



Australian Government

Defence Honours and Awards Appeals Tribunal

Martin and the Department of Defence [2015] DHAAT 18 (20 February 2015)

File Number(s) 2014/041

Re **Gregory Martin**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Mr M. Sullivan AO (Presiding Member)
Ms C. Heazlewood

Hearing Date 20 February 2015

DECISION

On 20 February 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Gregory Martin is not eligible for the award of the Australian Service Medal with Clasp 'MIDDLE EAST'

CATCHWORDS

DEFENCE AWARD – Australian Service Medal with clasp 'MIDDLE EAST' – prescribed operational area – period of service

LEGISLATION

*Defence Act 1903 – ss 110T, 110VB(2)
Defence Force Amendment Regulations No1 (2010) Schedule 3 Part 2
Australian Service Medal Regulations 1988 as amended – Reg 3 and 4*

REASONS FOR DECISION

Introduction

1. The applicant, Mr Gregory Martin (Mr Martin) 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 (ASM) with clasp 'MIDDLE EAST'. Mr Martin had lodged an application for the award of the ASM probably sometime in 2003. The Directorate found a database record of an application and denial in 2003 but could not find any paper record. Mr Martin sought review of this decision in his application to the Tribunal dated 8 May 2014 and provided further information before the Tribunal advised him on 9 May 2014 that it had accepted his application. Defence reconsidered the application and on 26 August 2014 declined to award the medal.

The Tribunal's Jurisdiction

2. Pursuant to s.110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review an application properly made to the Tribunal regarding a reviewable decision. The term *reviewable decision* is defined in s.110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence award in response to an application. The Directorate made a decision to refuse to recommend Mr Martin for the ASM 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 ASM. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the Review

3. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, as amended, on 8 May 2014 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Martin's application for review and requesting that he provide a report. On 18 September 2014, the Directorate on behalf of the Secretary provided the Tribunal with a report. A copy of the report of the Directorate was forwarded to Mr Martin for comment. Mr Martin provided an email and written responses in April and May 2014 and 13 October 2014.

The Australian Service Medal with Clasp 'MIDDLE EAST'

4. The ASM was established by the *Letters Patent* and the attached Australian Service Medal Regulations dated 13 September 1988 published in the *Commonwealth of Australia Gazette (CAG) No. S 336 (2 November 1988)*.

5. The ASM was established to accord '*...recognition to members of the Defence Force and certain other persons who render service in certain non-warlike military operations*' on or after 14 February 1975.

6. Regulation 3 states:

The Governor-General, on the recommendation of the Minister, may declare a non-warlike operation, in which members or (sic) the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations.

7. Regulation 4 provided that the ASM *may be awarded for service in or in connection with a prescribed operation*. It also set out the conditions for award of the medal, which were to be determined by the Governor-General on the advice of the Minister.

8. On 21 May 1990, in CAG No. S 336, the Governor-General declared under regulation 3 the following activities in the Middle East with effect from 14 February 1975, to be a prescribed operation for the purposes of the Regulations:

- (i) *United Nations Truce Supervision Organisation,*
- (ii) *United Nations Disengagement Observer Force,*
- (iii) *Second United Nations Emergency Force, and*
- (iv) *United Nations Interim Force in Lebanon; and ...*

9. Further, it was also determined that subregulation 4(2), amongst other things, specified the number of days a member was required to serve to be eligible for the ASM with Clasp 'MIDDLE EAST' as follows:

- (i) *one Medal may be awarded to a member of the Australian Defence Force who rendered military service as such a member while posted to or serving with one or more of the activities at for a period commencing on or after 14 February 1975 and **being a period of not less than 90 days...** (Emphasis added)*

10. These Regulations were subsequently revoked and amended by the Governor-General in CAG No. S 424 dated 8 October 2001, which declared that under regulation 3:

'...the following non-warlike operations in which members of the Australian Defence Force were engaged in during the following periods to be a declared operation for the purposes of the Regulations;

(i)...

