



Australian Government

Defence Honours and Awards Appeals Tribunal

Houston and the Department of Defence [2016] DHAAT 04 (7 March 2016)

File Number(s) 2014/060

Re **Mr Russell Wayne Houston**
Applicant

And **Department of Defence**
Respondent

Tribunal The Hon Peter Lindsay (Presiding Member)
Mr Richard Rowe PSM

Hearing Date 24 September 2015

DECISION

On 7 March 2016 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Russell Wayne Houston is not eligible for the award of the International Force East Timor Medal (INTERFET Medal).

CATCHWORDS

DEFENCE AWARD –International Force East Timor Medal

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 No S159 dated 30 March 2000 - INTERFET Medal Letters Patent and Regulations.

Commonwealth of Australia Gazette No S208 dated 17 October 2008 - Governor-General determination on the INTERFET Medal.

Commonwealth of Australia Gazette No S187 of 13 November 2009 - Governor-General declaration and determination of INTERFET operation.

Delegation by CDF under Regulation 6 of the International Force East Timor Medal dated 24 August 2000.

REASONS FOR DECISION

Introduction

1. The applicant, Mr Russell Wayne Houston (Mr Houston), 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 International Force East Timor Medal (INTERFET Medal).
2. Mr Houston lodged an application concerning his eligibility for the award of the INTERFET Medal on 30 October 2006.
3. Defence Honours and Awards records indicate that Mr Houston was advised by letter that he was not eligible for the INTERFET Medal. However a copy of this letter could not be located. In late 2013 Mr Houston contacted the Federal member for Corangamite, Ms Sarah Henderson MP who referred his medal eligibility enquiry to the Hon Darren Chester MP, Parliamentary Secretary to the Minister of Defence. The Minister responded on 12 February 2014 confirming that Mr Houston was not eligible for the award of the medal.
4. On 1 May 2014, Mr Houston applied to the Defence Honours and Awards Appeals Tribunal for a review of the unfavourable decision on his application for the INTERFET medal.

Tribunal Jurisdiction

5. 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 INTERFET Medal. Therefore the Tribunal has jurisdiction to review decisions in relation to this award.

Conduct of the Review

6. On 22 May 2014, 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 informing him of Mr Houston's application for review and requesting that he provide a report and copies of any material on which the Department sought to rely in coming to its decision. A written submission was received from the Directorate, on behalf of the Secretary, on 17 July 2014.
7. On 24 July 2014, Mr Houston 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 might have in support of his claim for the award of the INTERFET Medal.

The Tribunal received no response so followed up by letter on 15 October 2014 and by email on 1 March 2015. On 2 March 2015, Mr Houston provided a copy of his response letter dated 20 October 2014 which had not been received by the Tribunal.

8. The Tribunal met on 24 September 2015. During its meeting the Tribunal considered the response provided by Mr Houston and the Directorate. The Tribunal also considered Mr Houston's full service and Defence medical records. The Tribunal heard oral evidence from Mr Houston.

9. Following the hearing, Mr Houston provided the Tribunal with two letters he had received from his previous psychiatrist, Dr Martin van der Linden.

10. In late September 2015, the Tribunal sought additional information from the Department of Defence on whether there was any interpretation or precedent on the meaning to be given to the phrase "other disability due to service". This was received from Defence in October 2015. (See paragraph 26)

11. The Tribunal also wrote to Commander Nick Tate in January 2016 seeking further information on the early departure from East Timor by then Chief Petty Officer Houston. Commander Tate's response to this request was received on 18 January 2016 (see paragraph 34) and was sent to Mr Houston for comment on 18 January 2016. Mr Houston provided his comments on 2 February 2016 (see paragraph 35).

Eligibility Criteria for the INTERFET Medal

12. The Letters Patent for the INTERFET Medal were originally gazetted in the *Commonwealth of Australia Gazette S159* of 30 March 2000. Under sub-regulation 5(3) of the Regulations, the Governor General determined that:

- a. *the area comprising East Timor and the sea adjacent to East Timor out to a distance of 12 nautical miles from the low water mark to be the operational area of East Timor for the INTERFET Operation (the Operation);*
- b. *the period that commenced on 16 September 1999 and ended on 10 April 2000 to be the period of operations for the Operation;*
- c. *that the conditions for the award of the INTERFET Medal are:*
 - i. *the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted as a member of the Australian element of the Operation for 30 days, or for periods amounting in the aggregate to 30 days.*

13. The Regulations also contained a further unnumbered provision:

PROVIDED THAT where a member does not complete the determined period of operations required by subparagraph (c)(i) owing to his or her death, evacuation due to illness, injury or other disability due to service, the member will be deemed to have completed that period of operations.

