



Australian Government

Defence Honours and Awards Appeals Tribunal

Hacker and the Department of Defence [2015] DHAAT 27 (05 June 2015)

File Number(s) 2014/016

Re **Mr Warren Arthur George Hacker**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr R. Rowe PSM (Presiding Member)
Mr K. Woods CSC OAM

Hearing Date 13 May 2015

DECISION

On 05 June 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Warren Arthur George Hacker is not eligible for the award of the 1939-45 Star.

CATCHWORDS

DEFENCE AWARDS –refusal to recommend the award of the 1939-45 Star

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)
Defence Force Regulations 1952, Reg 93C
Commonwealth of Australia, Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal dated December 1948
Commonwealth of Australia Gazette No S374, dated 17 September 2001

REASONS FOR DECISION

Introduction

1 The applicant, Mr Warren Arthur George Hacker (Mr Hacker) 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 1939-45 Star. On 9 October 2001 Mr Hacker lodged an application to the Directorate for the award of the 1939-45 Star. On 26 March 2002 the Directorate advised Mr Hacker that he did not qualify for the award as he had served in the Pacific theatre from 30 September 1944 to 28 January 1945, whereas, the eligibility criteria for the award was operational service in a designated Pacific theatre of operations at any time during the six months immediately prior to, and including, 2 September 1945. On 14 July 2014 Mr Hacker applied to the Tribunal for a review of Defence'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. 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 1939-45 Star. Therefore the Tribunal has jurisdiction to review decisions in relation to this award. The role of the Tribunal is to determine whether the decision of the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

Steps taken in the conduct of the review

3. In accordance with the *Defence Honours and Awards Appeal Tribunal's Procedural Rules 2011*, on 22 August 2014, the Tribunal wrote to the Secretary of the Department of Defence advising it of Mr Hacker's application for review and invited it to make a submission and provide the Tribunal with any material on which it sought to rely. On 17 November 2014, 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 written submission to Mr Hacker for comment on 20 November 2014. On 2 December 2014 Mr Hacker responded stating that he now understood why his previous application was not accepted. On 18 December 2014 the Tribunal wrote to Mr Hacker to confirm that he no longer wished the Tribunal to continue with his application for review. On 22 December 2014 Mr Hacker advised, via a telephone call to the Tribunal from Mrs Hacker, that he did wish the review to continue.

4. The Tribunal met on 5 May 2015. During its meeting the Tribunal considered the material provided by Mr Hacker and the Directorate. Mr Hacker 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. On 13 May 2015 the Tribunal held a Hearing. At

that Hearing the Tribunal heard oral evidence from Mr Hacker who agreed to be available by telephone that afternoon.

Legal Authority for the Award of the 1939-45 Star

5. The legal authority for the grant of the 1939-45 Star as well as the relevant conditions for granting it are set out in the following documents:

- *Commonwealth of Australia, Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal*, dated December 1948.(known as the Dedman Papers, as the document was issued by the authority of the then Minister of State for Defence, The Hon. John J. Dedman, MP)
- *Commonwealth of Australia Gazette No.S374, Amendment of Conditions for Award of the 1939-45 Star*, dated 17 September 2001.

6. In 11 June 1948, administration of the Imperial World War II campaign, stars, clasps, emblems and medals for personnel from the Dominions was delegated to the Dominion Governments. In December 1948, through the Dedman Papers, the Minister for Defence devolved the authority to issue these Imperial awards to the individual Service medal offices. In 1996 the Directorate of Defence Honours and Awards inherited the responsibility for administering the World War II campaign stars, clasps, emblems and medals.

Eligibility Criteria for the 1939-45 Star

7. The eligibility criteria for the 1939-45 Star are contained in the Dedman Papers which also specifies the qualifying periods.

8. Mr Hacker was a Flight Mechanic which is a position classified as non-air crew. Eligibility criteria for non-air crew for the 1939-45 Star are set out in paragraph 5 (c) of the Dedman Papers, which states that:

5. Air Force.

...

(c) In addition, non-air crew personnel serving in the area of an Army operational command will qualify, six months service in the area of the operational command being the qualification, and special exception being made for those evacuated, eg from Dunkirk, Norway, etc., as for the Army above.

10. The qualifying periods are described in paragraph 127 of the same document and state that the qualifying period for New Guinea is from 7 March 1942 to 2 September 1945.

11. The eligibility criteria and qualifying periods for the 1939-45 Star were amended in 2001 by *Commonwealth of Australia Gazette No.S374, Amendment of Conditions for Award of the 1939-45 Star*, dated 17 September 2001. The relevant paragraph of the Amendment relating to Mr Hacker's application states:

6. *The 1939-45 Star may be awarded for service as a member of the Australian Defence Force, ...*

b. who was on operational service in a designated Pacific theatre of operations at any time during the six months immediately prior to, and including, 2 September 1945, but who had not previously met the qualifying periods of operational service for the award of the 1939-45 Star.

