



Australian Government

Defence Honours and Awards Appeals Tribunal

Andrews and the Department of Defence [2015] DHAAT 39 (7 August 2015)

File number (s) 2014/077

Re **Mr Michael John Andrews**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr R. Rowe PSM (Presiding Member)
Brigadier M. Bornholt AM (Retd)

Hearing Date 31 July 2015

DECISION

On 7 August 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Michael John Andrews is not eligible for the award of the Vietnam Logistic and Support Medal (VLSM).

CATCHWORDS

DEFENCE AWARDS – refusal to recommend the award of the Vietnam Logistics and Support Medal

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)
Defence Force Regulations 1952 – Regulation 93 C and Schedule 3
Defence Legislation Amendment Act (No1) – Schedule 1 Part 2
Commonwealth of Australia Gazette (CAG) No S79, Vietnam Logistic and Support Medal Regulations, dated 10 March 1993
CAG No 251, Vietnam Logistic and Support Medal Regulations, Declaration under Regulation 3, dated 13 August 1993
Commonwealth of Australia, Vietnam Logistic and Support Medal Regulations Amendments 2013, dated 18 January 2013

REASONS FOR DECISION

Introduction

1 The applicant, Mr Michael John Andrews (Mr Andrews) 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 Vietnam Logistic and Support Medal (VLSM). On 20 June 2008 Mr Andrews made an application to the Directorate for the award of the VLSM. On 1 July 2008 the Directorate advised Mr Andrews that he did not qualify for the award of the VLSM as he had previously been issued with the Vietnam Medal. On 18 April 2014 Mr Andrews applied to the Tribunal for a review of the 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. 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 VLSM. 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 him of Mr Andrews' application for review and seeking a report on the reasons for the original decision and the provision of relevant material that was relied upon in reaching the decision. On 17 September 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 Andrews for comment on 3 October 2014. On 4 May 2015 Mr Andrews responded and provided certified copies of his Royal Australian Air Force (RAAF) log book entries.

4. The Tribunal met on 23 July 2015. During its meeting the Tribunal considered the material provided by Mr Andrews and the Directorate. Mr Andrews was subsequently invited to give oral evidence (by telephone) to the Tribunal. On 31 July 2015 the Tribunal held a Hearing with Mr Andrews.

Legal Authority for the Award of the Vietnam Logistic and Support Medal

5. The legal authority for the grant of the VLSM is set out in the following documents:

- *Commonwealth of Australia Gazette (CAG) No S79, Vietnam Logistic and Support Medal Regulations*, dated 10 March 1993
 - which sets out, inter alia, the “area of operations” (Vietnam), the “relevant period” and the conditions for the award of the Medal.
- *CAG No 251, Vietnam Logistic and Support Medal Regulations*, Declaration under Regulation 3, dated 13 August 1993
 - which amends the area of operations for eligibility for the Medal.
- *Commonwealth of Australia, Vietnam Logistic and Support Medal Regulations Amendments 2013*, dated 18 January 2013
 - which relates to service in Thailand.

Eligibility Criteria for the Vietnam Logistic and Support Medal

6. The eligibility criteria, including the qualifying period, for the Vietnam Logistic and Support Medal as contained in *CAG No S79, Vietnam Logistic and Support Medal Regulations, dated 10 March 1993* are:

- “relevant period” means the period from 29 May 1964 to 27 January 1973, both days included”.
- **“Conditions for the award of the Medal**
 4. (1) The Medal may be awarded for service of one day or more in the area of operations of Vietnam during the relevant period:
 - (a) as a member of the crew of a ship or aircraft operating in support of the Australian Armed Forces; or
 - (b) while attached to a unit or organisation operating in support of the Australian Armed Forces; or
 - (c) while attached to, or serving with, a unit of the Australian Armed Forces or allied forces as an observer.
 - (2) The Medal may be awarded to persons who at the time of their service:
 - (a) were members of the Australian Armed Forces; or
 - (b) were integrated with the Australian Armed Forces.
 - (3) **A person who has been awarded the Vietnam Medal, or who is eligible for the award of the Vietnam Medal, is not eligible for the award of the Vietnam Logistic and Support Medal.** [emphasis added]
 - (4) The Medal may be awarded posthumously.”

