



Australian Government

Defence Honours and Awards Appeals Tribunal

Mildren and the Department of Defence [2015] DHAAT 23 (30 March 2015)

File Number(s) 2014/076

Re **Patrick James Mildren**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Mr M. Sullivan AO (Presiding Member)
Mr K. Woods CSC, OAM

Hearing Date 30 March 2015

DECISION

On 30 March 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Patrick James Mildren is not eligible for the award of the Australian Active Service Medal 1945-75 with Clasp 'THAILAND'.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Active Service Medal 1945-75 with Clasp 'THAILAND' to Mr Patrick James Mildren

LEGISLATION

*Defence Act 1903 as amended –ss 110T, 110V(1), 110VB(2)
Defence Force Regulations 1952 – Regulation 93C and Schedule 3*

*Commonwealth of Australia Gazette (CAG) No S18 dated 19 January 1998
CAG No S102 dated 27 March 2001
Declaration & Determination dated 4 December 2012 AASM 1945-75 with
Clasp 'THAILAND'*

REASONS FOR DECISION

Introduction

1. The applicant, Mr Patrick James Mildren (Mr Mildren) 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 Active Service Medal (AASM) 1945-75 with Clasp 'THAILAND'.
2. Mr Mildren has made several applications for this award. On 14 November 1997, Mr Mildren applied to Defence Personnel Executive (DPE) Air Force Medals Section concerning his eligibility for the AASM 1945-75 with Clasp 'THAILAND'. On 3 February 1998, DPE Air Force Medals Section advised Mr Mildren by letter that he was not eligible for the AASM 1945-75 with Clasp 'THAILAND' as he had been awarded the Australian Service Medal (ASM) 1945-75 with Clasp 'THAILAND' for his service at Base Squadron Ubon
3. On 16 May 2000, Mr Mildren applied to DPE Air Force Medals Section, concerning his eligibility for the AASM 1945-75 with Clasp 'THAILAND'. On 21 March 2001, DPE Air Force Medals Section advised Mr Mildren by letter that he was not eligible for the AASM 1945-75 with Clasp 'THAILAND' as the nature of his service (classified as operational) in Ubon was not in the prescribed time-frame for eligible (warlike) service at RAAF Ubon.
4. On 6 December 2010, Mr Mildren wrote to the Minister for Veterans' Affairs, the Hon Warren Snowdon, MP, regarding the nature of service classification of the service of RAAF at Ubon. The Vice Chief of the Defence Force Group, Nature of Service Branch, Commodore P G Kinghorne, RAN, Director General Nature of Service, responded on 23 March 2011 with a very detailed explanation of the Nature of Service Reviews of the RAAF's role at Ubon and the relationship between definitions of 'warlike' and the *Veterans' Entitlements Act 1986* (VEA).
5. On 20 February 2014, Mr Mildren applied to the Directorate concerning his eligibility for the AASM 1945-75 with Clasp 'THAILAND'. On 5 June 2014, the Directorate advised Mr Mildren by letter that he was not eligible for the AASM 1945-75 with Clasp 'THAILAND' as his service in Ubon was outside the qualifying period for the award.
6. Mr Mildren initially provided a submission to the Tribunal's *Inquiry into Refused, Withheld and Forfeited Defence Honours and Awards* on 30 January 2014. On 20 February 2014, the Tribunal Chair advised Mr Mildren that he should submit an individual appeal in relation to his ineligibility for the AASM 1945-75 with Clasp 'THAILAND'.
7. On 18 June 2014, Mr Mildren agreed to this proposal and provided a copy of the ineligibility letter dated 5 June 2014, from the Directorate.

The Tribunal's Jurisdiction

8. 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 Mildren for the AASM 1945-75 with Clasp 'THAILAND' 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 AASM 1945-75. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the Review

9. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, on 17 July 2014 the Tribunal wrote to the Secretary of the Department of Defence advising Defence of Mr Mildren's application for review and invited it to make submissions and provide the Tribunal with any material on which it sought to rely. On 18 September 2014, the Directorate on behalf of the Secretary provided the Tribunal with a written submission. On 1 October 2014, a copy of the submission from the Directorate was forwarded to Mr Mildren for comment. Mr Mildren provided his comments on this submission on 24 October 2014.

