



Australian Government

Defence Honours and Awards Appeals Tribunal

Barlow and the Department of Defence [2016] DHAAT 07 (3 March 2016)

File Number(s) 2015/016

Re **Mr Cecil Roy Barlow**
Applicant

And **Department of Defence**
Respondent

Tribunal Hon Peter Lindsay (Presiding Member)
Ms Jane Schwager AO

Hearing Date 19 December 2015

DECISION

On 3 March 2016 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Cecil Roy Barlow is not eligible for the award of the 1939-45 Star.

CATCHWORDS

DEFENCE AWARD – 1939-45 Star.

LEGAL AUTHORITY

Defence Act 1903 – ss 110V(1), 110T, 110VA and 110VB(2)
Defence Force Regulations 1952 - Reg 93C, Schedule 3 Part 2
UK Air Ministry Order No A755/1943
United Kingdom Command Paper Cmd 6833 issued June 1946
A Summary of the Conditions of the Award of the Campaign Stars, the Defence Medal and the War Medal (The Dedman Papers) dated December 1948
Commonwealth of Australia Gazette (CAG) S133, Amendment of Conditions for Award of the 1939-45 Star, dated 10 April 1995
CAG S274, Amendment of Conditions for Award of the 1939-45 Star, dated 18 July 1996
CAG S350, Amendment of Conditions for Award of the 1939-45 Star, dated 9 July 1998
CAG S374, Amendment of Conditions for Award of the 1939-45 Star, dated 17 September 2001

REASONS FOR DECISION

Introduction

1. The applicant, Mr Cecil Roy Barlow (Mr Barlow) seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the award of the 1939-45 Star.
2. Mr Barlow originally applied to the Secretary of Defence, Air Office, on 22 September 1993, to ascertain whether he qualified for any “service ribbon/medal” whilst serving during the Second World War with the Royal Canadian Air Force (RCAF).
3. On 6 October 1993, Mr Barlow was advised that he had been awarded the Defence Medal, War Medal 1939-45, the Australia Service Medal 1939-45 and the Returned from Active Service Badge for his service with the Royal Australian Air Force (RAAF). Although his service with the RCAF also qualified him for the Defence Medal and the Returned from Active Service Badge he had already received these medals for his RAAF service.
4. Over the following years from 1993 to 2000, Mr Barlow wrote a number of letters to Air Force and the Directorate, providing further information, including certified copies of his flight log books, to enable his eligibility for the 1939-45 Star to be reassessed. When assessing Mr Barlow’s 1996, 1997 and 2000 applications, the Directorate took into account the provisions of the Dedman Paper¹ although he was not advised of this at the time.
5. On 4 February 2000, the Air Force Section of the Directorate advised Mr Barlow by letter that the regulations had not changed since his previous application and that he still did not qualify for the 1939-45 Star.
6. On 4 February 2015, Mr Barlow again wrote to the Directorate requesting “a review of my application” for the 1939-45 Star. On 10 March 2015, the Directorate advised Mr Barlow that he was ineligible for the 1939-45 Star because he did not have qualifying service in an area or areas considered to be operational as per the provisions set out for the award of the 1939-45 Star.
7. On 26 April 2015, Mr Barlow applied to the Defence Honours and Awards Appeals Tribunal for a review of the decision of the Directorate that he is ineligible for the 1939-45 Star. The Tribunal accepted Mr Barlow’s application for review on 28 May 2015.

Tribunal Jurisdiction

8. 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

¹ A Summary of the Conditions of the Award of the Campaign Stars, the Defence Medal and the War Medal (The Dedman Paper) dated December 1948.

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 1939-45 Star. Therefore the Tribunal has jurisdiction to review decisions in relation to this award.

Conduct of the Review

9. On 28 May 2015, 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 Barlow'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.

10. On 29 July 2015, the Directorate, on behalf of the Secretary, provided the Tribunal with a submission which confirmed its position that Mr Barlow's service did not meet the eligibility criteria for the award of the 1939-45 Star. On 4 August 2015, a copy of the report of the Directorate was forwarded to Mr Barlow for comment. A written response was received on 21 September 2015.

11. The Tribunal met on 19 December 2015. During its meeting the Tribunal considered the responses provided by Mr Barlow and the Directorate and the Tribunal heard oral evidence from Mr Barlow. Following the hearing, the Tribunal decided to try to obtain further information.

Eligibility criteria for the award of the 1939-45 Star

12. The 1939-45 Star and a number of other Stars² and the Defence Medal are campaign medals of the British Commonwealth, established by Command Papers to recognise service in a number of theatres during the Second World War. The 1939-45 Star was established, on 3 August 1943, together with the Africa Star. Its establishment is recorded in Air Ministry Order A755/1943.³

13. The conditions for the award of the 1939-45 Star are set out in a number of documents.⁴ For the purposes of determining eligibility in the Australian armed forces, after the Second World War the conditions were set down in December 1948, when The Hon. John J. Dedman, the Australian Minister of State for Defence, issued a *Summary of the Conditions of the Award of the Campaign Stars, the Defence Medal and the War Medal*.⁵ Known generally as the *Dedman Paper*, it is a

² Stars include: the Africa Star, the Atlantic Star, the Air Crew Europe Star, the Italy Star, the France and Germany Star, the Pacific Star and the Burma Star.

