



Australian Government

Defence Honours and Awards Appeals Tribunal

Patterson and the Department of Defence [2015] DHAAT 30 (26 June 2015)

File Number 2014/073

Re **James Walter Patterson**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms N. Isenberg (Presiding Member)
Air Commodore M. Lax (Retd)

Hearing Date 1 June 2015

DECISION

On 26 June 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that James Walter Patterson is not eligible for the award of the Pacific Star.

CATCHWORDS

DEFENCE AWARD – Pacific Star – period of service for eligibility –end of hostilities

LEGISLATION

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

Defence Force Regulations 1952 - reg 93C and Sch 3

Campaign Stars and the Defence Medal (1945 UK Command Paper)

United Kingdom Command Paper 6833 of June 1946

A Summary of the Conditions of the Award of the Campaign Stars, the Defence Medal and the War Medal (The Dedman Paper)

Veterans' Entitlement Act 1986

REASONS FOR DECISION

Introduction

1. The applicant, James Walter Patterson (Mr Patterson) a former member of the Royal Australian Air Force, seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the Pacific Star. Mr Patterson's application for the award had been made on the basis of his service in the RAAF between 1944 and 1947.
2. On 17 February 2014, Mr Patterson made a submission to the Tribunal's *Inquiry into the Refusal to Issue Entitlements, Withholding and Forfeiture of Defence Honours and Awards* (the Inquiry). As Mr Patterson's submission was outside the Inquiry's Terms of Reference he was invited to lodge an application for review of the decision to refuse his application for the Pacific Star and he did so on 17 May 2014.
3. In correspondence, Mr Patterson had initially sought the Pacific Star, the Returned from Active Service Badge (RASB) and acceptance that his Certificate of Discharge was 'a true and legal document'.

Tribunal Jurisdiction

4. Pursuant to s110VB(2) of the *Defence Act 1903* (the Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. 'Reviewable decision' is defined in s.110V(1) of the Act 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.
5. 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 Pacific Star, but not the RASB. Therefore the Tribunal has jurisdiction to review the decision only insofar as it relates to the Pacific Star.
6. The Tribunal's role is to conduct a review of the decision of the Directorate, consider Mr Patterson's application for the award afresh, and, applying the eligibility criteria, make a decision as to his entitlement to the Pacific Star.

Steps taken in the conduct of the review

7. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 17 July 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Patterson's application for review and requesting that he provide a report. On 17 September 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the

Directorate confirmed its position that Mr Patterson's service did not meet the eligibility criteria for the award he sought. On 3 October 2014, a copy of the report of the Directorate was forwarded to Mr Patterson for comment. Mr Patterson replied on 27 December 2014.

8. The Tribunal met on 1 June 2015 to consider the material provided by Mr Patterson and the Directorate. The Tribunal scheduled a hearing with Mr Patterson that day. At that hearing, the Tribunal heard oral evidence from Mr Patterson who appeared by telephone.

Eligibility criteria for the Pacific Star

9. The Pacific Star is a campaign medal of the British Commonwealth, established to recognise service in a number of operations during World War II and was established in May 1945.¹ The conditions for the Pacific Star are contained in a paper, published by the Committee on the Grant of Honours Decorations and Medals in Time of War, in May 1945 (1945 Command Paper). Paragraph 9 of the 1945 Command Paper dealt with the establishment of the eligibility criteria for the award of the Pacific Star and provided, relevantly:

9. (i) A Pacific Star has been instituted for entry into operational service in the Pacific theatre from the 8th December, 1941, until further notice.

...

10. In December 1948, The Hon. John J. Dedman, the Australian Minister of State for Defence, issued a *Summary of the Conditions of the Award of the Campaign Stars, The Defence Medal and the War Medal*.² Known generally as the Dedman Paper, it is also a summary of the provisions of the 1945 and 1946 Command Papers³. The Dedman Paper recognised World War II awards are granted for service between 3 September 1939 and 2 September 1945. Some awards such as the Atlantic Star and Africa Star have earlier end dates, but none are awarded after 2 September 1945. The Dedman Paper specifically states in relation to Closing Dates, at paragraph 109(a):

(a) Insofar as the Australian Forces are concerned, the closing date for service overseas from or outside the country of residence in non-operational areas not subject to enemy air attack or closely threatened will be 2nd September 1945.⁴

¹ Committee on the Grant of Honours Decorations and Medals in Time of War – Campaign Stars and the Defence Medal, HMSO, London, May 1945. Available at www.northeastmedals.co.uk/britishguide/hmsocampaign_stars_defence.htm

² A copy of the 'Dedman Paper' can be found on the following web site: <http://www.defence.gov.au/medals/Content/+040%20Campaign%20Medals/+100%20World%20War%20II/WW2%20Dedman%20Paper%20transcript.pdf>

³ United Kingdom Command Paper 6833 of June 1946.

⁴ Dedman Paper, paragraph 109(a) - Closing Dates.

Mr Patterson's Service Record

11. Mr Patterson's Service records shows that he enlisted in the Citizen Air Force on 14 June 1944 as an electrician and, after technical training, served at No. 2 Operational Training Unit in Mildura, Victoria. Subsequently he was transferred to the Royal Australian Air Force (RAAF). On 1 October 1945, he was posted to No 3 Personnel Depot for duty with the British Commonwealth Occupation Force (BCOF) Japan.