The Australian Active Service Medal 1945-75 with Clasp 'THAILAND'

10. The AASM 1945-75 was approved in December 1997 and the Letters Patent were gazetted in the *Commonwealth of Australia Gazette (CAG) No S18* on 19 January 1998. The medal may be awarded to a member in, or in connection with prescribed warlike operations from 3 September 1945 until 13 February 1975.

11. On 23 December 2001, the Governor General made the first Declaration and Determination under the AASM 1945-75 Letters Patent to declare that members of the Australian Defence Force who were at the Royal Thai Air Force Base at Ubon during the period that commenced on 25 June 1965 and ended on 31 August 1968, to be a prescribed operation for the purposes of the Clasp 'THAILAND' to the AASM 1945-75.¹

12. On 4 December 2012, the Governor General revoked the previous Declarations and Determinations and declared that under regulation 3 the following warlike operations would be a prescribed operation for the purposes of the AASM 1945-75 with Clasp 'THAILAND':

- (i) Royal Australian Air Force activities in the defence of Thailand conducted from the Royal Thai Air Force Base at Ubon that commenced on 31 May 1962 and ended on 27 July 1962 and commenced on 25 June 1965 and ended on 31 August 1968; or

¹ CAG No S102 dated 27 March 2001, pages 5-6

(ii) 2 Field Troop Royal Australian Engineers
to be a *prescribed operation* for the purposes of the Regulations.

Defence records of Mr Mildren's Service

13. On 29 April 1957, Mr Mildren enlisted in the Permanent Air Force (PAF). He was discharged on 4 May 1978 having completed 20 years service and attained the rank of Flight Sergeant.

14. Mr Mildren was attached to Base Squadron Ubon, in Thailand, from 16 January 1963 to 26 April 1963 a total of 14 weeks.

15. For his service, Mr Mildren has been awarded the following awards:-

- Australian Service Medal 1945-75 with Clasp 'THAILAND' and 'SE ASIA'
- Defence Force Service Medal with First Clasp
- National Medal
- Australian Defence Medal

Summary of the Claims of Mr Mildren

16. In his application Mr Mildren provided copies of his previous letters to Ministers which in turn included copies of Ubon case details and a brief history titled 'CIA Air Operations in Laos, 1955-1974' by William M Leary. As a participant in the RAAF at Ubon (3 months), Mr Mildren states that he can not see how the conditions at Ubon changed during the wider period, so that the Government can determine that a certain medal applies from a particular day up to another day (AASM) and the next day after that medal's time period has finished, the medal conditions change for the next medal (ASM)

17. Mr Mildren's argument is that the conditions did not change; they were always warned of the dangers from the Communist forces; the base had defence bunkers constructed; warned not to enter certain places; the men were not to wear uniform outside the base; and that the 'fully armed Sabre aircraft remained on alert at all times and that no one told us that the Geneva Agreement had reduced the danger'.

18. Mr Mildren stated in his application, that 'in the last few years when we, (ex Ubon personnel) have been trying to obtain the facts and receive the recognition we believe that we deserve, I must admit that I have been extremely disgusted with the lack of co-operation and the cover up of information we have received. The only reason the Moir [Mohr] Inquiry² has been able to establish the links between Ubon and Vietnam from 1965 to 1968 is that information that the Government assured us over several years did not exist has miraculously been located. This information would never have surfaced at all had not the reunion group been able to obtain the information from the US regarding their involvement. The pre 1965 members do not have this to fall back on and therefore I do not believe that all relevant records were

² 'The Mohr (Board of) Inquiry' refers to the *Review of Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, by Major General the Hon Justice Mohr dated February 2000.

made available to the Moir [Mohr] Board of Inquiry in relation to the conditions of service at Ubon between 1962 and 1965’.

19. Mr Mildren also states that ‘the pre mid 1965 Ubon members have been placed in the embarrassing situation that we are not entitled to march with our colleagues from the post mid 1965 on Anzac Day because we do not have active service and they do. Finally I would like to ask, **Why are we being discriminated against?**’ (emphasis added by Mr Mildren).

Summary of the Claims of Defence

20. The Defence Submission dated 18 September 2014 was prepared in consultation with the Nature of Service Directorate in Military Strategic Commitments Division and Vice Chief of the Defence Force Group.

