



Australian Government

Defence Honours and Awards Appeals Tribunal

Newton and the Department of Defence [2015] DHAAT 25 (23 March 2015)

File Number(s) 2013/009

Re **Mr Robert Frederick Newton**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms C. Heazlewood (Presiding Member)
Mr R. Rowe PSM

Hearing Date 23 March 2015

DECISION

On 23 March 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Robert Newton is not eligible for the award of the Royal Navy Long Service and Good Conduct Medal.

CATCHWORDS

DEFENCE AWARDS – Royal Navy Long Service and Good Conduct Medal – eligibility criteria – serving engagement to complete 20 years service from date of entry – recommendation by Commanding Officer

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2), 110XB

Defence Force Regulations 1952 -, Reg 93C

Australian Book of Reference (ABR) 5016, Regulations and Instructions for the Royal Australian Navy, 1960, as amended by Amendment No. 36 of July 1974

REASONS FOR DECISION

Introduction

1. The applicant, Mr Robert Frederick Newton (Mr Newton) 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 Royal Navy Long Service and Good Conduct Medal (LS&GCM). On 21 November 2012 Mr Newton made an application to the Directorate for the award of the LS&GCM. On 28 February 2013 the Directorate advised Mr Newton that he was not eligible for this award. The reasons given by the Directorate were that: in the late 1990s the Queen signed a Charter which stated that no further Imperial Honours or Awards (apart from campaign awards) would be issued to Australian Defence Force Personnel; as the award was issued under the Imperial Honours System and Mr Newton was not recommended for it, the award could not now be issued to him retrospectively. On 22 March 2013 Mr Newton applied to the Tribunal for a review of Directorate's decision.

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. The Directorate made a decision to refuse to recommend Mr Newton for the LS&GCM following his 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 LS&GCM. Therefore the Tribunal has jurisdiction to review decisions in relation to this award.

Conduct of the Review

3. In accordance with its *Procedural Rules 2011*, on 11 April 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Newton's application for review and inviting him to provide a submission. On 29 May 2013 the Directorate, on behalf of the Secretary, provided the Tribunal with the Defence submission in the form of a written report. The Tribunal forwarded a copy of the Directorate's report to Mr Newton for comment on 31 May 2013. On 10 June 2013 Mr Newton responded to the Defence submission. On 2 December 2013 the Tribunal held a telephone Hearing with Mr Newton. Subsequently, the two Tribunal members who were conducting the Review ceased being members of the Tribunal. Accordingly, as provided for in the *Defence Act 1903* (Section 110XB) two other members of the Tribunal were assigned to undertake the Review, which started afresh.

4. The Tribunal met on 12 December 2014 when it considered the material provided by Mr Newton and the Directorate. On 23 March 2015 the Tribunal held a Hearing, by telephone, with Mr Newton.

Royal Navy Long Service and Good Conduct Medal

5. Awards to recognise long service and good conduct have been in existence from the early 19th century. The LS&GCM was instituted on 24 August 1831 by Order in Council. By 1953 the eligibility criteria for this award were specified in the *Queens Regulations and Admiralty Instructions of 1953 (QR&AI)* which stipulated, in Article 1887 (Conditions for award), the qualifying period as being having *completed 15 years pensionable service with continuous "Very Good" character*. Other relevant conditions are: the individual must have *actually re-engaged to complete time for pension; and be provisionally recommended by the Captain of the ship or establishment in which he is serving at the time of the application as in every respect deserving of the award*.

6. The eligibility criteria specified in the QR&AI of 1953 were later incorporated into the Australian Book of Reference (ABR) 5016, *Regulations and Instructions for the Royal Australian Navy*. The ABR was first issued in 1960 and the articles detailing the eligibility criteria were amended from time to time. The ABR, as amended by Amendment No. 36 of July 1974 (pages 18-11 and 18-12), contains the eligibility criteria for the LS&GCM that were applied to members of the Royal Australian Navy (RAN) at the time Mr Newton enlisted in 1960 and for the duration of his service.

7. To qualify for the LS&GCM in accordance with the eligibility criteria contained in the ABR, a sailor in the RAN must;

- i. have completed fifteen years qualifying service with continuous very good conduct, and with previous conduct in service over the age of eighteen years not below good;
- ii. be serving on an engagement to complete 20 years service from date of entry; and
- iii. have been recommended by their Commanding Officer for the award.

8. On 14 February 1975 the Australian Government instituted the National Medal *for the purpose of according recognition to persons who render long service in certain occupations*. The categories of persons eligible to be awarded the National Medal include members of the Defence Force. The conditions for the award stipulate that it *shall not be awarded to a person unless, since he attained the age of eighteen years, he has served diligently for a continuous period of fifteen years in one of the eligible categories of recipients or he has served diligently in two or more of those capacities for successive periods, that, in aggregate, are not less than fifteen years*.

9. In February 1984 the Deputy Chief of Navy cancelled Section IV "Long Service and Good Conduct Medal", contained in Articles 1871 to 1880 of the ABR 5016.

10. On 5 October 1992 the Prime Minister announced that the Queen had indicated that Australian citizens should be recognised exclusively by the Australian system of honours. There would be no further recommendations for British honours.

