



Australian Government

Defence Honours and Awards Appeals Tribunal

Wasson and the Department of Defence [2015] DHAAT 42 (30 September 2015)

File Number(s) 2015/010

Re **Mr Norman Wasson**
Applicant

And **Department of Defence**
Respondent

Tribunal **The Hon Peter Lindsay (Presiding Member)**
Air Vice-Marshal John Quaife AM (ret'd)

Hearing Date 24 September 2015

DECISION

On 30 September 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Norman Wasson is not eligible for the award of the Australian General Service Medal for Korea.

CATCHWORDS

DEFENCE AWARD – Australian General Service Medal for Korea

LEGISLATION

Defence Act 1903 as amended – Sections 110T, 110V(1), 110 VB(2)

Defence Force Amendment Regulations 2011 (No. 1) – Regulation 93C and Schedule 3 Part 2

Commonwealth of Australia Gazette S20, dated 3 March 2010, Letters Patent and Regulations for the Australian General Service Medal for Korea.

REASONS FOR DECISION

Introduction

1. The applicant, Mr Norman Wasson (Mr Wasson), 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 General Service Medal for Korea (AGSM Korea).
2. On 3 June 2014, Mr Wasson applied to the Directorate for the award of the AGSM Korea.
3. The Directorate records indicate that Mr Wasson was advised by letter on 2 February 2015 that, on the information available, he was not eligible for the award. He was invited to submit any further information relevant to his claim. Mr Wasson did not provide any further information. On 26 March 2015 the Directorate wrote again to Mr Wasson confirming their assessment that he was not eligible for the AGSM Korea because he was not in Korea during the qualifying dates for the award.
4. After receipt of the initial response from the Directorate, Mr Wasson applied to the Tribunal on 16 February 2015 for a review of his eligibility for the AGSM Korea.

Tribunal Jurisdiction

5. The Tribunal has jurisdiction to hear and determine Mr Wasson's application for review (see ss 110V, 110VA and 110VB(2) of the *Defence Act 1903* and Regulation 93C of the *Defence Force Amendment Regulations 2011* (No 1). 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

6. On 7 May 2015, in accordance with the *Defence Honours and Awards Appeal Tribunal's Procedural Rules 2011 (No1)*, the Tribunal wrote to the Secretary of the Department of Defence advising it of Mr Wasson's application for review and invited Defence to make a submission and provide the Tribunal with any material on which it sought to rely. A written submission from the Directorate was provided on 29 June 2015.
7. On 9 July 2015, Mr Wasson was provided with a copy of the Directorate's written submission and he was invited to respond to this and submit any further material he may have in support of his claim for the award of the AGSM Korea. Mr Wasson's comments were received by the Tribunal on 7 August 2015.
8. The Tribunal met on 24 September 2015. During its meeting the Tribunal considered the material provided by Mr Wasson and the Directorate. It also heard oral evidence from Mr Wasson who had agreed to be available by telephone that afternoon.

Eligibility Criteria for the AGSM Korea

9. The eligibility criteria for awarding the AGSM Korea are contained in the *Australian General Service Medal for Korea Regulations 2009* – dated 3 March 2010.

Declaration of prescribed operation

The operation to which these regulations applies is participation in Australian naval, military or air force operations in South Korea, including any location within 161 kilometres seaward from the coast of South Korea, in the period starting on 28 July 1953 and ending at the end of 19 April 1956.

Award of Medal

(1) *The medal may be awarded to a person who served in the prescribed operation in accordance with this regulation.*

(2) *The person must have served in any of the following capacities:*

(a) a member of the Naval, Military or Air Forces of the Commonwealth;

(b) a member of the Naval, Military or Air Forces of the Commonwealth who was contributing to the defence force of another country under secondment or exchange;

(c) a person included in a class of persons specified, in writing, by the Minister for this paragraph.

(3) *The person must have served in that capacity, or in those capacities, or a period of at least 30 days (continuous or not) unless subregulation (5) applies.*

Defence records of Mr Wasson's service

10. Defence records of Mr Wasson's service state he enlisted in the Citizen Military Forces on 5 July 1948 for a two year enlistment period. He served almost 5 years before discharge.

11. On 22 February 1954 Mr Wasson enlisted with the Australian Regular Army (ARA) with an initial enlistment period of 6 years. In June 1954, he was transferred to the Royal Australian Signals Regiment. On 20 June 1956, Mr Wasson was posted for service overseas to be part of the Commonwealth Contingent Korea (CCK). He returned home to Sydney on 24 July 1957.