- (v) *participation by **ships of the Royal Australian Navy** in the North West Indian Ocean deployments in the area north of 10 degrees north and west 75 degrees east, that is, the Arabian Sea including the Gulf of Aden, Gulf of Oman and Persian Gulf during the period that commenced **1 September 1980 and ended on 31 July 1986...** (Emphasis added)*

11. Additionally, subregulation 4(2) amended the prescribed period for eligibility to the ASM with Clasp 'MIDDLE EAST', and determined '*...that the conditions for the award of the Australian Service Medal with Clasp "MIDDLE EAST" ("the Medal") for the declared operation are:*

*(i) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted to or serving as a member of the Australian element of the declared **operation for a period of 30 days, or for periods amounting in the aggregate to 30 days; (Emphasis added)***

(ii) ...'

12. CAG No. S 424 was then amended by the Governor General on 4 November 2002 in CAG No. S 418 which declared under regulation 3 that:

'...the following non-warlike operations in which members of the Australian Defence Force were engaged in during the following periods to be a declared operation for the purposes of the Regulations;

(i) ...

*(v) participation in **naval operations** in the North West Indian Ocean deployments in the area north of 10 degrees north and west 75 degrees east, that is, the Arabian Sea including the Gulf of Aden, Gulf of Oman and Persian Gulf during the period that commenced **1 September 1980 and ended on 31 July 1986...** (Emphasis added)*

13. Regulations 3 and 4 in CAG No. S 418 were subsequently revoked by the Governor General in CAG No. S 80 dated 16 May 2011, replacing the term “*declared operations*” with the term “*prescribed operations*”. Additionally, Regulation 3(b)(i) provides detailed longitude and latitude descriptions for the prescribed operations ADF members served in with the United Nations. The prescribed period for eligibility to the ASM with Clasp ‘MIDDLE EAST’ remains extant.

Mr Martin’s service record

14. On 30 June 1973, Mr Martin enlisted in the Permanent Naval Forces and ceased continuous full time service on 7 July 2003, transferring to the Inactive Navy Reserve on 8 July 2003.

15. On 15 September 2006 Mr Martin resigned from the Navy Reserve. For his service in the Navy Mr Martin was awarded the:

- Australian Active Service Medal with Clasp ‘ICAT’;
- Afghanistan Medal;
- Defence Force Service Medal with First and Second Clasps;
- Australian Defence Medal; and
- Returned from Active Service Badge.

16. Mr Martin has also been awarded the Maritime Commander Australia Commendation.

17. Mr Martin's service record showed that he served on the HMAS *Brisbane* from 12 July 1982 to 30 September 1985. *Brisbane* was the only ship Mr Martin served on that participated in naval operations in the North West Indian Ocean in the relevant period. The Consolidated Ships Movement List revealed that *Brisbane* arrived in Colombo on 26 May 1984 and departed on 28 May. The ship travelled to Male an island in the Indian Ocean close to Sri Lanka and then to Mahe, a port on the south west coast of India. *Brisbane* then sailed to Mombasa, Kenya arriving on 9 June 1984. It departing on 16 June and arrived in Colombo on 4 July 1984, 18 days later. HMAS *Brisbane* sailed through the North West Indian Ocean on its trip back to Colombo. The Navy History section research showed that the maximum period the *Brisbane* sailed in the North West Indian Ocean was an aggregate 14 days.

Mr Martin's response to the Defence submission

18. On 3 October 2014 the Tribunal wrote to Mr Martin providing him with the Defence submission and giving him the opportunity to review and respond to it. On 14 October 2014 Mr Martin provided his comments to the Tribunal as a result of his examination of the Defence submission. Mr Martin noted:

- a. that he concurred with the Defence submission and agreed with the result in full; and
- b. he thanked those who had put together a very professional response to his application for the ASM.