Mr Newton's Service Record

11. Mr Newton enlisted in the RAN on 1 January 1960 and discharged on 31 December 1979. His Engagement and Re-engagement forms over this period show he:

- engaged for 12 years from 1 January 1960 until 31 December 1971
- re-engaged for three years from 1 January 1972 to 31 December 1974
- re-engaged for three years from 1 January 1975 to 31 December 1977
- re-engaged for two years from 1 January 1978 to 31 December 1979

12. Mr Newton has been has been issued with the following medals and badge for his service:

- Australian Active Service Medal 1945-75 with Clasps ‘MALAYSIA’ and ‘VIETNAM’
- General Service Medal 1962 with Clasp ‘MALAY PENINSULA’
- Vietnam Logistic and Support Medal
- Australian Service Medal 1945-75 with Clasp ‘FESR’
- Defence Force Service Medal with First Clasp
- National Medal
- Australian Defence Medal
- Pingat Jasa Malaysia Medal
- Returned from Active Service Badge

Mr Newton’s Submission

13. Mr Newton argued in his application for review and his letters of 19 March 2013 and 10 June 2013 that he is entitled to be awarded the LS&GCM because:

- He qualified for the award on 1 January 1975, after fifteen years of service.
- He completed 20 years (1 January 1960 to 31 December 1979) of “good conduct” as a sailor in the RAN.
- He did not know he had to be recommended for the award.
- He did not see how the National Medal “reputedly replaced” the LS&GCM.
- The National Medal was not instituted by letter of patent until 14 February 1975 ... and Her Majesty’s Charter was issued in the late 1990s ... at the date of (which) I was not a member of the armed forces.
- He understands that Her Majesty’s Charter states that *no further Imperial Honours, Awards (apart from campaign awards) would be issued to Australian Defence Force Personnel. I believe that long service awards do not form a part of the “Honours and Awards” system.*

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14. At the Hearing on 23 March 2015 Mr Newton made the following further points in support of his application:

- The National Medal, instituted on 14 February 1975, did not, as the Defence submission states, replace the LS&GCM. The LS&GCM continued to exist, until 1992, when Her Majesty’s Charter was promulgated and no further Imperial awards would be made to Australians.
- While accepting that the ABR contained the eligibility criteria for the LS&GCM, there was a contradiction in Article 1872 regarding the qualifications required as specified in paragraphs (a) and (b). Paragraph (a) required completion of fifteen years of service with continuous very good conduct and (b) requiring service on an engagement to complete twenty years service.

- He disagreed with the statement in the Directorate’s submission that he was not serving on an engagement to complete twenty years service from date of entry; to state this was “playing with words”.
- He was not recommended for the award because, at the time he was eligible, he and his then Divisional Officer were under a “misconception” that Imperial awards could not be issued concurrently with new awards and that the LS&GCM *was no longer applicable*. It was only recently that he had queried this and found this not to be the case.
- He was not aware he had to be recommended for the award, as this type of award, for good conduct and long service, was usually issued as a result of service records without requiring application or recommendation.

Directorate’s Submission

15. In the Directorate’s submission dated 29 May 2013 it was noted that there was no provision under which the LS&GCM could be issued since the Queen’s announcement in 1992. Defence was no longer able to make a recommendation to the Governor-General in relation to the Imperial LS&GCM.

16. The Directorate referred to Mr Newton’s service history and the requirements to be awarded the LS&GCM noting the amendments in the QR&AI and then the ABR until the National Medal replaced this medal. After 15 years of service on 1 January 1975 the eligibility requirements for Mr Newton were that he had to:

- i. *have completed fifteen years qualifying service with continuous very good conduct, and with previous conduct in service over the age of eighteen years not below good; and*
- ii. *be serving on an engagement to complete 20 years service from date of entry; and*
- iii. *have been recommended by their Commanding Officer for the award.*

17. The Directorate noted that Mr Newton was not serving *on an engagement to complete 20 years service from his date of entry*. Mr Newton did not commence his engagement to complete 20 years service until 1 January 1978. In addition Mr Newton’s Commanding Officer did not recommend him for the medal. The Directorate concluded that Mr Newton is not eligible for the award of the LS&GCM.

Tribunal Consideration and Findings

18. After carefully considered all the material placed before it the Tribunal noted that Mr Newton’s good conduct over his period of service with the RAN was not in dispute. Mr Newton had received numerous awards and a badge for his service.

19. The Tribunal determined that the relevant criteria were those specified in ABR 5016 as amended to July 1974. The Tribunal informed Mr Newton that these Regulations represented the law against which his application would be assessed.

20. The Tribunal noted that the National Medal, instituted on 14 February 1975, was intended to replace the LSGCM. This is made clear in the proclamation which states “it is desirable that there be instituted an Australian medal for the purpose of according

recognition to persons who render long service in certain occupations”. The Tribunal noted that Mr Newton had been awarded the National Medal.

21. After considering Mr Newton’s record of service against the criteria set out in the ABR as amended, the Tribunal found that Mr Newton met the first criterion, namely, that he had completed fifteen years qualifying service with continuous very good conduct. However, Mr Newton did not meet the second criterion. He was not serving on an engagement to complete 20 years service from his date of entry when he completed the fifteen years qualifying service. The Tribunal finds that Mr Newton commenced his engagement to complete 20 years service from his date of entry on 1 January 1978. Mr Newton acknowledged that he had not been recommended by his Commanding Officer for the award and the Tribunal so finds. The Tribunal determined that Mr Newton did not meet the eligibility criteria for the award.

DECISION

22. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Robert Frederick Newton is not eligible for the award of the Royal Navy Long Service and Good Conduct Medal.