



Australian Government

Defence Honours and Awards Appeals Tribunal

Raymond Kenneth Barrett and the Department of Defence [2019] DHAAT 03 (4 April 2019)

File Number 2018/042

Re **Mr Raymond Kenneth Barrett**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Anne Trengove (Presiding Member)
Ms Naida Isenberg

Hearing Date **20 March 2019**

DECISION

On 4 April 2019 the Tribunal decided to affirm the decision of Directorate of Defence Honours and Awards that Mr Raymond Barrett is not eligible for the award of the Defence Long Service Medal.

CATCHWORDS

DEFENCE AWARDS – Defence Long Service Medal – evidentiary issues – volunteer work - balance of probabilities

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)
Defence Regulation 2016 – Regulation 36
Commonwealth of Australia Gazette No S352 dated 10 July 1998
Commonwealth of Australia Gazette No S160 dated 30 March 2000
Commonwealth of Australia Gazette No S2 dated 3 January 2002
Chief of the Defence Force Determination dated 6 February 2013

REASONS FOR DECISION

Introduction

1. Mr Raymond Barrett seeks review of a decision that he is not eligible for the award of the Defence Long Service Medal (DLSM). Mr Barrett asserts that his service in the Australian Army Reserve between 18 August 1987 and 12 April 2003 qualifies him for the award. The contention by the Department of Defence via the Defence Honours and Awards Directorate is that Mr Barrett only satisfied the service requirements for fourteen of the required fifteen years. The question for the Tribunal is whether Mr Barrett achieved the 20 day Reserve qualifying service during his fifteenth enlistment year, being 18 August 2001 – 17 August 2002.

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 36 of the *Defence Regulation 2016* lists the defence awards that may be the subject of a reviewable decision. Included in the defence awards listed in Regulation 36 is the DLSM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

Conduct of the Review

3. On 26 October 2018, Mr Barrett applied to the Tribunal for the review of a decision by the Directorate of Honours and Awards of 26 September 2018 which refused to recommend him for the award.

4. On 20 March 2019, the Tribunal heard oral evidence by telephone from Mr Barrett, who was self-represented, and submissions from Mr Mark Jordan and Ms Allison Augustine from the Directorate, representing the Department of Defence.

Mr Barrett's Service Record

5. Mr Barrett served in the Australian Army Reserve from 18 August 1987 to 12 April 2003. For his service, Mr Barrett has been awarded the Australian Defence Medal.

The Defence Long Service Medal

6. The DLSM was introduced by Letters Patent on 26 May 1998¹ for the purpose of:

... according recognition to persons who render long and efficient service as members of the Defence Force ...

¹ *Commonwealth of Australia Gazette No S352* dated 10 July 1998, Folio #19.

7. The Defence Long Service Regulation 3 dated 10 July 1998 provides:
3. The Medal may be awarded to a person who:
- (a) has given qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and
 - (b) has given at least 1 day's qualifying service on or after 14 February 1975.
8. Regulation 5 defines 'qualifying service' as follows:
- (a) where the service was given as member of the Permanent Forces or the Reserve Forces - the member:
 - (i) fulfilled the requirements specified in directions given by the Chief of the Defence Force: and
 - (ii) gave efficient service; or
 - (b) where the service was given as a member of a philanthropic organisation who provides philanthropic service to the Defence Force – the member gave efficient service.

The Schedule to the Regulation provides that a 'philanthropic organisation' means an organisation determined to be a philanthropic organisation' by the Chief of the Defence Force (CDF) or a delegate of CDF.

7. Subsequently, on 30 March 2000 the Regulation was amended² to provide a definition of 'efficient service':³

Regulation 2

Efficient service⁴ means service determined to be efficient service by the Chief of the Defence Force.

8. On 6 February 2013,⁵ the then CDF made a Determination⁶ in which he specified that the minimum periods of qualifying service for the Australian Army Reserve as follows:

- Until 30 June 1993 26 days
- 1 July 1993 – 20 April 2000 14 days
- From 20 April 2000 20 days

9. The Determination also recorded that the days were to be remunerated at Defence rates of salary, unless they were approved voluntary unpaid Reserve service.

Mr Barrett's evidence

10. Mr Barrett gave oral evidence supplementing written statements he had earlier provided. He believed that, in all likelihood, he would have achieved the fifteen years qualifying service and he should be awarded the DLSSM. Mr Barrett's evidence

² *Commonwealth of Australia Gazette No S160* dated 30 March 2000

³ Regulation 3 was also amended, but the change is not relevant to this review.

⁴ No Determination has been made subsequent to the Regulation as to "efficient service".

⁵ On 3 January 2002, the Regulation was again amended, but the changes are not relevant to this review.

⁶ *CDF Determination* dated 6 February 2013.

focused on the enlistment year 18 August 2001 to 17 August 2002, being the period in question. He stated that during this period he was a Sergeant in an acting Platoon Commander position as well a Safety Officer. During the relevant period, he was posted to Charters Towers Army Reserve Depot, which had been his posting for most of his Reserve career. He was required to open the Depot for parade nights, training weekends and check the Depot following frequent power cuts. He also had Range Qualifications and drafted Standing Orders for training weekends, as well as other duties.

