



Australian Government

Defence Honours and Awards Appeals Tribunal

Adler and the Department of Defence [2018] DHAAT 15 (30 August 2018)

File Number 2018/018

Re **Mr Henry Adler**
Applicant

And **Department of Defence**
Respondent

Tribunal Brigadier M. Bornholt AM (Retd) (Presiding Member)
Ms A. Trengove

DECISION

On 30 August 2018 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Henry Adler is not eligible for the award of the Defence Medal.

CATCHWORDS

DEFENCE AWARD – Defence Medal, Dedman Paper 1948

LEGISLATION

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

Defence Regulation 2016 - Reg 36

Commonwealth of Australia, Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal dated December 1948

REASONS FOR DECISION

Introduction

1. On 17 November 2017 the applicant Mr Henry Adler (Mr Adler) made application to the Directorate of Honours and Awards of the Department of Defence (the Directorate) for his 'entitlement to service awards'. The Directorate advised Mr Adler by letter and telephone on 28 November 2017 that he was previously issued with four awards and that records confirmed that he had no further entitlement to additional medals.¹ In mid-February 2018 Mr Adler, acting on advice from the Tribunal, asked the Directorate to review his entitlement to the Defence Medal.² On 23 February 2018 the Directorate advised Mr Adler that he was not entitled to the Defence Medal.³

2. On 23 February 2018 Mr Adler made application to the Tribunal to review the Directorate's decision claiming that he was entitled to the Defence Medal based upon his service with 'VDC 5th Bat, Port Phillip Bay A.A. Battery'.⁴ On 15 August 2018 Mr Adler, having received the Defence Submission advised the Tribunal that he now thought he may not be entitled to the Defence Medal and he subsequently consented to the Tribunal reviewing the matter without hearing.⁵ Defence also consented to the Tribunal finalising the review 'on the papers'.

Tribunal Jurisdiction

3. 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 a defence award in response to an application. *Defence Regulation 2016 – Reg 36* specifies defence awards for the purposes of s110T of the Defence Act. Included in the defence awards at Item 11 is the Defence Medal.

4. The Tribunal was satisfied that Mr Adler's request to the Directorate on 17 November 2017 to review his entitlement to service awards constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal considered that the response by the Directorate on 23 February 2018 which informed Mr Adler that he was not entitled to the Defence Medal constituted a refusal to recommend him for the award thus satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. Therefore, the Tribunal has jurisdiction to review the decision to refuse to recommend Mr Adler for the Defence Medal. The role of the Tribunal is to determine whether the decision by the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

¹ DH&A letter to Mr Adler AL17587934 – PM8353 dated 28 November 2017

² DHAAT/OUT/2018/064 letter to Mr Adler dated 12 February 2018

³ DH&A letter to Mr Adler AL18078300 V367034/PM8353 dated 23 February 2018

⁴ Application for Review of Decision by Mr Adler dated 1 February 2018

⁵ Telecon Mr Adler and the Tribunal on 15 August 2018

Steps taken in the conduct of the review

5. In accordance with its *Procedural Rules 2011*, on 29 March 2018, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Adler's application for review and requested that he provide a report detailing the reasons for the decision to not recommend Mr Adler for the Defence Medal.⁶ On 16 May 2018 the Directorate, on behalf of the Secretary, provided the Tribunal with a submission (the Defence Submission). In the Defence Submission, the Directorate confirmed its position that Mr Adler did not meet the eligibility criteria for the award.⁷ On 21 May 2018 the Tribunal forwarded a copy of the Defence Submission to Mr Adler for comment.⁸ On 12 June 2018 Mr Adler provided comments to the Tribunal.⁹

6. As previously discussed, Mr Adler indicated that he did not wish to be heard and the Tribunal decided to consider the review 'on the papers'. *Procedural Rule 12* allows the Tribunal to review matters without a hearing provided there is agreement by the Applicant and Defence.

The Defence Medal

7. In June 1946 the Imperial Committee on the Grant of Honours, Decorations and Medals announced that His Majesty King George VI had approved the institution of a War Medal and various other awards for service in the Second World War including the Defence Medal.¹⁰ On 11 June 1948, administration of the Imperial Second World War campaign stars, clasps, emblems and medals for personnel from the Dominions was delegated to the Dominion Governments.¹¹ In Australia a paper titled *Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal* was issued in December 1948 under the authority of the Honourable John Dedman, MP, Minister of State for Defence (the Dedman Paper). The Dedman Paper sets out the conditions for the award of medals, awards and emblems approved by the King in Command Paper 6833.¹² The criteria for the award of the Defence Medal to Australian serviceman and women is contained in the Dedman Paper:

...