12. Mr Patterson was then posted overseas, first to Labuan in Borneo and then to Japan during the following periods:

- a. Transit from Australia, through Morotai, Netherlands East Indies (now called Indonesia) to Labuan, British North Borneo (now called East Malaysia) from 7 to 29 October 1945 to No 81 (Fighter) Wing, a period of 22 days; and
- b. Service at Labuan with No 81 (Fighter) Wing, from 29 October 1945 to 7 January 1946, a period of two months and 9 days; and
- c. Service in Japan with No 381 (Base) Squadron, BCOF from 7 January 1946 to 2 April 1947, a period of one year, two months and 26 days.

13. Upon return to Australia on 2 April 1947, Mr Patterson was posted to the Transit, Demobilisation and Recruiting Section (TD&RS) at RAAF Base Laverton and was discharged on 13 January 1947.

14. For his service, Mr Patterson was awarded the War Medal 1939-45; the Australia Service Medal 1939-45; the Australian Service Medal 1945-75 (ASM 1945-75) with Clasps 'S.W. PACIFIC' and 'JAPAN'; the Australian Defence Medal and the General Service Badge.

Consideration and Findings

15. In support of his application for review, Mr Patterson made written submissions dated 17 February 2014, 27 December 2014 and 9 February 2015, upon which he was invited to expand at the hearing.

16. In his submission to the Tribunal dated 17 February 2014 Mr Patterson sought to be awarded, in addition to the Pacific Star, 'either the 1945-75 Active Service Medal or the Active Service (Japan) Medal'. Mr Patterson was informed that the Tribunal has no jurisdiction to review his claim for the ASM 1945-75 or the Australian Active Service Medal 1945-75 (AASM 1945-75) with Clasp 'JAPAN' as he had not had these claims rejected by Defence. The Tribunal however noted that Mr Patterson already has the ASM 1945-75 with Clasp 'S.W. PACIFIC' and Clasp 'JAPAN' which Defence had previously assessed as his entitlement. The Tribunal

also advised Mr Patterson that the AASM 1945-75 with Clasp 'JAPAN' does not exist.

17. Mr Patterson also sought to have his Certificate of Discharge issued sometime in 1947 accepted as 'a true and legal document' as it shows that he qualified for the RASB. At the hearing, Mr Patterson sought to use this annotation on his Certificate of Discharge to obtain the RASB and thereby argue for the Pacific Star. The Tribunal noted that correspondence from the Director of Honours and Awards to Mr Patterson dated 13 December 2010 advised him that he did not qualify for the RASB and that the entry on his Certificate of Discharge was in error. Regardless, Mr Patterson was informed at the hearing that the Tribunal had no power to comment on the accuracy of or change his Certificate of Discharge, regardless of the outcome of the review.

18. The Directorate had reached its decision in relation to the Pacific Star on the basis that from his Service Record, Mr Patterson did not have operational service in the Pacific theatre between 8 December 1941 and 2 September 1945.

19. Mr Patterson disputed aspects of his Service record. He said that it was on about 3 October 1945 that he arrived in Morotai after the Liberator bomber in which he travelled refuelled in the Philippines. He remained in Morotai for about 2 weeks before travelling by Ventura bomber to Labuan, joining 22RSU on 26 October 1945. Subsequently, he thought in March 1946, he joined the BCOF in Japan, where he remained until April 1947. He did not dispute that he did not depart Australia until October 1945. The Tribunal accepts that Mr Patterson served in Morotai, Labuan and in Japan from October 1945 until his return to Australia in April 1947.

20. Mr Patterson's main contention was that he objected to the use of 2 September 1945 as the end of hostilities and the cut-off date for the Pacific Star. In his submissions he acknowledged that the Japanese were ordered to cease hostilities as early as 16 August 1945; however he contended that it took some time - up to 12 days - for those orders to be received throughout the Japanese forces. He referred to surrender ceremonies taking place as late as 29 October 1945 and he understood that 6 Japanese soldiers in Morotai had only surrendered in March 1946. In any event, he submitted, there remained a 'state of war' until the peace treaty with Japan was actually signed in 1952.

21. He noted that during his deployment to Labuan and Morotai he was armed as the situation remained dangerous. Further, he noted that on the return trip to Australia aboard HMAS *Manoora*, there was still a risk because of Japanese mines. He observed that his pay records show he was paid at an increased rate for service 'in a war zone'.

22. Mr Patterson also stated that, for the purposes of the *Veterans' Entitlement Act 1986* (VEA), 29 October 1945 is regarded as the end date of World War II. In that regard, during the hearing, Mr Patterson was informed that although the Department of Veterans' Affairs may have agreed he had qualifying service for pension entitlement purposes, this did not impact on his eligibility for medallic recognition. Qualification dates for medallic recognition at the end of World War II were as stated in the Dedman Paper not the VEA. The two schemes - veterans' pension entitlements and medallic recognition - are entirely separate.

23. The Tribunal carefully considered all the material before it, in particular, Mr Patterson's submissions, the Defence submission and the eligibility criteria for the Pacific Star. The Tribunal accepts that Mr Patterson may have been exposed to some danger during his service overseas. However, the criteria for eligibility for awards, including the Pacific Star, are strict and the Tribunal does not have any discretion in respect of those criteria. The Dedman Paper was clear that World War II awards were to be granted only for service between 3 September 1939 and 2 September 1945. Accordingly, the Tribunal must affirm the decision under review.

DECISION

24. The decision of the Directorate of Honours and Awards of the Department of Defence that James Walter Patterson is not eligible for the award of the Pacific Star is affirmed.