criteria for the award of the ASM 1939-45.

34. As Mr Hanson was discharged for a reason which constituted a dishonourable discharge, his service does not meet the requirement of Regulation 6 of the Royal Warrant for the ASM 1939-45, so he is not eligible for that award.

## **DECISION**

35. The Tribunal decided to affirm the decision of the Department of Defence that Mr Frank Hanson is not eligible for the award of the Australia Service Medal 1939-45.

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<sup>6</sup> NAA: MP 742/1, 84/1/78. Department of the Army (2<sup>nd</sup> Echelon) memorandum 025437, 'Certificates of Discharge – AAF 101, 3 September 1943. Defence Submission.

<sup>7</sup> *Kenneth Stephens and the Department of Defence* DHAAT 23, 18 October 2013.