



Australian Government

Defence Honours and Awards Appeals Tribunal

Chad and the Department of Defence 2016 DHAAT 36 (15 September 2016)

File number 2016/009

Re **Garry John CHAD**
Applicant

And **The Department of Defence**
Respondent

Tribunal Ms Naida Isenberg (Presiding Member)
Rear Admiral James Goldrick AO CSC RAN (Retd)

Hearing Date 29 August 2016

DECISION

On 15 September 2016 the Tribunal decided to recommend to the Minister for Defence that the decision of the Department of Defence that Garry John Chad should not be awarded any further Defence honour arising out of his actions on 29 July 1971, is affirmed.

CATCHWORDS

DEFENCE HONOUR – Defence Honour – application for Military Medal – Mention in Despatches previously awarded - whether the service rendered by Mr Chad in Vietnam on 29 July 1971 should be recognised with a further Defence honour.

LEGISLATION

Defence Act 1903 - ss 110V(1), 110VB(1)

REASONS FOR DECISION

Introduction

1. On 17 April 2016 the Applicant, Mr Garry John Chad (Mr Chad) requested the Tribunal to review the refusal by the Department of Defence to recommend him for the Military Medal (MM) for his service in Vietnam in July 1971, for which he has previously been awarded a Mention in Despatches (MID).
2. On 29 May 2015 Mr Chad lodged an Application for Defence Medals with the Directorate of Honours and Awards of the Department of Defence (the Directorate). On 20 August 2015, at the request of the Directorate, Mr Chad provided further information to Army Headquarters, to whom his application had been referred.
3. On 7 April 2016, the Director General Personnel - Army (Army) informed Mr Chad that his application had been rejected. Mr Chad now seeks review of that decision.

Tribunal Jurisdiction

4. Pursuant to s110VB(1) 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 or the Minister to refuse to recommend a person for an honour in response to an application. Regulation 93B of the *Defence Force Regulations 1952* defines a Defence honour as being those awards set out in Part 1 of Schedule 3. Included in the Defence honours set out in Part 1 is the Military Medal.
5. According to s110VB of the *Defence Act 1903* the Tribunal must review a *reviewable decision* relating to a Defence honour. A *reviewable decision* is defined in s110V(1) as one, made by a person within the Department of Defence or the Minister in response to an application, to refuse to recommend a person for a Defence Honour. The Tribunal considered that the Director General Personnel – Army’s letter of 7 April 2016, constituted a refusal to recommend Mr Chad for an honour. Therefore, the Tribunal has jurisdiction to review the decision.
6. Pursuant to s110VB(1)(b) the Tribunal may make any recommendations to the Minister that the Tribunal considers appropriate, but does not have the power to affirm or set aside the decision.

Conduct of the review

7. In accordance with its *Procedural Rules 2011*, on 2 June 2016, the Chair of the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Chad’s application for review and seeking a report on the decision of Defence to deny Mr Chad the medal he seeks.
8. On 14 June 2016, Defence provided its report in the form of a ‘desktop review’.

9. On 16 June 2016, Mr Chad provided additional information to be included as part of his application for review.

10. On 17 June 2016, the Tribunal Secretariat wrote to Mr Chad providing him with a copy of the Defence report and seeking his comments. On 20 June 2016, Mr Chad provided his comments, and he provided further submissions on 4, 10 and 29 July 2016. In addition, Mr Chad provided statements from colleagues from his platoon - Messrs Smith, Sommer, Croton and Butterly, as well as from his former platoon commander, Lieutenant (now Lieutenant Colonel [Retired]) Paul Andrews.

11. Mr Chad appeared in person at the hearing on 29 August 2016. Defence was represented by Ms G Heard, Staff Officer Ceremonial – Army.

Mr Chad's service

12. After National Service in the Army in 1959 and service in the Citizen Military Forces in 1959-60, on 22 April 1965 Mr Chad joined the Australian Regular Army and was allotted to the Royal Australian Infantry Corps. He deployed to Vietnam on two occasions, serving in three different units:

- 11 March to 4 June 1966 - 1st Battalion, the Royal Australian Regiment.
- 5 June 1966 to 28 February 1967 - 6th Battalion, the Royal Australian Regiment.
- 1 May to 17 December 1971 - 4th Battalion, the Royal Australian Regiment (4 RAR).¹

13. Mr Chad was awarded a MID during his second deployment, for actions of 29 July 1971, while serving with 4 RAR. The citation reads:

On 29 July, 1971, in Phuoc Tuy Province, Sergeant Chad's platoon made contact with the 1st Battalion, 274 Regiment, in a heavily defended bunker system. The leading elements of the platoon, including the platoon commander, were pinned down in a deep re-entrant by a heavy volume of machine gun fire, rocket propelled grenades and directional mines.