³ UK Air Ministry Order (AMO) A755/1943, 3 August 1943. *Introduction of Africa and 1939-43 Stars*, etc.

⁴ AMO A755/1943, 3 August 1943, *Introduction of Africa and 1939-43 Stars*, etc.;

Committee on the Grant of Honours Decorations and Medals in Time of War – Campaign Stars and the Defence Medal, HMSO, London, May 1945. Available at www.northeastmedals.co.uk/britishguide/hmso/campaign_stars_defence.htm; and *United Kingdom Command Paper Cmd 6833*, June 1946.

⁵ A copy of the *Dedman Paper* can be found on the following web site:

summary of the provisions of the *Air Ministry Order A755/1943* and the 1945 and 1946 United Kingdom Command Papers.

14. In accordance with the *Dedman Papers*, the 1939-45 Star is granted for service in operations during the period from the 3 September 1939 to 2 September 1945. The conditions relevant to this application are:

‘5. *Air Force*

(a) *The 1939-45 Star is awarded to all air crew who have taken part in operations against the enemy, subject to the completion of two months in an operational unit.*

(b) *Air crew service in operations against the enemy between 8 May 1945 and 2 September 1945, in the areas described in 4(b)... will qualify, subject to completion of two months in an operational unit.’*

Section 4(b) states, *inter alia*, that qualifying service must have been rendered in operations in specified zones (i.e., the Indian and Pacific Oceans).

15. The conditions for the 1939-45 Star were subsequently amended by *Commonwealth of Australia Gazette (CAG)* No S133 of 10 April 1995 and CAG S274 of 18 July 1996, both of which were revoked by CAG S350 of 9 July 1998. On 20 August 2001 by CAG S374, the Governor General revoked the 1998 CAG and created further conditions for the award of the 1939-45 Star.

16. Relevant to this review, the criteria, as set out in the 2001 CAG, in addition to the criteria set out in Command Paper 6833, states that:

‘5. *The 1939-45 Star may be awarded for service as a member of the Australian Defence Force...*

a. *who was on operational service in a designated European theatre of operations at any time during the six months immediately prior to, and including, 8 May 1945, but who had not previously met the qualifying periods of operational service for the award of the 1939-45 Star; or*

b. *who was on operational service in a designated Pacific theatre of operations at any time during the six months immediately prior to and including, 2 September 1945, but who had not previously met the qualifying periods of operational service for the award of the 1939-45 Star...’⁶*

Mr Barlow’s Service

17. On 21 May 1942, Mr Barlow enlisted in the Permanent Air Force (PAF) as an Aircraftsman with the duties of ‘Air Crew V Guard’. He was aged 22 years and was allocated Service No 425822.

<http://www.defence.gov.au/medals/Content/+040%20Campaign%20Medals/+100%20World%20War%20II/WW2%20Dedman%20Paper%20transcript.pdf>

⁶ *Commonwealth of Australia Gazette (CAG)* S374 of 17 September 2001.

18. On 30 January 1943, Mr Barlow was promoted to Leading Aircraftsman and sent to No 5 Elementary Flying Training School (5EFTS) at the RAAF Station Narromine NSW. On 30 April 1943, Mr Barlow embarked from Brisbane for attachment with the RCAF. He arrived in Canada on 17 May 1943 to continue his pilot training with No 3 Service Flying School (3SFTS) at Calgary, Alberta, Canada.

19. On 16 September 1943, Mr Barlow graduated as a Sergeant Pilot but the next day he was commissioned as a Pilot Officer and presented with his flying badge. On 2 October 1943 until 10 April 1945, Mr Barlow was posted to No 2 Flying Instructor School (2FIS) at Claresholm, Alberta, Canada as a flying instructor/examining officer. On 17 March 1944 he was promoted to Flying Officer.

20. From 11 April 1945 to 19 October 1945, Mr Barlow was posted to No 8 Operational Training Unit at Greenwood, Nova Scotia, Canada to train airmen on Mosquito aircraft.

21. On 16 September 1945, Mr Barlow was discharged with Commission from the RCAF and returned to Australia as a Flight Lieutenant (FLTLT) on 20 October 1945. He was discharged from the RAAF on demobilisation on 30 November 1945.

Summary of Mr Barlow's claims

22. After being initially advised that he was not eligible for the 1939-45 Star in 1993, Mr Barlow reapplied for consideration on 10 November 1996.

23. Mr Barlow's new application was based on his understanding that amendments to the eligibility criteria had "widened the entitlement to Military Awards". He said that he had been advised that his service with the RAAF may entitle him to the 1939-45 Star. He said that

While at Greenwood Nova Scotia with my navigator F/S [Flight Sergeant] Bowles I carried out several patrols over the Atlantic of up to 3 hours duration, in search of missing aircraft and on one occasion to check on a submarine report.

24. On 4 February 2015 Mr Barlow again made application for the grant of the 1939-45 Star. He wrote that his family had researched his service through the National Archives of Australia and because of detailed information of his service record he was seeking a further review of his application.