101. So far as members of the Australian Forces are concerned, the Defence Medal is to be granted:

- (a) to members serving six months in non-operational areas subjected to enemy air attack, or closely threatened, subject to (b) below. The specified areas are set out in paragraph 110 below;*

⁶ DHAAT/OUT/2018/130 letter to the Secretary of Defence dated 29 March 2018

⁷ DH&A/OUT/2018/0022 - *Defence Submission* – Review Mr Adler dated 16 May 2018

⁸ DHAAT/OUT/2018/380 letter to Mr Adler dated 21 May 2018

⁹ Letter from Mr Adler to the Tribunal received on 12 June 2018

¹⁰ Command Paper 6833 – *The War Medal, 1939-45 ...* dated June 1946

¹¹ *Campaign Stars and Commemorative Medals Instituted for the 1939-45 War*, Sect III, Para 83, dated 11 June 1948

¹² *Commonwealth of Australia - Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal* – issued by the authority of The Hon. John J. Dedman, MP., Minister of State for Defence – dated December 1948

- (b) *to members who served for six months in the aggregate at any time between 3rd September 1939 and 2nd September 1945 in the Northern Territory north of 14°30' South and the Torres Strait Islands ...*
- (c) *for twelve months' non-operational service in the Forces overseas from or outside Australia;*
- (d) *to members of Mine and Bomb Disposal units of the Forces employed in the areas mentioned in paragraph 110 below for three months within the periods stated.*

...

104. Service at sea.

- (a) *Service at sea on passage during the war, to a non-operational area will be reckoned as service counting towards the period for the grant of the Defence Medal for service in the Forces overseas from, or outside, the country of residence.*

...

- (e) *Service in seagoing commissioned ships ... in non-operational areas, within the periods as appropriate:*

(i) 3.9.39 to 31.5.40

(ii) 3.9.39 to 9.6.40

(iii) 9.5.45 to 2.9.45

Will be qualifying service for the Defence Medal, provided that the ships concerned are serving on a station where shore service in the Navy qualifies at that period for the Defence Medal.

...

109. Closing dates.

- (a) *Insofar as the Australian Forces are concerned, the closing date for service overseas from or outside the country of residence in non-operational areas not subject to enemy air attack or closely threatened will be 2nd September 1945.*
- (b) *The closing dates for non-operational areas subjected to air attack or closely threatened are shown in paragraph 110 below.*

110. Non-operational areas subjected to enemy air attack or closely threatened. *The territories classified as non-operational areas subjected to enemy air attack or closely threatened are shown below with dates:-*

...

*Northern Territory of Australia (North of latitude 14°30' South).
3.9.39 to 2.9.45.*

...

Mr Adler's Service Record

8. **Volunteer Defence Corps Service.** Mr Adler's military record indicates that he served as a school cadet in 1942.¹³ On 4 March 1943 he enlisted in the Volunteer Defence Corps (VDC) at Caulfield in Melbourne.¹⁴ He was initially allocated to the 1st Battalion for 'part time duty' and on 12 July 1943 he was transferred to the 5th Battalion of the VDC.¹⁵ A declaration in his records indicates that his VDC service was firstly at the Commonwealth Aircraft Factory at Fisherman's Bend and then at the Brighton Drill Hall.¹⁶ Mr Adler's service record indicates he discharged from the VDC on 31 January 1944.¹⁷

9. **Naval Service.** Mr Adler's Record of Mobilized Service indicates he was mobilized for service by proclamation into the Royal Australian Naval Reserve (RANR) on 8 May 1945.¹⁸ He was initially posted to the training establishment HMAS *Cerberus* on the Mornington Peninsula and remained there until 13 November 1945. On 14 November 1945 Mr Adler was posted to the Naval Reserve Base at HMAS *Lonsdale* near Melbourne and he then served in the mine sweeper HMAS *Mildura* from 2 February 1946 for two months.