Sergeant Chad immediately deployed the remainder of the platoon and directed fire onto the enemy positions. He then moved forward into an exposed position to engage the enemy with rifle grenades and in doing so, was wounded. Despite his wound he continued to direct his fire with such accuracy that the forward elements of the platoon were able to withdraw with only light casualties.

When his platoon commander had safely rejoined the main body and commenced to redeploy the platoon, Sergeant Chad assisted by skilfully directing artillery fire to within 50 metres of the Platoon, thereby preventing an enemy counter attack.

Sergeant Chad's aggressiveness, quick reactions and professional skill undoubtedly saved many lives and regained the initiative. His actions reflect great credit upon

¹ The Nominal Roll of Vietnam Veterans', *Chad, Garry John - 216372*,
<http://www.vietnamroll.gov.au/VeteranDetails.aspx?VeteranIdN1277162>

himself, the Regiment and the Australian Army.²

14. In addition, Mr Chad received the following Defence awards and badges for his service:

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM'
- Australian Service Medal 1945-75 with Clasp 'SE ASIA'
- Vietnam Medal
- Defence Force Service Medal with First Clasp
- National Medal
- Australian Defence Medal
- Anniversary of National Service 1951 -1972 Medal
- Republic of Vietnam Campaign Medal
- Infantry Combat Badge
- Returned from Active Service Badge

The contact on 29 July 1971

15. The following description of the action on 29 July 1971 is taken from official records at the Australian War Memorial.³

The incident on 29 July 1971 occurred under the auspices of Operation Iron Fox which ran from 28 July to 5 August 1971. The Operation was classified as a search and destroy mission aimed at elements of the 274 (Viet Cong) Regiment in the north of the Phuoc Tuy Province. The operation was controlled by Headquarters 1st Australian Task Force out of Nui Dat while the actual 4 RAR/NZ Group tasked with the mission deployed forward.

7 Platoon, C Company 4 RAR/NZ was following a track which led to an unoccupied bunker system. The forward section of the platoon crossed a steep re-entrant and sighted a bunker. As the section commander, Corporal JR Smith, went to investigate when an enemy exited the bunker and first contact was initiated at 1440h. The enemy responded with small arms fire and rocket propelled grenades with claymore mines in the trees detonating periodically. D Company, 4 RAR/NZ and C Squadron, 1 Armoured Regiment were directed to move to the contact and prepare to attack from the North.

After approximately one hour the Platoon withdrew using fire and movement. The After Action Report (AAR) states that extraction of the leading platoon and their casualties was not completed until last light after which the Company engaged the area with 'very effective artillery fire'. As a result of thick undergrowth and numerous deep, steep sided re-entrants, D Company and C Squadron did not arrive until dusk and were unable to provide assistance to 7 Platoon.

² *AFW3121 - Recommendation for Honours or Awards - 216372 Sgt Gary John Chad* dated 5 November 1971 (excerpt of AWM119 631 Part 2).

³ 4 RAR/NZ BN After Action Report - Operation Iron Fox (AWM File 7/4/48) including Appendix 1, Summary of Contact

Mr Chad's submissions

16. In his detailed submissions and in his evidence, Mr Chad's main contentions were, in summary, that the citation for his MID was erroneous and had been 'watered down' and that his Officer Commanding (OC), Major B was biased against him and had therefore been responsible for his recommendation for a MID, rather than a MM.

17. Mr Chad contended that the citation neglected to include a number of significant details which would have elevated the recommendation to that of a MM. For example:

- he had moved forward 60 metres from the back of the formation under fire to the forward section
- his grenades were white phosphorus grenades, which, because of their weight, necessitated his standing in order to be able to fire them, thereby exposing himself to fire, and that he did so regardless of his own safety
- he silenced the NVA [North Vietnamese Army] commander who was yelling orders from his bunker
- he knocked out the RPG [rocket propelled grenade] bunker
- he had moved around to find a clear shot through the thick jungle, each time causing a number of enemy casualties
- he directed the M60 gun group's fire into the screaming wounded enemy, causing them more casualties
- he was the last man out, ensuring all were safe, covering the last M60 group whose gun had jammed
- he was evacuated by helicopter ('dustoff'), returning six days later
- he had continually exposed himself, drawing enemy fire in an exemplary nature, his actions alone inflicting many enemy casualties
- he had acted with bravery and courage

18. As to the claimed intervention in the recognition process by Major B, Mr Chad said that sometime before the contact he had an altercation with Major B, telling him that he disagreed with his tactics. On one occasion he had challenged Major B in the mess which had resulted in an informal "infringement". He said that Major B had wanted him put on a charge and reduced in rank, but the Commanding Officer, Lieutenant Colonel Hughes had intervened. As a result, Major B was "disgruntled". He noted that when he was hospitalised as a result of the shrapnel wound he received in the contact, Major B did not visit him in hospital, as may have been expected.