Defence records of Mr Houston's service

14. Defence records of Mr Houston's service state he enlisted in the Permanent Naval Forces (PNF) on 28 July 1976. His 20 years of service in the Permanent Naval Force ended in 1996 after which he enlisted in the Standby Australian Naval Reserve (ANR).

15. Subsequently, as a member of the ANR, he undertook further continuous full time service (CFTS) on several occasions. On 9 January 2000 he transferred from ANR to CFTS and was force assigned to *OP Warden* in East Timor on 21 January 2000. After 100 Days service¹, his expected return date to Australia was 17 April 2000. However, he was returned to Australia on 9 February 2000 apparently for compassionate reasons related to the illness of his step father. There was no Defence record of the reasons for his return to Australia.

16. On 2 April 2000, Mr Houston was discharged to shore and transferred, on 3 April 2000, to the ANR. On 18 April 2000, Mr Houston re-enlisted with the Navy Reserves and rendered service until his medical discharge on 10 June 2006 having completed 30 years of military service.

17. For his service, Mr Houston has been issued the following medals:

- Australian Active Service Medal with clasp 'EAST TIMOR'
- Defence Long Service Medal with first and second clasps
- Australian Defence Medal
- Returned from Active Service Badge

Summary of Mr Houston's claims

18. In his letter of 1 May 2014, Mr Houston states:

"I am asking that I be granted the INTERFET Medal as my service was cut short due to my evacuation due to illness due to service".

"The reasons for my return to Australia had been in my best interests as my mental health was unsuitable to continue as an active member of INTERFET".

"Working in a war like environment and having such grave news given to me affected my mental health".

Mr Houston contends that his mental health was aggravated due to his service in a war like environment. He claims that he was:

"returned to Australia with no option to return to complete my service due to mental health issues that was aggravated whilst on active service".

¹ Defence Personnel Executive Conditions of Service Agreement CTFS, Signature Proforma, 4 January 2000

Mr Houston also states that he is “under constant mental health care”.

19. In his oral evidence on 24 September 2015, Mr Houston outlined the circumstances leading up to his return to Australia. Part of his duties at the Australian National Command Support Centre was to manage phone calls from family of serving members and to arrange members return to Australia. On the evening of 8 February 2000, he answered a phone call from Australia. The caller was his wife informing him that his step father was critically ill. He was so shocked and emotional that he asked another member to speak with his wife.

Mr Houston advised the Tribunal that, later that evening, he spoke with his Commanding Officer, (then) Lieutenant Commander (LCDR) Nick Tate, who had said “you need to go home”. The CO had said he (Houston) was “not suitable to be in-country”. He did not want him back given his mental state. It was better that he serve in Australia where his state of mind would not be a problem.

The Tribunal was advised that the next day Mr Houston was “evacuated” back to Australia. He and another member were the only passengers on the C130 aircraft.

20. In the hearing, Mr Houston spoke to the Tribunal about the family trauma he has suffered while a serving member particularly the loss of close relatives.

21. The Tribunal noted that Mr Houston’s posting order was subject to medical fitness being confirmed prior to deployment². He was found to be fit and well. The Tribunal asked Mr Houston to explain why there was no indication of any mental illness. He said that he did go to Timor with an existing mental health issue but he had not reported this. He pointed to Major-General John Cantwell who said³ it is built into the psyche of the warrior to hide problems, particularly psychological ones. In addition, fears for the impact on their military careers of reporting these problems further fuels this reluctance. So Mr Houston said he never reported his mental health issues. He said his CO in East Timor did not know he had a mental health issue.

22. In response to a request from the Tribunal, Mr Houston subsequently provided copies of two letters from his previous psychiatrist Dr Martin van der Linden.

23. The essence of Mr Houston’s written and oral submissions is that his return to Australia was because of his mental health illness issues which were aggravated due to service and that his inability to return to Timor to complete his full period of service was because of those issues. He therefore contends that his eligibility for the INTERFET Medal is covered by the special provision in the regulations viz:

*PROVIDED THAT where a member does not complete the determined period of operations required by subparagraphs (c)(i), (ii), (iii), (iv), (v) or (vi) owing to his or her death, **evacuation due to illness, injury or other disability due to service**, the member will be deemed to have completed that period of operations. (emphasis added)*

² Defence Medical Examination Record Mr Russell Wayne Houston, 4 January 2000.

³ Report: <http://www.smh.com.au/comment/defence-leadership-on-soldier-welfare-comes-from-the-top-20130224-2ezhu.html> - Professor David Forbes 25 February 2013.

