



Australian Government

Defence Honours and Awards Appeals Tribunal

Grimshaw and the Department of Defence [2016] DHAAT 14 (28 June 2016)

File number (s) 2015/039

Re **Mr Denis Arthur Grimshaw**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms J. Schwager AO (Presiding Member)
Ms N. Isenberg

Hearing Date 13 May 2016

DECISION

On 28 June 2016 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Denis Arthur Grimshaw is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Defence Medal.

LEGISLATION

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

Defence Force Regulations 1952 - reg 93C and Schd 3

Commonwealth of Australia Gazette No S48 dated 30 March 2006 – Australian Defence Medal Regulations 2006

Australian Defence Medal Regulations 2006 – Instrument of Delegation – dated 9 August 2014

CDF Determination on Qualifying Service as Efficient Service – dated 6 February 2013

REASONS FOR DECISION

Introduction

1. The applicant, Mr Denis Arthur Grimshaw (Mr Grimshaw) 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 Defence Medal (ADM). On 27 July 2015 Mr Grimshaw made an application to the Directorate for the award of the ADM. On 14 October 2015, the Directorate advised Mr Grimshaw that he did not qualify for the award as he had not completed any of his initial enlistment periods nor had he served for a continuous or aggregate period of not less than four years. On 22 September 2015, Mr Grimshaw 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 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. The ADM is included in the defence awards set out in Part 2. 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.

Conduct of the Review

3. Initially, Mr Grimshaw only provided to the Tribunal a 'preliminary assessment' letter from the Directorate. Following a phone call to the Tribunal Secretariat on 20 August 2015, Mr Grimshaw provided the 'final' letter from the Directorate and his completed application form dated 22 September 2015 seeking a review of the decision by the Directorate to deny him the ADM.

4. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011* (as amended), on 15 October 2015, the Tribunal wrote to the Secretary of the Department of Defence advising him of Mr Grimshaw's 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 30 November 2015, 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 report to Mr Grimshaw for comment on 3 December 2015. Mr Grimshaw responded to the Directorate's written report on the 15 January 2016

5. The Tribunal considered the material provided by Mr Grimshaw and the Directorate. Mr Grimshaw's service records were provided to the Tribunal with the

Defence submission. Mr Grimshaw was invited to give oral evidence (by telephone) to the Tribunal. On 13 May 2016, the Tribunal held a telephone hearing with Mr Grimshaw.

Australian Defence Medal

6. The ADM was instituted by Her Majesty, Queen Elizabeth the Second by Letters Patent on 8 September 2005, *for the purpose of according recognition to Australian Defence Force personnel who have served for a minimum of six years since the end of World War II.*

7. The Regulations are set out in the Schedule attached to the Letters Patent. Those Regulations were amended on 20 March 2006.¹ As a result of that amendment the minimum period of service became four years. Regulation 4 of the amended Regulations states:

(1) The Medal may be awarded to a member, or former member, of the Defence Force who after 3 September 1945 has given qualifying service that is efficient service:

*(a) by completing an initial enlistment period; or
(b) for a period of not less than 4 years service; or
(c) for periods that total not less than 4 years; or
(d) for a period or periods that total less than 4 years, being service that the member was unable to continue for one or more of the following reasons:*

*(i) the death of the member during service;
(ii) the discharge of the member as medically unfit due to a compensable impairment;
(iii) the discharge of the member due to a prevailing discriminatory Defence policy, as determined by the Chief of the Defence Force or his or her delegate;*

(2) For sub regulation (1), the Chief of the Defence Force or his delegate may determine that a period of the member's qualifying service is efficient service ...

8. The minimum periods of a member's annual qualifying service that is efficient service for the award of the ADM are set out in the Australian Defence Medal Regulations Determination by the Chief of the Defence Force dated 6 February 2013. With effect from 20 April 2000, the minimum qualifying period for each year served for all members of both the Royal Australian Air Force and the Australian Army is stipulated to be 20 days.

¹ Commonwealth of Australia Gazette No. S48, 30 March 2006.

Mr Grimshaw's service record

9. Mr Grimshaw's service record states that on 20 October 1964, at age of 17, he enlisted in the Citizen Military Forces (CMF) for a two-year period, and that on 7 May 1965 he discharged at own request.

10. His service record further indicates that on 12 May 1965, Mr Grimshaw enlisted in the Australian Regular Army for six years, and that on 15 May 1967 he was discharged under Australian Military Regulations (AMR) 176 (1) (N) that 'the retention of the soldier in the Military Forces is not in the interests of those Forces'.

11. His service record also indicates that on 21 November 1967, he enlisted in the Active CMF (ACMF) for two years. On 26 November 1967, Mr Grimshaw was discharged under AMR 176(1)(U) in that he 'failed to render efficient service'.

Mr Grimshaw's claims for the ADM

12. In his application for review, Mr Grimshaw stated:

I joined the Army on the 12 May, 1965 after serving two years in the Citizens Military Forces (CMF) as a 17 year old and at Kapooka. I was the youngest in my intake and as a consequence I was continually bullied and this continued during subsequent postings until I was finally broken. I had no - one to talk to. My enlistment papers showed my mother signed my papers as it was the only way I could escape my violent Home Environment. I was looking for guidance and received none only to be told be a man your (sic)in the army now.