Defence submissions

19. It was Defence's position that only if there were a clear case of maladministration or a failure in due process, or if there was compelling new evidence that was not available at the time of the original decision, would it conduct a merits review of Mr Chad's application. On the basis of the Applicant's submission and the available unit information, it determined that due process had been followed in accordance with the policies and processes in place at the time of the original recommendation, and therefore did not conduct a merits review.

20. In support of its position Defence provided a detailed analysis of how the Applicant had been recommended for the MID, with corroborating documents. It stated that the policy

governing the honours and awards process during the Vietnam War required that recommendations for honours were to be initiated by Commanding Officers and countersigned by all superior commanders. In respect of the Applicant, Lieutenant Colonel Hughes was the authorised initiating officer as the Commanding Officer 4 RAR, and, on 5 November 1971, he signed a recommendation, nominating the Applicant for a MID for his actions on 29 July 1971. The nomination was progressed through the chain of command to Commander, 1st Australian Task Force and then to Commander, Australian Forces Vietnam who both endorsed the recommendation as a MID. The award of Mr Chad's MID was recorded in the *London Gazette* on 1 September 1972.

21. For the July to December 1971 operational period, the 1st Australian Task Force submitted recommendations for 23 decorations and 22 MIDs, 11 of which were for 4th Battalion, the Royal Australian Regiment. The Recommendation for Mr Chad's MID was submitted by the 1st Australian Task Force as number 10 of 22 in the MID order of priority.

22. The final submission from Australian Forces Vietnam for that period endorsed recommendations for 18 decorations and 29 MIDs. The order of priority of this list identified Mr Chad's recommendation as 20 of 29.

23. To ascertain whether the Applicant's suggested amendments to the citation would have affected the level of the award, Defence said that it had examined other citations for the same period looking at terminology, detail, construct and wording. Three recommendations were identified as involving similar incidents to that which Mr Chad's platoon experienced. Each of the three citations, it was submitted, contained similar wording to that suggested by the Applicant as the correct citation.

Eligibility Criteria for the Imperial Honour of Military Medal and Mention in Despatches

24. Section F of the *Pamphlet on Military Honours and Awards* (WO 12922) dated July 1960 provides the description and conditions of the Imperial awards available during the Vietnam War. The MID was available to be awarded to all ranks 'for an act of bravery or for continuous good work over a long period'. Paragraph 5 of the Pamphlet states that the MID may be 'awarded for either gallant or distinguished service'.

25. The Royal Warrant for the Military Medal states that it was created to recognise acts of bravery in the field for non-commissioned officers and men 'for gallant and distinguished service in action against the enemy'.⁴ In the Imperial Honours System, the Military Medal was considered a level two award.

26. In 1992, the then Prime Minister advised Her Majesty that Australia would no longer make recommendations for Imperial awards; this advice was accepted by the Queen.

27. A level two honour in the Australian system is the Medal for Gallantry created in 1991.⁵

⁴ *Supplement to the London Gazette* 29535, dated 4 April 1916, p 3747.

⁵ *Commonwealth of Australia Gazette*, No. S25, 4 February 1991, Schedule Gallantry Decorations Regulations; *Commonwealth of Australia Gazette* No. S420, 6 November 1996, Schedule Amendment of the Gallantry Decorations Regulations

Eligibility Criteria for the Medal of Gallantry

28. The *Commonwealth of Australia Gazette* (CAG) No S25 dated 4 February 1991, creates by Letters Patent the awards of the Star of Gallantry, the Medal for Gallantry and the Commendation for Gallantry. The conditions for these awards are referred to as the *Gallantry Decorations Regulations 1991* (the Regulations). The Regulations were amended in CAG No. S420, dated 6 November 1996.

29. Regulation 3 provides the following eligibility criteria for those honours:

- (1) The Star of Gallantry shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.
- (2) The Medal for Gallantry shall be awarded only for acts of gallantry in action in hazardous circumstances.
- (3) The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.