Summary of Defence's Submissions

24. In its submission, Defence advised the Tribunal that, in accordance with the regulations governing award of the INTERFET medal, to qualify for the INTERFET medal a member is required to have rendered service as such a member of the Australian element of the Operation for 30 days, or for periods amounting in aggregate to 30 days. The regulations allow for the medal to be awarded to members who did not complete the determined period of service in the event of death, evacuation due to illness, injury or other disability due to service.

25. Defence records show Mr Houston served in East Timor on Operation WARDEN from 21 January 2000 to 9 February 2000, giving him 20 days qualifying service. The Directorate, in assessing Mr Houston for the INTERFET medal, could not find any evidence to support the claim that he was evacuated from the qualifying area due to illness, injury or other disability due to service.

26. As mentioned above, additional information was sought from Defence in relation to whether there was any interpretation or precedent on the meaning to be given to the phrase "other disability due to service" The information provided⁴ was that:

The clause is not unique to the INTERFET Medal, nor is it unique to Defence awards or awards instituted under the Australian honours and awards system.

In the case of the INTERFET Medal, the relevant clause refers to a member's "death, evacuation due to illness, injury or other disability due to service". It is a provision common to medal determinations for clasps to the Australian Active Service Medal and Australian Service Medal (pre-1975 and post-1975) as well as for Australian campaign medals.

Similar provisions are also found in other Australian non-Defence awards. For example, sub-regulation 4(4) of the original Humanitarian Overseas Service Medal Regulations 1999, now reflected in sub-regulation 6(4) of the Humanitarian Overseas Service Medal Regulations 2011, provides that the Secretary may treat as eligible service a period of service that is shorter than the qualifying period if the person's service was terminated because of "death, disability or illness of the person due to that service".

The provision is also found in determinations made under the Police Overseas Service Medal Regulations. For example, the determination for the Police Overseas Service Medal for service with the Regional Assistance Mission, Solomon Islands, may be awarded if the prescribed service was terminated because of the "death of the member or person, illness or injury, or other disability due to service".

⁴ By Email Friday 10 October 2015 Brett Mitchell Research Officer Directorate of Honours and Awards Department of Defence.

The provision is also found in the regulations of medals instituted under the Imperial honours and awards system. Some examples that date back to World War II are:

- *Rhodesia Medal (Command Paper 7997) - "death or evacuation owing to wounds or other disability due to service".*
- *Vietnam Medal (Royal Warrant) - "death or evacuation owing to wounds or other disability due to service".*
- *Korea Medal (Command Paper 8314) - "death or evacuation owing to wounds or other disability due to service".*
- *Naval General Service Medal / General Service Medal with Clasp "MALAYA" (Command Paper 7907) - "death or evacuation owing to wounds or other disability due to service".*

World War II Campaign Stars and Medals (Command Paper 6833)

- *Campaign stars, "by death, wounds or other disability due to service".*
- *War Medal 1939-45, "by death, wounds or other disability attributable to service."*

27. Defence also advised⁵ that it was not able to identify any specific case where the "other disability due to service" provision has been used in relation to the granting of an award. However, they were aware of a few past examples where awards were granted for reason of a member's illness or injury.

28. The information provided by Defence regarding "other disability due to service" was sent to Mr Houston on 22 February 2016 for his information and comment. Mr Houston responded on 27 February 2016 providing the Tribunal with additional comments in support of his application.

Tribunal Consideration

29. The Tribunal noted that Mr Houston's application was based on his assertion that he was evacuated from Dili "due to illness due to service"; the "illness" being his mental health condition, which he contends was aggravated due to his service in a war like environment.

30. The Tribunal considered that whether Mr Houston was eligible for the INTERFET Medal under the provisions of sub-regulation 5(3) of the Regulations (paragraph 12 above) would depend on whether his evacuation from Dili, and therefore his inability to "complete the determined period of operations", was, in fact, due to 'illness' or 'other disability due to service'.

31. There is no dispute that Mr Houston only served 20 days qualifying service from 21 January 2000 to 9 February 2000.

⁵ By Email Friday 10 October 2015 Brett Mitchell Research Officer Directorate of Honours and Awards Department of Defence

32. As regards his mental health condition, in Mr Houston's service record, the Tribunal can only find three references to an adverse state of mental health:

- a. a report dated 11 July 1994,⁶ for the CO HMAS *Harman* from Social Worker Ms Joan McPherson (the report discussed Mr Houston's compassionate posting application and concluded with a strong recommendation not to grant the application);
- b. an outpatient clinical record dated 26 June 1996 entered by departmental medical officer, Dr Louise Owen; and
- c. a further clinical note on 22 July 1996.

