



Australian Government

Defence Honours and Awards Appeals Tribunal

Greaves and the Department of Defence [2015] DHAAT 46 (25 September 2015)

File Number (s) 2014/081

Re **Mr Arthur Greaves**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Naida Isenberg (Presiding Member)
The Hon Peter Lindsay

Hearing 25 September 2015

DECISION

On 25 September 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Greaves is not eligible for the award of the Vietnam Logistic and Support Medal.

CATCHWORDS

DEFENCE AWARDS - previously issued with the Vietnam Medal - 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 93C and Schedule 3
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

Decision under Review

1. The applicant, Mr Arthur Greaves (Mr Greaves) 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 14 July 2013 Mr Greaves applied to the Directorate for the award of the VLSM. On 22 December 2013 the Directorate informed Mr Greaves that he did not qualify for the award of the VLSM as he had previously been issued with the Vietnam Medal. On 31 July 2014 Mr Greaves applied to the Tribunal for a review of the Directorate's decision.

The Tribunal's Jurisdiction

2. Pursuant to s.110VB(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. *Reviewable decision* is defined in s.110V(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 the Directorate's decision.

Conduct of the Review

3. In accordance with the Tribunal's Procedural Rules, the Secretary of the Department of Defence was informed of Mr Greaves' application for review and a report in relation to the decision under review requested. The Directorate, on behalf of the Secretary, provided the Tribunal with a report which was then forwarded to Mr Greaves for comment. Mr Greaves did not provide further comment.

4. On 25 September 2015 the Tribunal held a Hearing with Mr Greaves, at which he appeared by telephone.

The Vietnam Logistic and Support Medal: legal framework

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.
- *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.

Eligibility Criteria for the Vietnam Logistic and Support Medal

6. The eligibility criteria for the Vietnam Logistic and Support Medal are:

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 [Tribunal's emphasis]***

(4) *The Medal may be awarded posthumously.*

"Relevant period" means the period from 29 May 1964 to 27 January 1973, (inclusive).

Mr Greaves' Service Record

7. Mr Greaves served in the Royal Australian Air Force (RAAF) from 19 January 1959 to 29 January 1982. He was attached to 79 SQN, RAAF Ubon from:

- 13 January 1966 to 10 March 1966
- 6 April 1967 to 1 June 1967
- 27 December 1967 to 21 February 1968

8. Subsequently he served with 9 Squadron RAAF in Vietnam from 18 February to 18 December 1970.

9. In recognition of his service Mr Greaves has been issued with the following medals and badge:

- *Australian Active Service Medal 1945-75 with Clasps 'MALAYSIA', 'THAILAND' and 'VIETNAM'*
- *Vietnam Medal*
- *General Service Medal 1962 with Clasp 'BORNEO'*
- *Australian Service Medal 1945-75 with Clasp 'SE ASIA'*
- *Defence Force Service Medal with First Clasp*
- *National Medal*
- *Australian Defence Medal*
- *Republic of Vietnam Campaign Medal*
- *Pingat Jasa Malaysia*
- *Returned from Active Service Badge*

Consideration

10. The Directorate's submission, in summary, was that Mr Greaves is not eligible for the award of the VLSM because he had previously been awarded the Vietnam Medal (VM).

11. At the Hearing Mr Greaves confirmed the accuracy of his service records, and, his medallic recognition, in particular, that he had previously been awarded the VM. Mr Greaves acknowledged that he was not entitled to the VLSM but contended that it was unfair that he, and others, are not eligible for the award. He considered he had met the criteria for the award of the VLSM through his service in Ubon, which was for a different period of time to his service in Vietnam for which he was awarded the VM.

12. The Tribunal explained the relevant eligibility criteria for the VLSM. In particular, the Tribunal drew attention to Regulation 4 of the 10 March 1993 Regulations, which provides 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.

13. The regulation is clear that a person cannot be awarded both the VM and the VLSM. In this the Tribunal has no discretion.

Finding

14. For the reasons set out above, the Tribunal finds that Mr Greaves 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

15. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Greaves is not eligible for the award of the Vietnam Logistic and Support Medal.