25. Mr Barlow contends that he had the two months operational service but has not sought to demonstrate that the service was in the specified operational area after 8 May 1945.

26. During the Tribunal hearing Mr Barlow justified his application by referring to the 1996 amendment to the conditions for the award of the 1939-45 Star⁷ which

⁷ CAG S274, *Amendment of Conditions for Award of the 1939-45 Star*, dated 18 July 1996

covered a member of the Australian Defence Force who had not previously met the qualifying periods of operational service. He was relying on the change in eligibility period to include the six months prior to and including 8 May 1945.

27. Mr Barlow told the Tribunal about an incident over the Atlantic while he was searching for U-boats. His aircraft was attacked from underneath by a German fighter and he lost the use of the starboard engine. Because of this action he felt that he was operating in the designated European theatre of operations. He could not say where the fighter came from but thought it may have been from England but said this incident demonstrated he was in an operational area in April 1945.

28. In his letter of 20 May 2015, Mr Barlow wrote that his application for a review was based on Clause 6(a) *CAG S374, Amendment of Conditions for Award of the 1939-45 Star*, dated 17 September 2001 which stated:

The 1939-45 Star may be awarded for service as a member of the Australian Defence Force, or to a person in a civilian category designated in Command Paper 6833 ...who was on operational service in a designated European theatre of operations at any time during the six months immediately prior to, and including, 8 May 1945, but who had not previously met the qualifying periods of operational service for the award of the 1939-45 Star.

Summary of Defence's Submission

29. In its submission, Defence noted that Mr Barlow had made several applications to be considered for the award of the 1939-45 Star. Defence stated that, although four amendments to the conditions of award had been issued between 1995 and 2001, they did not change his eligibility for the 1939-45 Star. On each occasion Mr Barlow was found not to be eligible for the 1939-45 Star.

30. In response to the Tribunal's request for a Defence Submission Defence advised that they had again examined Mr Barlow's service records provided by the National Archives of Australia and his medal card held by the Directorate. Defence checked the RAAF unit and squadron locations guide and also considered previously submitted extracts of Mr Barlow's flying log book.

31. There was no dispute with Mr Barlow's posting dates and locations listed in his service record.

32. In its submission, Defence stated that for aircrew to qualify for the 1939-45 Star they must have served for two months in an operational unit in specified areas. Defence determined that Canada was considered a non-operational area and that the search for U-boats did not qualify for the 1939-45 Star.

Tribunal Consideration

33. At the conclusion of the hearing, the Tribunal sought further information about the nature of Mr Barlow's operational service. In particular, the Tribunal asked if any evidence was available from the records of the Greenwood Control Tower to confirm the return of his damaged aircraft on one engine.

34. During the period of the Second World War, the United Kingdom organised and co-ordinated all Commonwealth/Dominions Air Forces. The airfield which contained the Greenwood Control Tower was part of RAF Station Greenwood, which was used by the RAF and the RCAF as part of the British Commonwealth Air Training Plan (BCATP). The No 8 Operational Training Unit (OTU) used RAF Station Greenwood as their base for operations. On 1 July 1944, RAF Station Greenwood was returned officially to the RCAF, and became known as RCAF Greenwood. No 8 OTU was disbanded on 31 July 1945. The Tribunal was unable to find any files relating to the operation of the control tower at either RAF Station Greenwood or RCAF Station Greenwood.

35. In his letter of 10 September 2015, in response to the Directorate submission, Mr Barlow stated

I consider that I was on operational service in an operational area in April 1945.

36. In earlier applications, Mr Barlow provided extracts from his flying log book which listed the following flights while posted to 8 OTU:

- 26 May 1945 – Sub search
- 12 June 1945 – Enemy sub search
- 25 June 1945 – A/C [air craft] search
- 29 June 1945 – night search missing A/C

However, these flights over the Atlantic were flown after the qualifying period for the European theatre of operations for the award ended on 8 May 1945

37. Mr Barlow served with the RAAF (but physically in Canada) having been commissioned, and posted to No 2 Flying Instructor School at Claresholm, Alberta, Canada from 2 October 1943 until 10 April 1945. As Canada was not designated an operational area, this part of Mr Barlow's service does not count towards the 1939-45 Star.

38. Mr Barlow was next posted to No 8 OTU at Greenwood, Nova Scotia from 11 April 1945 until 19 October 1945. During the period between 11 April and 8 May 1945, Mr Barlow had to have flown one (1) sortie against the enemy in the European theatre AND served a total of two (2) months within an operational unit in the European theatre⁸. Mr Barlow did not complete that requirement.

39. In the period 9 May 1945 until 2 September 1945, Mr Barlow had to have flown one (1) sortie and served the balance of the two months within an operational unit which fought against the enemy (Japan) in the Pacific theatre. Mr Barlow did not complete this requirement.

⁸ As outlined in the *Dedman Papers*, paragraph 122.

Finding

40. 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. The Tribunal considered that the Directorate correctly applied the regulations.

DECISION

41. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Cecil Roy Barlow is not eligible for the award of the 1939-45 Star.