12. In Korea he served as a Telegraph Mechanic with the Royal Australian Signals Squadron attached to the CCK.

13. On return to Australia, Mr Wasson continued his service and achieved the rank of Warrant Officer Class 2. On 21 February 1966 he was discharged from the ARA having served 12 years full time.

14. On 22 February 1966, Mr Wasson enlisted in the Regular Army Emergency Reserves from which he was discharged on 21 February 1970 having served a further four year period.

15. For his service, Mr Wasson has been issued with the following medals:

Australian Service Medal (ASM)1945-75 with Clasp 'Korea' and
Australian Defence Medal

Summary of the claims of Mr Wasson

16. In his written submission requesting a review of the Directorate's decision, Mr Wasson said that the service of those who served in the post armistice period has been ignored. Because of the small numbers involved, he felt post armistice service should be recognised. He observed that the Korean Government recognised his service when he was awarded their "Ambassador of Peace" medal.

17. During the Tribunal Hearing Mr Wasson noted that, while hostilities had ceased when he was posted to Korea, the war had not ended and Korea was "like an armed camp".

18. In his 4 August 2015 response to the Directorate's submission, he said that:

...the denial of the AGSM Korea was to be expected due to the existing regulation'.

In his oral evidence Mr Wasson reconfirmed his view that, under current regulations, he has no entitlement to the AGSM Korea.

19. The basis of Mr Wasson's submission is to request 'a review of the period of service that is currently used for the granting of this award'. Mr Wasson believes his service entitles him to the same status as those who served before 19 April 1956.

20. Mr Wasson told the Tribunal that New Zealand recognises all service in the period 1953 to 1957 and he asked why are Australian forces who served in this period treated differently.

Summary of the Defence Submission

21. In its written submission, the Directorate reiterated that which it had said in its decision, namely Mr Wasson's service records confirmed that he was not in Korea during the qualifying dates for the AGSM Korea. He served from 26 June 1956 to 19 July 1957. This period does not fall inside the prescribed dates of 28 July 1953 and 19 April 1956. Therefore Mr Wasson is not eligible for the award of the AGSM Korea.

22. Regrettably, the statement of reason letter that was sent to Mr Wasson contained an error in it. A copy of the incorrect regulation was provided referring to the *Commonwealth of Australia Gazette No. S20, Australian Defence Medal*

Regulations 2006 - dated 30 March 2006 instead of the *Commonwealth of Australia Gazette No. S20, Australian General Service Medal for Korea Regulations 2009* – dated 3 March 2010. This may have caused confusion or hope for Mr Wasson.

The Tribunal's Findings

23. There is a clear distinction between activity in the period prior to 19 April 1956 and activity in the period post that date. This date coincides with the withdrawal of Australian combat forces and hence the end of their associated duties, and the establishment of the Commonwealth Contingent Korea. The CCK was a new construct established to cover a revised concept for operations reflecting the nature of situation at that time.

24. The Crawford Review¹ recommended:

...if there are to be even-handedness and fairness in the recognition of all 1945–1975 service, it needs to be recognised that conditions experienced during the more demanding service in Korea during the period from 28 July 1953 until 19 April 1956 warrant recognition beyond the Australian Service Medal 1945–75 with clasp 'KOREA'.

25. The Crawford Review recommendation is reflected in the Australian General Service Medal for Korea Regulations 2009. Service prior to 19 April 1956 is recognised by the AGSM Korea and the ASM 1945-75 with Clasp 'Korea', while service with the CCK is recognised by the award of the ASM Korea only. Mr Wasson's service in Korea has been recognised, but the nature of that service does not provide eligibility for further recognition through award of the AGSM Korea.

26. In conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the AGSM Korea. Accordingly, in order for Mr Wasson to be eligible for the award, he must have met the prescribed minimum period of service of 30 days during the period 28 July 1953 to 19 April 1956.

27. Mr Wasson was posted to Korea from 26 June 1956 to 28 July 1957. Thus he was not in Korea during the qualifying period for the award of the AGSM Korea.

28. The Tribunal has no power to review the period of service that is currently used for the granting of this award.

DECISION

29. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Norman Wasson is not eligible for the award of the Australian General Service Medal for Korea.

¹ *Report of the Post-Armistice Korean Service Review*, Rear Admiral Ian Crawford AO, AM (Mil), RAN (Retd), December 2005.