33. As regards the official reason for Mr Houston's return to Australia no signal or other documentation has been located other than one document, a letter, dated 9 February 2000, the day of Mr Houston's return to Australia. This letter, sent to Mr Houston's CO, LCDR Tate, by Ms Mary Benson, a Social Worker with Defence Community Organisation, Melbourne⁷ recommended that due to the severity of Mr Houston's step-father's condition and the history of the family in regard to loss, he be returned to Australia and complete his CFTS in Geelong "which would enable him to provide the best support to his parents".

34. As mentioned earlier, to assist the Tribunal in determining the official reason for Mr Houston's return to Australia, information was sought from Mr Houston's CO in Timor Leste, LCDR (now Commander) Tate, by letter dated 13 January 2016. A number of questions were posed to Commander Tate who responded by letter dated 18 January 2016. Commander Tate's responses were as follows:

- *'The then CPOWTR Houston and I were both posted to the Australian National Command Element and I was his immediate supervisor. Mr Houston assisted me in my responsibilities as the J1 – Chief Staff Officer Personnel for all Australian personnel in theatre at that time. Our duties included management of the recording of the movement of Australian personnel in and out of the operational area, along with oversight of the compassionate and medical returns of personnel to Australia. I was also responsible for oversight of medallion recognition and certification of Australian personnel.'*
- *'During his deployment we had constant interaction during our extended working hours.'*
- *'Mr Houston was returned to Australia for compassionate reasons based on the illness of his step-father and, in particular, based on the recommendation of the Defence Community Organisation report provided in the DCO Minute of 9 February 2000.'*
- *'My recollection is that Mr Houston was a member of the Naval Reserve on a Continuous Full Time Service contract that covered the expected duration of his deployment to East Timor. Noting the short residual period of his contract (ending in April 2000), there was no expectation of his return to East Timor noting resolution of his family'*

⁶ Report to CO HMAS *Harman* from NSW Social Worker Ms Joan McPherson dated 11 July 1994

⁷ Letter Mary Benson Social Worker Defence Community Organisation Defence Personnel Executive to LCDR Nick Tate Australian National Command Element 9 February 2000

issues would take more than a month, and a replacement was immediately sought.'

- *'The DCO report did not raise mental health concerns for Mr Houston. The circumstances described by DCO were very focussed on him returning home to support his family. This, along with my personal discussions with Mr Houston, was enough to support a compassionate return to Australia.'*
- *'I have no recollection of Mr Houston indicating he had mental health issues at the time and therefore did not seek his referral for psychological assessment or support. Mr Houston expressed natural levels of grief and had a strong concern for his step-father and mother. However, had I been concerned over his mental health, then I would have referred him for psychological support, noting that it was readily available in Dilli, and would have sought a Medical Return to Australia rather than using the compassionate return procedure.'*
- *'I have no recollection or information that would support the contention that Mr Houston departed early from the Area of Operations due to his death, evacuation due to illness, injury or other disability due to service.'*

35. Commander Tate's letter was sent to Mr Houston on 18 January 2016 for his information and comment. Mr Houston replied on 2 February 2016, commenting that:

"I concur with the facts as given by Commander Tate. CMDR Tate to my recollection was a kind and considerate person to have served with. If I had been upfront and open about my mental health issues at the time I believe that he would have done his utmost to help me. At the time my only thoughts were with my mother and father and I was being consumed by grief and guilt of my absence from Australia."

Tribunal Findings

36. The Tribunal notes the evidence of Mr Houston's mental health condition over a long period of time and his assertion that this condition was aggravated through a combination of the stressful environment in which he was working together with the news relating to the health of his step-father. However, it is clear from Commander Tate's evidence that the actual and official reason for Mr Houston's evacuation from Timor Leste was solely on compassionate grounds. There is no evidence to support Mr Houston's contention that his evacuation was due to "illness due to service" (nor is there any evidence that his evacuation was due to an "other disability due to service"). In this regard the Tribunal notes Commander Tate's statement that "I have no recollection or information that would support the contention that Mr Houston departed early from the Area of Operations due to his death, evacuation due to illness, injury or other disability due to service".

37. On the basis of the evidence before it the Tribunal finds that Mr Houston does not meet the eligibility criteria for the award of the INTERFET Medal because his

inability to complete “the determined period of operations” was not due to “illness”. Nor was it due to an “other disability due to service”. Mr Houston was evacuated from Timor Leste on compassionate grounds. Accordingly the Tribunal finds that the decision of the Directorate is the correct decision.

DECISION

38. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Russell Wayne Houston is not eligible for the award of the International Force East Timor Medal (INTERFET Medal).