10. The HMAS *Mildura* Report of Proceedings for the month of February 1946 indicates the ship was either tied up in the Port of Melbourne or conducting minesweeping activities off Wilson's Promontory. In March 1946 the ship is reported as conducting exercises south of Melbourne including search and rescue operations and further patrolling exercises in and around Tasmania concluding with a further month alongside at Port Arthur. He was posted off HMAS *Mildura* on 30 March 1946 and spent the remainder of his naval service in shore establishments in Victoria from 31 March 1946 until 29 November 1946 when he was 'discharged free'.

11. Mr Adler also had two periods of service in the Citizen Military Force between 1951 and 1956 however this service is not relevant to his eligibility for the Defence Medal.

12. **Recognition.** The Defence Submission states that Mr Adler has been issued with the following awards in recognition of his service:

- War Medal 1939-45,
- Australia Service Medal 1939-45,
- Australian Service Medal 1945-75 with Clasp 'SW PACIFIC',
- Australian Defence Medal, and
- General Service Badge.

¹³ Enrolment Form – *The Home Guard* dated 26 February 1943

¹⁴ *Certificate of Discharge* dated 28 June 1954

¹⁵ *Service and Casualty Form* B103-1, V367034 Henry Adler

¹⁶ Statutory Declaration by Henry Adler, declared at St Kilda on 4 December 1953

¹⁷ *Service and Casualty Form* B103-1, V367034 Henry Adler

¹⁸ Royal Australian Naval Reserve *Record of Mobilized Service* – Adler, Henry

Mr Adler's Submission

13. Mr Adler said that he had tried to enlist in the Australian Imperial Force in 1942, however his mother would not give her permission for underage enlistment.¹⁹ He said that once he was discovered as being too young, he had offered to serve in the VDC until 'I came of age'. He said that his service with the VDC was at the A/A Battery at Port Phillip Bay. Mr Adler's letter of 12 June 2018 indicated that he had recently read an article in a newspaper which stated that VDC members who served between 1939 and 1945 were eligible for the Defence Medal. He therefore made application for the medal but was refused. Mr Adler's contention is that he should receive the Defence Medal for his service in the VDC and also with the RANR.

The Defence Submission

14. In the Defence Submission, the Directorate confirmed that there was no formal instrument to delegate the authority to make decisions for Imperial awards and that the Directorate 'by convention' became the responsible decision makers. The submission identifies that in the absence of *Command Paper 8533* which is the instrument for the awards, the '*Dedman Papers*' are relied upon to identify the relevant eligibility criteria for the majority of the Imperial awards including the Defence Medal.²⁰

15. The submission states that Mr Adler's service in the VDC does not contribute towards qualifying service for the Defence Medal as the Melbourne area where he served 'does not fall within one of the non-operational areas listed in paragraph 7, section 110' of the *Dedman Paper*.²¹ The submission also identified that Mr Adler's service in the Navy Reserve cannot be used as qualifying service as he 'was posted to shore establishments at HMAS *Cerberus* and *Lonsdale* and these do not fall within one of the non-operational areas in paragraph 7, section 110' of the *Dedman Paper*.²² The Directorate stated that Mr Adler was 'not posted to an overseas going vessel prior to 2 September 1945' and that his posting to HMAS *Mildura* between 2 February 1946 and 30 March 1946 was not eligible service 'as these dates fall outside the cut-off date for the Defence Medal of 2 September 1945'.²³

16. The Defence Submission indicated that on receipt of the application for review, the Directorate had reassessed Mr Adler's eligibility and again confirmed that he was not eligible for the Defence Medal as he was not posted to the Northern Territory, north of 14°30' South and the Torres Strait Islands for at least six months; was not posted to a non-operational area subjected to enemy attack or closely threatened; was not posted for non-operational service outside Australia for at least 12 months prior to 2 September 1945 and was not posted to a sea going vessel during World War II.

¹⁹ Letter from Mr Adler to the Tribunal received on 12 June 2018

²⁰ *Defence Submission*, Para 4-5

²¹ *Ibid.* Para 10

²² *Ibid.* Para 11

²³ *Ibid.* Para 12

The Volunteer Defence Corps

17. The Tribunal noted that recognition of service with the VDC had been considered previously in *Hunter and the Department of Defence*.²⁴ In the report of that matter, the Tribunal outlined the background to and history of the VDC.

