



Australian Government

Defence Honours and Awards Appeals Tribunal

Cannan and the Department of Defence [2015] DHAAT 14 (18 March 2015)

File Number(s) 2014/083

Re **Robert William John Cannan**
 APPLICANT

And **Department of Defence**
 RESPONDENT

Tribunal Mr K. Woods CSC, OAM (Presiding Member)
 Ms N. Isenberg

Hearing Date 5 March 2015

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 Robert William John Cannan is not eligible for the award of the Australian Service Medal 1945-75 with Clasp 'SE ASIA'.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Service Medal 1945-75 with Clasp 'SE ASIA'.

LEGISLATION

Defence Act 1903 – ss 110VB(2), 110T, 110V, 110VA
Defence Force Regulations 1952 - reg 93C and Schd 3
Australian Service Medal Regulations 1988
Australian Service Medal 1945-1975 Letters Patent and Regulations 1995
Australian Service Medal 1945-1975 Regulations 2001

REASONS FOR DECISION

Introduction

1. The applicant, Mr Robert William John Cannan (Mr Cannan), 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 Service Medal 1945-75 (ASM 1945-75) with Clasp 'SE ASIA'. Mr Cannan had lodged an application for the award of the ASM 1945-75 with Clasp 'SE ASIA' on 2 January 2013. His application was based on his service in the Royal Australian Navy from 24 September 1966 to 28 November 1986.
2. The Directorate wrote to Mr Cannan on 6 August 2014 and informed him that he was not eligible for the award of the ASM 1945-75 with Clasp 'SE ASIA'. In that letter the Directorate explained that Mr Cannan was not eligible for the award of the ASM 1945-75 with Clasp 'SE ASIA' as he had already been awarded the ASM 1945-75 with Clasp 'FESR'.
3. Being dissatisfied with the decision of the Directorate, Mr Cannan lodged his application for review with the Tribunal on 6 August 2014. In his application for review, Mr Cannan explained that he believed he qualifies for the ASM 1945-75 with Clasp 'SE ASIA' because of his service in HMAS *Hobart* in 1972.

Tribunal Jurisdiction

4. There is no dispute that the Tribunal has jurisdiction to review the Directorate's decision in regard to Mr Cannan's application for the award of the ASM with Clasp 'SE ASIA': see subsection 110V(1) and 110T of the *Defence Act 1903* and regulation 93C and Schedule 3 of the *Defence Force Regulations 1952*.

Steps taken in the conduct of the review

5. On 4 September 2014, in accordance with the *Defence Honours and Awards Appeal Tribunal's Procedural Rules 2011*, as amended in 2013, the Tribunal wrote to the Secretary of the Defence Department advising it of Mr Cannan's application for review and invited it to make submissions and provide the Tribunal with any material on which it sought to rely. A written submission was received from the Directorate on 29 October 2014.
6. On 29 October 2014 Mr Cannan was provided with a copy of the Directorate's written submission and he was invited to respond to this and submit any further material he may have in support of his claim for the award of the ASM 1945-75 with Clasp 'SE ASIA'. Mr Cannan provided a written response to the Directorate's submission on 7 November 2014. Mr Cannan was also invited to give oral evidence (by telephone) to the Tribunal on a date that was suitable to him and the Tribunal panel members.

7. The Tribunal met on 5 March 2015. During its meeting the Tribunal considered the material provided by Mr Cannan and the Directorate. It also heard oral evidence from Mr Cannan who agreed to be available, by telephone, that day.

Australian Service Medal 1945-75 Regulations

8. The Australian Service Medal 1945-75 is an Australian award instituted by Letters Patent on 22 February 1995. The Medal is awarded to recognise military service in a prescribed non-warlike operation from 1945 to 1975. The Schedule sets out the *Regulations Governing the award of the Australian Service Medal 1945-1975* (the Regulations).¹ Regulation 3 states that the Governor-General, on the recommendation of a Minister may declare a non-warlike operation in which members of the Defence Force were engaged, between 3 September 1945 and 16 September 1975, to be a declared operation. Regulation 4 of the ASM 1945-75 Regulations sets out the conditions for the award of the medal.

Australian Service Medal 1945-75 with Clasp ‘SE ASIA’

9. On 8 June 2001, the Governor-General acting under ASM 1945-75 Regulation 3, revoked the Declaration and Determination made on 23 March 2001 and declared a number of non-warlike operations to be ‘a *declared operation*’ for the purpose of the Regulation’.² Paragraph (b) of the Regulations state:

(b)that the following non-warlike operations in which members of the Australian Defence Force were engaged with elements of the South East Asia Treaty Organisation; the Australia, New Zealand and the United State (Pacific Security) Treaty; Far East Strategic Reserve; the United Nations; the Australian, New Zealand and United Kingdom (ANZUK); Five Power Defence Arrangement; and Australian Army Survey Operations in South East Asia during the following periods to be a *declared operation* for the purpose of the Regulation:

(vi) participation by ships of the Royal Australian Navy in the ANZUK Forces that commenced on 30 October 1971 and ended on 14 March 1975, and during such periods those ships were formally allocated or assigned to those forces.

and at paragraph (d)

(d) **determine**, for the purposes of this determination, that a person is not eligible for an award of the Medal where;

(i) a separate award of the Australian Service Medal 1945-75 with Clasp ‘FESR’ has been awarded;

¹ Letters Patent, Australian Service Medal 1945-75, *Commonwealth of Australia Gazette* S122, 3 April 1995.