Defence records of Mr Hacker's Service

12. Mr Hacker enlisted in the Royal Australian Air Force (RAAF) as a Flight Mechanic on 29 June 1942. This role is classified as non-air-crew. He was assigned Service No. 58391. After his initial training, Mr Hacker was posted to No.7 Squadron from 29 August 1943 to 4 February 1945. The RAAF Unit movement guide confirms that 7 Squadron moved from (Higgins Field) North Queensland by air to Tadjji in Papua New Guinea on 21 October 1944.

13. On 18 March 1946 Mr Hacker completed a Commonwealth of Australia Statutory Declaration stating that he went from Townsville to Tadjji on 20 September 1944; that he returned to Townsville on 28 January 1945; and that he served continuously outside Australia for three and three quarter months.

14. On 27 March 1946 Mr Hacker discharged from the RAAF "on demobilisation".

15. Mr Hacker has been issued with the following medals and badge for his service in the RAAF:

- Pacific Star
- The War Medal 1939-45
- The Australia Service Medal 1939-45
- Returned from Active Service Badge

Summary of Arguments of Mr Hacker

16. In his written submissions Mr Hacker said:

I have read the article about the Defence Honours and Awards Appeal Tribunal in the Vet affairs autumn 2014 edition on page 9. I wrote to the Airforce Medal Section on the 9 October, 2001 enquiring as to my eligibility to receive the 1939-45 Star. I was very disappointed when I received their reply dated 26 March, 2002 stating that I was not qualified to receive this medal. I served with 7 Squadron RAAF at Tadjji (Aitape) in New Guinea from 20 September 1944 to 28 January 1945 as a Flight Mechanic. My RAAF service No was 58391, and I was a LAC. I would appreciate the Tribunal making a review of the previous decision.

17. As a result of Mr Hacker receiving the Defence submission he wrote a letter (dated 26 November 2014) to the Tribunal. In that letter Mr Hacker said that he now

understood why his previous application was not accepted. He was not aware of the discrepancy between the qualifying period for the 1939-45 Star for air crew and ground staff. The Tribunal wrote to Mr Hacker on the 18 December 2014 asking if he wished the Tribunal to continue with the review. On 22 December 2014, Mrs June Hacker rang the Tribunal, on behalf of Mr Hacker, and asked that the Tribunal continue its review of her husband's eligibility for the 1939-45 Star.

Summary of Arguments of Defence

18. The Defence submission, dated 17 November 2014, concludes that, after re-assessment of all the material questions of fact, including relevant documentation, Mr Hacker is not eligible for the award of the 1939-45 Star because he did not:

- complete six months service in the area of an Army operational command as non-air crew; or
- complete one day's service in the Pacific theatre of operation in the last six months prior to, and including, 2 September 1945.

The Tribunal's Consideration

19. The Tribunal carefully considered all the material placed before it. In the Hearing with Mr Hacker, held on 13 May 2015, Mr Hacker confirmed the accuracy of his service records and also that he had signed a Statutory Declaration on 18 March 1946 stating that he had embarked at Townsville for Tadjji (in Papua New Guinea) on 20 September 1944 and that he had disembarked at Townsville on 28 January 1945 "after having served continuously outside Australia for three and three quarter months".

20. The Tribunal explained the eligibility criteria and the qualifying periods for the 1939-45 Star as set out in the relevant documentation ("Eligibility Criteria for the 1939-45 Star"; paragraphs 11- 15 above). The Tribunal informed Mr Hacker that, in its view, on the basis of the evidence before it, in particular his service record and his Statutory Declaration, he did not meet the eligibility criteria for the award because he did not:

- complete six months service in the area of an Army operational command as non-air crew; or
- complete one day's service in the Pacific theatre of operation in the last six months prior to, and including, 2 September 1945.

21. Mr Hacker informed the Tribunal that he now fully understands why he was not eligible for the award and that he did not wish to pursue his application for review any further.

Finding

22. For the reasons set out above, the Tribunal finds that Mr Hacker is not eligible for the 1939-45 Star as he does not meet the eligibility criteria for the award.

Accordingly the Tribunal finds that the decision of the Directorate is the correct or preferred decision. These findings do not in any way diminish the contribution Mr Hacker made to his country for the period he did serve.

DECISION

23. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Warren Arthur George Hacker is not eligible for the award of the 1939-45 Star.