Mr Andrews' Service Record

7. Mr Andrews enlisted as an officer in the Permanent Air Force (PAF) on 1 July 1964. He was posted to 36 Squadron, RAAF Base Richmond, from 1 November 1965 to 3 January 1968. Unit Personnel Occurrence Reports confirm that Mr Andrews was a member of the C-130A flight crew on aircraft deployments to Vietnam in support of operations on the following dates:

- 12 September 1966 to 25 September 1966
- 28 April 1967 to 14 May 1967
- 29 September 1967 to 3 October 1967; and
- 5 December 1967 to 10 December 1967.

8. Mr Andrews was posted to 9 Squadron in Vietnam from 4 February 1969 to 24 December 1969. This squadron flew UH1H helicopters in support of ground operations.

9. Mr Andrews resigned from the RAAF on 30 September 1977 with the rank of Squadron Leader, having served for 13 years.

10. Mr Andrews has been issued with the following medals and badge for his service:

- Australian Active Service Medal with Clasp 'VIETNAM'
- Vietnam Medal
- Australian Service Medal 1945-75 with Clasp 'PNG'
- Australian Defence Medal
- The Republic of Vietnam Campaign Medal
- Returned from Active Service Badge

Mr Andrews' Submission

11. In his written submission dated 18 April 2014 Mr Andrews stated:

'I served with No.36 Squadron, RAAF, from 1965 to 1967, as a pilot, and met the criteria for the award of this medal, with frequent missions to South Vietnam in support of our forces. In late 1967, I was posted to helicopters and subsequently served in No.9 Squadron during 1969 with the Australian Task Force, for which service I was awarded the Vietnam Medal and the Vietnam Campaign Medal.

Several years ago, I inquired about the subject medal to Defence Awards, believing that I was eligible with my earlier service in No.36 Squadron, but was informed that a ruling or edict had been made that those who received the "in-country" medals (i.e. the Vietnam and Vietnamese Campaign Medals) were not to get the Vietnam Logistic and Support Medal as well, although they met the requirements for the awarding of it. I believe this is illogical and unfair, as the medal was for distinctly different service at another time and in another role. Whether this was done on economy grounds or for any other purpose, I did not receive a coherent or reasonable response to my request for an explanation.'

The Directorate's Submission

12. The Defence submission, dated 17 September 2014, concludes that, after re-assessment of all the material questions of fact, including relevant documentation, Mr Andrews is not eligible for the award of the VLSM because he had previously been awarded the Vietnam Medal.

The Tribunal's Consideration

13. The Tribunal carefully considered all the material placed before it. In the Hearing with Mr Andrews, held on 31 July 2015, Mr Andrews confirmed the accuracy of his service records, including his separate periods of service with 36 Squadron and 9 Squadron, and that he had been awarded the Vietnam Medal on 24 July 1970.

14. Mr Andrews said his request for a review of Defence's decision was on the basis that he considered he had met the criteria for the award of the VLSM through his service with 36 Squadron at a different period of time to his service with 9 Squadron.

15. The Tribunal explained the eligibility criteria and the qualifying period for the VLSM as set out in the relevant documentation (paragraph 6 above). In particular, the Tribunal drew attention to regulation 4 of the 10 March 1993 Regulations, which stipulated that 'A person who has been awarded the Vietnam Medal, or who is eligible for the award of the Vietnam Medal, is not eligible for the award of the Vietnam Logistic and Support Medal'. The regulation was clear that a person could not be awarded both the Vietnam Medal and the VLSM. Moreover, this regulation had been confirmed in the 18 January 2013 Regulations. The Tribunal informed Mr Andrews that, in its view, as he had previously been awarded the Vietnam Medal he was not eligible for the VLSM.

16. Mr Andrews said that when the Tribunal had accepted his application for a review of Defence's decision he thought this indicated that there might be some prospect of an interpretation of the relevant regulations which would enable him to be awarded the VLSM in relation to his service with 36 Squadron during the period 1966 to 1967. He said he now understood that the Regulations were unequivocal and there could not be any exceptions made to them.

Finding

17. For the reasons set out above, the Tribunal finds that Mr Andrew is not eligible for the Vietnam Logistic and Support Medal as he does not meet the eligibility criteria for the award. Accordingly the Tribunal finds that the decision of the Directorate is the correct decision.

DECISION

18. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Michael John Andrews is not eligible for the award of the Vietnam Logistic and Support Medal.