Consideration

30. The Tribunal noted that the *Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013 (Valour Inquiry) had addressed the issue of retrospective honours and awards. The guidelines suggest that the first step should be the conduct of a review to determine whether due process had been followed. This step should include ‘an attempt to determine whether there is a case of maladministration and whether new evidence has come to light’, then, if due process had been followed and there was no maladministration, and if there was no new evidence, the original decision should remain unchanged. The Tribunal noted that Army had used this approach in reaching its decision in relation to Mr Chad.

31. Notwithstanding the guidance provided by the Valour Inquiry, it should be noted that s110VB of the *Defence Act 1903* requires the Tribunal to undertake a merits review of all reviewable decisions, where an application for review has been properly made.

32. In conducting its review, the Tribunal considered afresh the relevant facts, law and policy associated with the original decision. There is no presumption that the original decision was correct, even if there is no new available evidence in addition to that relied on by the original decision-maker. Thus, the Tribunal must make an independent decision based on all the material before it. It must apply the eligibility criteria that applied at the time of the making of the reviewable decision: s110VB(6) - in this case the reviewable decision is that made in 2015, not the time of the action that is the subject of the claim. The Tribunal is bound to make the ‘correct or preferable’ decision - i.e. if there is only one correct decision, that decision. If there can be more than one correct decision, the ‘preferable’ one must be made.

33. The basis of Mr Chad’s submission is that the citation accompanying the MID recommendation does not accurately reflect his actions and that the formulation of the recommendation was unfairly downgraded by his Company Commander, Major B.

34. The Tribunal reviewed the statements by Messrs Smith, Sommer, Croton and Butterly, but found these did not provide any substantive elaboration upon the events of the contact beyond the Applicant's contentions as detailed in paragraph 16. The statement by Lieutenant Colonel Andrews dated 14 August 2015 provided some corroboration of the Applicant's contentions about the detail of the contact.

35. In an email to Defence dated 23 February 2016, Lieutenant Colonel Andrews wrote that he was likely to have had input into the Report of the Contact, although he could not recall doing so. He was certain, though, that he did not see or approve the Summary of Contact report because it contained some errors, although these were not, in his view, significant.

36. Lieutenant Colonel Andrews wrote that he was not consulted about the recommendation of Mr Chad for a MID, and was unaware of the practice for making recommendations. He assumed there were some discussions between himself and Major B, the company commander, about the details of Mr Chad's actions but could not specifically recall any.

37. When asked by Defence about the accuracy of Mr Chad's citation, Lieutenant Colonel Andrews wrote that, in his view, the citation was 'essentially accurate'. He went on to observe that 'it is not possible to describe the actions of [Mr Chad] ... in a close contact over the period of about an hour in the space of a few lines.'

38. The Tribunal came to a similar view. While it may be irksome to Mr Chad that the citation does not contain a more detailed discourse of his actions in the contact and that it may contain some errors, including the misspelling of his first name, the omissions are not, in the Tribunal's view, material.

39. Further, the Tribunal was reasonably satisfied that the evidence demonstrates that even if the citation had included Mr Chad's suggested amendments it is unlikely that it would have altered the level of award he received. Further, on reviewing examples provided to the Tribunal, it was reasonably satisfied that the use of similar descriptors to those proposed by Mr Chad had also resulted in MIDs.

40. As to Mr Chad's contention that Major B had interfered with the recommendation, there was no evidence, beyond Mr Chad's assertion, to support such a finding. Lieutenant Colonel Andrews thought that he would have discussed the details of the action with Major B, and considered the detail provided in the citation to be 'essentially accurate'. That, in the Tribunal's view, is inconsistent with Mr Chad's contention that the citation had been 'watered down' by Major B. The Tribunal observes that Mr Chad was the only member of his Company to be nominated for recognition for the incident on 29 July 1971 and one of only five Australian members of 4 RAR/NZ to be awarded an MID in the Honours List concerned.⁶

⁶ Army Canberra Signal 030001Z September 1972, received under cover of the Defence Submission dated 14 June 2016.

Conclusion

41. The Tribunal was of the view that the actions of Mr Chad had been appropriately assessed as meeting the eligibility criteria for the MID. In terms of the current suite of Gallantry honours, the Tribunal does not find the Applicant's actions to satisfy the eligibility criteria for the Medal for Gallantry.

42. Further, the Tribunal considered that, on the basis of the evidence before it, that Mr Chad's actions satisfied the criteria for the Commendation for Gallantry. As this is no higher an award than the MID, the Tribunal came to the view that Mr Chad had been appropriately recognised by the award of the MID.

DECISION

43. The Tribunal decided to recommend to the Minister for Defence that the decision of the Department of Defence that Garry John Chad should not be awarded any further Defence honour arising out of his actions on 29 July 1971, is affirmed.