19. On 14 October 2014, the Tribunal sought confirmation from Mr Martin whether he wished the Tribunal to continue with the review of his matter. On that same day Mr Martin confirmed that he wished his matter to continue, stating:

'...yes please to continue. I did note in the report that all records of the Middle East Op's have gone missing so while theres (sic) a "chance" please continue.'

Mr Martin's Submission

20. Mr Martin's application was made because of something "he had read" in the VETAFFAIRS magazine that triggered his interest in the ASM. He remembered applying for the medal some years before and receiving an emailed response not awarding the medal.

21. In his correspondence with the Tribunal Mr Martin wanted the Directorate and the Tribunal to check whether he may be eligible for an ASM

22. At his hearing Mr Martin stated that he did understand the requirements for the ASM with clasp "MIDDLE EAST". He was hoping that his accumulated service in the Navy would make him eligible for some form of general ASM. He seemed to accept that no such award was available

The Directorate's Submission

23. The Directorate advised the Tribunal that:

'A comprehensive check was made of the Directorate of Honours and Awards (DH&A) records. While no documents could be located, an old access database that was used for registering applications from current serving personnel, indicates that a request was received from a G.A Martin in 2003, and the award he was seeking was the ASM with Clasp 'MIDDLE EAST'. The database also records that a response was provided in 2003, however this has not been located on the reference file.'

'...Mr Martin has been assessed on the ASM with Clasp 'MIDDLE EAST'.'

24. The Directorate also advised the Tribunal that

'The legal basis for the decision made in relation to Mr Martin's application for the ASM with Clasp 'MIDDLE EAST' follows:'

'a. Commonwealth of Australia Gazette (CAG) No. S 80, Commonwealth of Australia Declaration and Determination under the Australian Service Medal Regulations dated 19 May 2011...'

25. In summary the Directorate advised the Tribunal that:

'During Mr Martin's second seagoing posting on HMAS Brisbane, the Ships Movements List (Attachment B-3) showed for that period the ship sailed from Mombasa, Kenya on 16 June 1984 and arrived in Colombo, Sri Lanka on 4 July 1984. This service meets the eligibility criteria towards the ASM with Clasp 'MIDDLE EAST'.'

'On 17 December 2001, the Naval History Section wrote a minute, Australia Service Medal with Clasp 'MIDDLE EAST' – North West Indian Ocean Deployments (Attachment 4) identifying which HMA Ships had eligible service and how many days the accrued towards the award.'

'For HMAS Brisbane's service in the North West Indian Ocean, the ship had 14 days eligible days towards the ASM with Clasp 'MIDDLE EAST'.'

'As a result of Mr Martin's appeal to the Tribunal his eligibility for the ASM with Clasp 'MIDDLE EAST' was assessed.'

'The assessment confirmed that Mr Martin is not eligible for the ASM with Clasp 'MIDDLE EAST' for the reasons specified at paragraph (c)(1) (Attachment B-1), he did not complete 30 days service in the prescribed area.'

Conclusion

26. The ASM with Clasp 'MIDDLE EAST' may be awarded to a person who has satisfied the requirements the Australian Service Medal Regulations as amended to 19 May 2011. These require an accumulation of 30 days eligible service within the

geographic zone outlined in those Regulations during the timeframe also set out in the Regulations. The Consolidated Ships Movement List and Mr Martin's service record showed that the maximum period he could have participated in naval operations in the prescribed operational area was 18 days. The Naval History section advised that the maximum period was 14 days and the Tribunal accepts that advice. Even if the Tribunal were to find that Mr Martin had 18 days service it is still insufficient to satisfy the criteria to be eligible for the ASM with Clasp 'MIDDLE EAST'.

27. The Tribunal finds that while Mr Martin has an extensive record within the Royal Australian Navy he does not satisfy the criteria for the award of the ASM with Clasp 'MIDDLE EAST' because he has not served for at least 30 days in the prescribed operational area.

DECISION

28. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Gregory Martin is not eligible for the award of the Australian Service Medal with Clasp 'MIDDLE EAST'.