11. Mr Barrett did not believe his Member Attendance Summary for the relevant period captured his true attendance. He thought the days recorded understated his attendance. He said he attended a number of training weekends, from Friday to Sunday throughout the relevant period. He pointed out that the Summary does not record any three-day periods of consecutive pay. He states that the period of 1 and 2 September 2001, should have been in fact three days, to account for what would have been a three-day training weekend. He also pointed out there were no attendance entries between 23 October 2001 and 22 January 2002. He states that he would have done cyclone preparation training during this time, as well as ad hoc attendances responding to power cuts.

12. Given the passage of time, Mr Barrett could not recall his parading attendance for the relevant year in any real detail. He did not have any records from which to verify his asserted attendance, such as banking records, which might show he was paid for additional time. There was no contention by Mr Barrett that he had performed 'voluntary unpaid Reserve service', but rather he did not get around to submitting pay claims for duly authorised work. Mr Barrett freely admitted that he was not as careful as he should have been in submitting pay claims for work performed during this period. Mr Barrett's efforts and attention, he said, were to his service which at all times required him to travel very long distances from home to the Depot, as opposed to submitting pay claims. He admitted the fault lay with him, but he sought the Tribunal's discretion to find that he would have likely served 20 or more days during that period.

13. He emphasised that his service to Defence had a value which could not be measured by his Member Attendance Summary compiled from pay records. He referred, for example, to attending to switch off the alarm, which, was less than one hour in duration, and therefore, unremunerated, notwithstanding that he had to travel 26 kms to reach the Depot. He understood he would be 'given a couple of extra days', but this never occurred, and he never followed it up. Similarly, he would travel to the Depot to open up, but did not put in pay claims. He stated that this value should be recognised by the award of a DLSSM.

14. Mr Barrett also contended his volunteering work since discharge from the Army Reserves should also be considered 'in some way' towards the DLSSM. He pointed to his informal help provided to his daughter's Australian Cadet Unit 130, roles within Returned & Services League (RSL) - Charters Towers Branch, and volunteering with the Rural Fire Services (RFS).

Department of Defence evidence

15. Mr Jordan, on behalf of the Directorate, relied upon Mr Barrett's Member Attendance Summary as recorded by MARS - CENRES pay reporting. The Summary shows his attendance being 12.33 days in his final and fifteenth year. Defence pay data is used by the Directorate to determine a member's yearly efficiency, in conjunction with any available Defence records. In this case the pay data is the only evidence. There are no other Defence records in support or to the contrary.

16. In relation to Mr Barrett's volunteer contributions, Mr Jordan explained that the philanthropic organisations referred to within Regulation section 5 for 'efficient service' include six organisations as determined by CDF. They do not include organisations, such as Australian Cadets, local RSL Branches or the Rural Fire Services. Mr. Jordan submitted that the kind of volunteer community work performed by Mr Barrett cannot be considered 'efficient service' qualifying him for a DLSM.

17. Mr. Jordan further submitted that the Directorate has a responsibility to maintain the integrity of the Australian Honours and Awards system, by ensuring members receive their correct medallic entitlements in accordance with the Regulation and Determination. Mr. Jordan contended that the Tribunal should find that Mr Barrett is not eligible for the DLSM on the material provided.

Tribunal Consideration

18. The Tribunal carefully considered all the available evidence against the Regulation as variously amended and the Determination set out in paragraphs 6 – 9 above.

19. There is no dispute that Mr Barrett meets the eligibility criteria in respect of his service enlistment years in each of the 14 years from 18 August 1987 and 17 August 2001. The issue is whether he had 'efficient service' or expressed as 'qualifying service' as defined in the Regulation, during the relevant period from 18 August 2001 to 17 August 2002. During that year he has 12.33 days recorded as his attendance and a minimum of 20 days are required.

20. Firstly, the Tribunal observes Mr Barrett's very commendable involvement with an array of community groups. However, his involvement with these groups cannot be regarded as 'efficient service' as defined in the Regulation and Determination. Therefore, his time spent volunteering cannot be added to his Reserve service for the purposes of the DLSM.

21. The Tribunal finally looked to Mr Barrett's lengthy and valuable Army Reserve service and in particular his efficiency for the relevant period. The Directorate's position relies entirely on his Member Attendance Summary from pay data. Mr Barrett's position relies solely upon his memory. There is no evidence in support of Mr Barrett's assertion that would have performed an additional 7.66 days. The Tribunal observed it was understandably difficult for Mr Barrett to reliably recall his attendance some 18 – 19 years ago. Mr Barrett gave evidence in a forthright manner, but he conceded he did not have any evidence to back up his recollection.

22. The Regulation and Determination are clear and unequivocal in relation to the number of days of efficient or qualifying service. The Tribunal has no discretion in their application. The Tribunal must be satisfied on the balance of probabilities on the available evidence that Mr Barrett is eligible for the DLISM. Having considered all of the evidence and for reasons given above, the Tribunal regarded the Directorate's assessment of his efficiency for the relevant period to be persuasive and preferable to Mr Barrett's memory of events a long time ago. The Tribunal therefore finds that Mr Barrett's total qualifying service is 14 years and 12.33 days and therefore fell short of the required service for award of the DLISM.

Finding

23. The Tribunal finds that Mr Barrett is not eligible for the DLISM as he did not complete a minimum of 15 years of qualifying service. Accordingly, the Tribunal finds that the decision of the Directorate is correct and is therefore affirmed.

DECISION

24. The Tribunal decided to affirm the decision that Mr Raymond Kenneth Barrett is not eligible for the award of the Defence Long Service Medal.