21. Defence has provided a detailed history of the Nature of Service Reviews of RAAF personnel who served at Ubon in the 1960s. ‘On 11 May 2010, the government announced that the recommendation of the 2009 Defence Ubon Review, and it was agreed that service at Ubon from 28 July 1962 to 24 June 1965 would remain classified as ‘operational service’, not war-like. It was also agreed by government that service at Ubon would not be the subject of further review.’³ In summary the nature of service classification for the service provided by the RAAF at Ubon is now as follows:-

- a. 31 May 1962 to 27 July 1962 is classified as ‘Warlike Service’;
- b. 28 July 1962 to 24 June 1965 is classified as ‘Operational Service’ (not warlike); and
- c. 25 June 1965 to 31 August 1968 is classified as ‘Warlike Service’.

22. Defence confirm that Mr Mildren was attached to Base Squadron Ubon from 16 January 1963 to 26 April 1963. The nature of service classification for the service provided by RAAF personnel attached to RAAF Ubon from 28 July 1962 to 24 June 1965 is classified as ‘operational service’ (not warlike). For this service in particular, Mr Mildren has been awarded the ASM 1945-75 with Clasp ‘THAILAND’.⁴

Mr Mildren’s Response to the Defence Submission

23. In his email of 27 October 2014, Mr Mildren responded to the Defence Submission stating that ‘it is the very facts that have been repeated again by the Department of Defence that are the subject of this appeal.’ Mr Mildren provided the following:-

1. ‘When ‘Warlike Service’ was first awarded to Ubon members from 25 June 1965 until the withdrawal on 31 August 1968, all members from 31 May 1962 until 25 June 1965 were excluded from receiving the AASM as it was deemed ‘Operational Service’ only.

³ The *Review of Service Recognition for RAAF Ubon (1965-68)*, 2008, (Abigail Report)

⁴ Defence Submission paragraph 17.

2. The decision made in 2010 to recognise that the service from 31 May 1962 until 2 July 1962 is a complete turnaround from the previous decision above.
3. From this 2010 decision it was decided that the period of service from 2 July until (sic) would remain as 'Operational Service' because the crisis eased somewhat with the signing of the Geneva Agreement on 23 July 1962. It is this decision that I have severe difficulty in accepting for the following reasons;
 - A. The briefing we all received on arrival at the Base never changed from day one, (except for the ongoing updates) in relation to the dangers from the Communist forces.
 - B. Defence bunkers were established within the first month of occupation and these were active during the total period the Base existed.
 - C. Initial briefing covered not only the known dangers to the Base but also we were all taken on a tour of the district and shown the many areas which had been placed on the out of bounds list.
 - D. We were informed that it was extremely unwise to travel in large groups, (more than 3 or 4) again because of a possible ambush.
 - E. We were told not to wear service uniform off base as this would identify where we were from. (We found it rather amusing given that we assumed that the locals would have a very good idea from our appearances that we were not locals.)
 - F. Why were we requested to remain after the Geneva Agreement in 1962 by the American United States. Perhaps because of the boarder (sic) unrest that was still occurring, or because of the continued operation of Air America out of the country including Ubon.
 - G. Our fully armed Sabre aircraft remained on alert at all times and no-one told us that the Geneva Agreement had reduced the danger.'

24. Mr Mildren further believes that the 'Geneva Agreement' appears to be used as a "get out clause" by Defence and thus deprive members who served during this period of their rightful entitlements.'

Tribunal Consideration

25. Mr Mildren is very committed to his belief that the criteria for the award of the AASM 1945-75 with Clasp 'THAILAND' are unfair and incorrect for the reason he outlines. The Tribunal does not doubt the sincerity of Mr Mildren's views including the stress of many aspects of his service in Ubon. At the same time Mr Mildren does not contend any of the facts of his service at Ubon and concedes he is not eligible under the criteria set for the award. In conducting this review the Tribunal explained to Mr Mildren that it is bound by the eligibility criteria that govern the award of the AASM 1945-75 with Clasp 'THAILAND'. He understood this point while reiterating he felt the criteria were wrong.

26. The Tribunal finds that Mr Mildren does not meet the eligibility criteria for the award of the AASM 1945-75 with Clasp 'THAILAND'. For these reasons, the

Tribunal finds that the decision of the Directorate is the correct and preferred decision and should be affirmed.

DECISION

27. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Patrick James Mildren is not eligible for the award of the Australian Active Service Medal 1945-75 with Clasp 'THAILAND'