18. The VDC was inaugurated on 15 July 1940 under the auspices of the Returned Sailors, Soldiers and Airmen's Imperial League of Australia (now the RSL). Its founding principle was to provide a means by which ex-servicemen could contribute to the defence of their communities. In May 1941 the VDC became part of the Army and in 1942 became a corps of the Citizen Military Forces. It comprised men from every part of Australia and every walk of civilian life including volunteers who were unfit for combat in the regular forces, over the age limit or in reserved occupations. Military historian Professor David Horner described the purpose of the VDC as a part time force who initially 'were involved in defending static positions (bridges and power stations), but later operated anti-aircraft batteries and searchlights'.²⁵ Most volunteers served on a part-time basis, reporting for duty for about six hours per week. The VDC was organised into regionally based battalion groups and by 1943 numbered approximately 75,000 men. In July 1944 the majority of volunteers were placed onto reserve status and most units were disbanded. Shortly after the war ended the VDC was demobilised.

The Tribunal's Consideration

19. The Tribunal carefully considered all the material placed before it including the application and Defence's written submission. The Tribunal was satisfied with the Directorate's explanation that the decision to refuse Mr Adler's eligibility was made by convention and that the correct authority, being the '*Dedman Paper*', had been used to inform the decision.

20. There is no dispute that Mr Adler served in the VDC from 14 March 1943 to 31 January 1944. There is also no dispute that he served in the RANR from 8 May 1945 to 29 November 1946.

21. At issue is whether Mr Adler's service prior to the cessation of World War II meets the eligibility criteria for the Defence Medal. The Tribunal notes that Mr Adler originally made application based upon 'reading an article in a newspaper which stated that VDC members who served 1939-45 were eligible for the Defence Medal'.²⁶

22. The Tribunal notes that many of the Campaign Stars and Medals for service during the World War II were available to individuals who provided service in non-operational roles or part-time appointments. Each of these awards has specific and different eligibility criteria and Mr Adler is one such individual who has received recognition without operational service.

23. The Tribunal further notes that Mr Adler has been awarded the War Medal 1939-45 and having reviewed his service record, was reasonably satisfied that his

²⁴ DHAAT 08/2016, *Hunter OBO Goss*, War Medal 1939-45, dated 18 March 2016

²⁵ *Australia's Military History*, David Horner, Wiley Publishing 2010 - Page 296

²⁶ Letter from Mr Adler to the Tribunal received on 12 June 2018

service in the RANR between 8 May 1945 and 2 September 1945 correctly entitled him to this award as it is granted for:

*full-time personnel of the Armed Forces wherever their service during the war has been rendered. A 28-day qualification will be adopted. Operational and non-operational service will qualify.*²⁷

24. Similarly, the Tribunal noted that Mr Adler received the Australia Service Medal 1939-45 and the qualifying service for this award was for ‘full-time duty of 30 days at home and for part-time duty 90 days’.²⁸ The Tribunal was reasonably satisfied that Mr Adler’s service in the VDC was on a part-time basis and, as it was from 4 March 1943 to 31 January 1944, a period in excess of 90 days, he was correctly entitled to this award.

25. However, to be eligible for the Defence Medal, Mr Adler must meet the eligibility criteria for that award and his eligibility for other awards has no bearing on his claimed entitlement to the Defence Medal.

26. Having reviewed Mr Adler’s service record, the Tribunal is reasonably satisfied that he:

- a. was not posted to the Northern Territory or the Torres Strait Islands for at least six months prior to 2 September 1945;
- b. was not posted to a non-operational area subjected to enemy attack or closely threatened;
- c. was not posted for non-operational service outside Australia for at least 12 months; and
- d. was not posted to a sea going vessel during World War II.

Finding

27. For the reasons stated above, the Tribunal finds that Mr Adler is not entitled to be awarded the Defence Medal.

DECISION

28. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Henry Adler is not eligible for the award of the Defence Medal.

²⁷ *Commonwealth of Australia - Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal* – issued by the authority of The Hon. John J. Dedman, MP., Minister of State for Defence – dated December 1948, Part IV, Para 111

²⁸ *Commonwealth of Australia Gazette (CAG) 91* of 1949 dated 30 November 1949 as amended by CAG S309 dated 31 August 1996