² *Commonwealth of Australia Gazette* No S230 dated 29 June 2001.

Defence records of Mr Cannan's service

10. Defence records of Mr Cannan's service state he enlisted in the Permanent Naval Forces on 24 September 1966 for a nine year enlistment period. According to Mr Cannan's service record he was 17 years old.

11. After completing recruit training Mr Cannan served in a number of HMA ships and shore base postings. He served in HMAS *Hobart* in 1972. It is the service in this ship that Mr Cannan seeks recognition for the award of the ASM 1945-75 with Clasp 'SE ASIA'. On 28 November 1986, Mr Cannan discharged from the Permanent Naval Forces.

Summary of Claims of Mr Cannan

12. In his written submissions Mr Cannan said:

'My service was with the Royal Australian Navy, enlistment 24 Sep 66, discharged 28 Nov 86. I was awarded the ASM 1945-75 with Clasp 'FESR' for service in HMAS Vampire, Far East Strategic Reserve 1969. I believe I qualify for the Clasp 'SE ASIA' to the ASM 1945-75 for service in HMAS Hobart 1972. HMAS Hobart sailed to SE ASIA from Sydney on 27 Jan 72 returning 14 Apr 72. In SE ASIA Hobart served with ANZUK Force on operational exercises SEAHARK and GENISIS. My only comment on the Defence report received 3 Nov 14 is as stated in my appeal I am applying for the Clasp 'SE ASIA' to the ASM 1945-75 only. Not the MEDAL'.

13. In his oral evidence Mr Cannan reiterated what he had said in his submission. He argued that he should receive the Clasp 'SE ASIA' to the ASM 1945-75 because 'I served in HMAS *Hobart* in South East Asia in 1972'.

14. The essence of Mr Cannan's written and oral submission is that he believes that since the FESR period ended on 31 October 1971 and the South East Asia period began that day, the two Clasps are separate awards for different periods of service. Therefore he believes his service in South East Asia in HMAS *Hobart* in 1972 should be recognised with the award of the ASM 1945-75 with Clasp 'SE ASIA'. The Tribunal explained to Mr Cannan that both Clasps recognise the one period of service which includes service to FESR.

Summary of Claims of Defence

15. In its written submission, the Directorate reiterated that which it had said in its decision, namely Mr Cannan is not eligible for the ASM 1945-75 with Clasp 'SE ASIA' as he had previously been awarded the ASM 1945-75 with Clasp 'FESR'.

The Tribunal's Findings

16. In conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the ASM 1945-75 with Clasp 'SE ASIA'. Accordingly, in order for Mr Cannan to be eligible for the award of the ASM 1945-75 with Clasp 'SE

ASIA' it must be established that his period of service met with the eligibility criteria as stated in the Declarations and Determinations made under the Regulations.

17. There is no dispute that Mr Cannan served in HMAS *Hobart* in the South East Asian region in 1972. However, Mr Cannan has previously been awarded the ASM 1945-75 with Clasp 'FESR' for his service in HMAS *Vampire* in 1969.

18. The Tribunal notes that to be eligible for the award of the ASM 1945-75 with Clasp 'FESR' a member of the Australian Defence Force must have served in the '*declared operation*' for a period of 30 days, or for periods amounting in aggregate to 30 days from 2 July 1955 to 31 October 1971. The Tribunal also notes that to be eligible for the award of the ASM 1945-75 with Clasp 'SE ASIA' ships of the Royal Australian Navy must have served in the '*declared operation*' (ANZUK) for a period of 30 days, or for periods amounting in aggregate to 30 days from 30 October 1971 to 14 March 1975.

19. From the material before it, the Tribunal finds that Australia's contribution to operations under FESR and ANZUK occurred in 'one period of service' from 2 July 1955 to 14 March 1975.

20. In conclusion, for the reasons set out above, the Tribunal finds it is the intent of the Regulations that since Mr Cannan has been awarded the ASM 1945-75 with Clasp 'FESR', he is ineligible for the ASM 1945-75 with Clasp 'SE ASIA'.

21. This conclusion does not in any way diminish the commitment and contribution Mr Cannan made to his country for the period he did serve.

DECISION

22. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Robert William John Cannan is not eligible for the award of the Australian Service Medal 1945-75 with Clasp 'SE ASIA'.