13. On 15 January 2016, Mr Grimshaw provided his comments to the Directorate's submission by email. In his email Mr Grimshaw states:

I now understand that the criteria for the A.D.M. is four years service and I do not qualify due to my discharge before I had served the four years required. However, I wish to appeal the decision to deny the A.D.M. because I did not want to be discharged from the A.R.A. I enlisted at 17 years of age and at the time I was affected by anxiety, depression and anger issues. During my service I was subjected to peer pressure and bullying, mainly due to my promotion over those older than myself. These factors led to my attitude and behaviour, leading to my involuntary discharge. If the above did not occur I would have completed the necessary service to be awarded the A.D.M. as my aim upon enlistment was to make my life the defence Force. Due to the lack of training and support, I was unable to cope with the anxiety, depression, bullying and anger. I had no conflict resolution skills and received no training or counselling for the issues I have mentioned.

The Directorate's submission

14. The Defence submission, dated 30 November 2015, concluded that after reassessment of all material questions of fact, including relevant documentation, Mr Grimshaw was not eligible for the ADM because he did not meet the eligibility criteria for the award, in that he:

- did not complete his initial enlistment period;
- did not give 'qualifying service that is efficient service' for four years in that he only completed two years of 'efficient service';
- was not discharged as medically unfit; and
- was not discharged due to a prevailing discriminatory Defence policy.

15. The assessment confirmed that Mr Grimshaw did not complete his enlistment periods in the CMF, ARA and ACMF. Further, when his service was combined, he had served for a continuous or aggregate period that was less than the required qualifying service of four years. The assessment confirmed that Mr Grimshaw is not eligible for the ADM as he did not meet the medal's eligibility criteria.

16. In relation to Mr Grimshaw's claim that he was the 'youngest in his intake at Kapooka and was continually bullied, and that he was after guidance and received none' the submission notes that the Directorate cannot address this claim and suggested that Mr Grimshaw contact Defence Complaint Resolution for appropriate guidance.

The Tribunal's consideration

17. The Tribunal carefully considered all the material placed before it. At the hearing on 13 May 2016 Mr Grimshaw confirmed the accuracy of his service records in relation to the CMF. He confirmed that he enlisted in the CMF on 20 October 1964 for a two-year initial enlistment period but discharged at his own request on 7 May 1965 having completed 6 months and 18 days of service.

18. Mr Grimshaw also confirmed that he enlisted in the ARA for a six year initial enlistment period on 12 May 1965 and that he discharged on 15 May 1967 under AMR 176 (1)(N) which states that 'the retention of the soldier in the Military Forces is not in the interest of those forces'. He confirmed that he completed two years and four days in the ARA.

19. When asked whether he could confirm that on the 21 November 1967, he enlisted in the ACMF for a two year enlistment period and that he was discharged five days later on the 26 November, 1967 under AMR 176 (1)(U) which states that he

‘failed to render efficient service’, Mr Grimshaw strongly denied that he had ever enlisted in the ACMF for the stated six day period.

20. Mr Grimshaw told the Tribunal that he understood that when his service was combined he had served for a continuous or aggregate period that was less than the required qualifying service of four years.

21. Mr Grimshaw told the Tribunal that he enlisted in the ARA to get away from a violent home life. He told the Tribunal that he wanted to complete his enlistment period but was prevented from doing so because of the continuous bullying he was subjected to and the lack of support and guidance that he received from his superiors.

22. Mr Grimshaw told the Tribunal that he was only 18 when he was promoted to the rank of Corporal and sent to Rockhampton where – in the upheaval of the pre-Vietnam environment – he was expected to train 20 year olds who sneered at him. He argued that he was never trained himself, that he had no qualifications but was expected to train the National Service soldiers.

23. Mr Grimshaw stated that, without addressing each specific charge, most of the ‘charges on his service record’ were true but that some were ‘trumped up’. He told the Tribunal that he retaliated to the bullying in the ARA in the only way he knew how, which was by reacting with anger and lashing out as had happened in his home life. He told the Tribunal that after the break up of two marriages, an attempted suicide and a lifetime of not being able to talk about his distress or receive help he was only now receiving help from the RSL and by helping the community.

Tribunal’s finding

24. The Tribunal carefully considered Mr Grimshaw’s service records and his submission regarding his experience of ‘bullying and lack of training and support’. Whilst the Tribunal was sympathetic to Mr Grimshaw’s experience in the CMF and ARA, unfortunately it has no bearing on his eligibility for the ADM.

25. The Tribunal considered Mr Grimshaw’s denial that, contrary to his service records, he had never enlisted in the ACMF. As the stated period was only six days, the Tribunal considered that this discrepancy was not material to its findings.

26. The Tribunal finds that Mr Grimshaw is not eligible for the ADM as he does not meet the eligibility criteria for the award in that he:

- did not complete his initial enlistment period;
- did not give ‘qualifying service that is efficient service’ for four years in that he only completed two years of ‘efficient service’;

- was not discharged as medically unfit; and
- was not discharged due to a prevailing discriminatory Defence policy.

Accordingly the Tribunal finds that the decision of the Directorate is the correct decision.

DECISION

27. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Denis Arthur Grimshaw is not eligible for the award of the Australian Defence Medal.