



Australian Government

Defence Honours and Awards Appeals Tribunal

Blackman and the Department of Defence [2016] DHAAT 38 (28 September 2016)

File Number(s) 2016/002

Re **Mr Ronald Blackman**
Applicant

And **Department of Defence**
Respondent

Tribunal Brigadier M. Bornholt AM (Retd) (Presiding Member)
Rear Admiral J. Goldrick, AO, CSC, RAN (Retd)

Hearing Date 13 September 2016

DECISION

On 28 September 2016 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Ronald Blackman 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) and 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*

REASONS FOR DECISION

Introduction

1. On 18 March 2011 Mr Ronald Blackman (Mr Blackman) made application to the Directorate of Honours and Awards of the Department of Defence (the Directorate) for the Australian Defence Medal (ADM).¹ On 6 May 2011 the Directorate responded to Mr Blackman advising him that, as he did not complete his initial engagement period of two years in the Citizen Military Forces (CMF), he did not qualify for the ADM.² Mr Blackman served in the CMF from 30 May 1967 to 30 March 1968.³

2. On 1 February 2016 Mr Blackman applied to the Tribunal for a review of the decision, claiming that the reason he applied for discharge before his engagement period was complete was to ‘ease the burden on my wife by spending quality time with her’ in raising their young family.⁴ In subsequent correspondence he also asked that discretion be applied to his circumstances and that his appeal be considered under the auspices of ‘discharge of the member due to a prevailing discriminatory Defence policy’.⁵

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 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 ADM. 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

4. On 26 February 2016, in accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, the Tribunal wrote to the Secretary of the Department of Defence advising of the review of Mr Blackman’s eligibility for the ADM and inviting submissions and an explanation of how Defence had reached its decision to refuse the award. A written submission was received from the Directorate on 21 April 2016. This submission concluded that Mr Blackman did not complete his initial enlistment period or serve for a continuous aggregated period of not less than four years and that, accordingly, he was not eligible for the award of the ADM.⁶

¹ Application for the Issue of Medals and/or Clasps dated 18 March 2011

² DHA 11/388161 dated 6 May 2011

³ Record of Service – 2205895 Ronald Anthony Blackman

⁴ Application for Review of Decision dated 1 February 2016

⁵ Mr Blackman letter to the Tribunal dated 10 May 2016

⁶ DH&A/OUT/2016/0058 dated 21 April 2016

5. The Defence submission was provided to Mr Blackman on 26 April 2016.⁷ Mr Blackman made comment on the submission on 10 May 2016.⁸ On 13 September 2016 the Tribunal heard evidence by telephone from Mr Blackman at a hearing also attended by Mr David Bell as the representative of the Directorate.

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 2006.⁹ 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 subregulation (1), the Chief of the Defence Force or his delegate may determine that a period of the member's qualifying service is efficient service'.*

...

⁷ DHAAT/OUT/2016/152 dated 26 April 2016

⁸ Mr Blackman letter to the Tribunal dated 10 May 2016

⁹ Commonwealth of Australia Gazette No. S48, 30 March 2006

Mr Blackman's Submission

8. Mr Blackman originally made application for the ADM and the 'Citizen's Military Force Medal' in 2011, some 43 years after his service.¹⁰ He stated that he made the application because:

'... when I march in the Anzac march the only medal I have to wear is the National Medal (with Clasp) from my 30 years Police service ...'.

9. In his application for review he acknowledges that he was discharged on 30 March 1968 'after only serving for 10 months instead of the enlistment period of two years' and that his reason for applying for the discharge:

*'was for personal family reasons due to the fact that my wife had just given birth to our second child on 11 January 1968 – only one month before the 17 RNSWR Annual Camp 10-23 February 1968 at Colo-Putty Training Area. After returning to shift work as a policeman after the camp, I became concerned to assist my wife in looking after our two very young daughters. Shift work in my job as a policeman meant that I was away from home at all hours of the day and night and I felt that I had to make a decision to resign from the army so as to ease the burden on my wife by spending quality time with her in raising our young family ...'.*¹¹

10. Mr Blackman also asserted that he 'earnt the right to receive the ADM'. He claimed that he earned this right by virtue of his commendable performance in the CMF. Mr Blackman provided letters of commendation as evidence to support his assertion. He concluded the submission by stating his regret that he did not have:

'an army medal to wear to show that I have proudly served in the armed services'.

11. In his letter of 10 May 2016 in response to the Defence submission, Mr Blackman reiterated that the reason he applied for discharge was to support his family.¹² He asserted that:

'... I had a valid reason for requesting a discharge because I believed my priority at that time was to assist my wife ...'.

and

'I respectfully appeal in relation to paragraph d.iii "the discharge of the member due to a prevailing discriminatory Defence policy" ... that my appeal is one where "Defence Discretion" could and should be applied because of the valid circumstances prevailing at time of my discharge'.

¹⁰ Application for the Issue of Medals and/or Clasps dated 18 March 2011

¹¹ Application for Review of Decision dated 1 February 2016

¹² Mr Blackman letter to the Tribunal dated 10 May 2016

12. In his oral evidence Mr Blackman reiterated his written contentions and again asserted that in his view, Defence discretion could be applied to his circumstances ‘as it was often done in the Police Service’. He stated that he would like the Tribunal to also consider ADM Regulation 4(2) which he asserted allowed for the Chief of the Defence Force to make a discretionary determination that his period of ‘qualifying service’ could also be deemed to be ‘efficient service’ therefore providing him with eligible service for the ADM.

The Defence Submission

13. The Defence submission of 21 April 2016 indicates that the decision maker in this case holds the appropriate delegation. The submission indicates that the legislative basis for the decision is *Commonwealth of Australia Gazette No S48* dated 30 March 2006 – Australian Defence Medal, as amended.

14. The submission states that the assessment of Mr Blackman’s eligibility for the ADM was based upon his service record. In making the assessment, the Directorate relied upon the following material facts:

- a. Mr Blackman enlisted in the CMF on 30 May 1967 for a period of two years as evidenced by his ‘Attestation Form’ dated 30 May 1967.¹³
- b. On 30 March 1968 Mr Blackman discharged from the CMF having completed ten months and one day of his two-year period. His service record states that he discharged under Regulation DA 40 ‘at own request’.¹⁴

15. The Directorate confirmed that Mr Blackman did not complete his initial enlistment period of two years and, accordingly, the Delegate determined that he was not entitled to the ADM as he did not meet the eligibility criteria.

Mr Blackman’s Service Record

16. Mr Blackman’s service record indicates that he enlisted in the CMF on 30 May 1967 and completed recruit training in August 1967. He was allocated to the Royal Australian Infantry Corps and posted to C Company, 17th Battalion, the Royal New South Wales Regiment as a private soldier on 9 November 1967. He was discharged at own request on 30 March 1968. Mr Blackman confirmed these details during the hearing.

The Tribunal’s Consideration of Eligibility for the ADM

17. There is no dispute regarding Mr Blackman’s period of service in the CMF being from 30 May 1967 to 30 March 1968 – a period of ten months and one day. There is also no dispute that he was discharged from the CMF at his own request for what he has stated were ‘personal family reasons’. At issue is whether his reason for discharge meets any of the exception clauses in the ADM Regulations.

¹³ Attestation Form 55 AESS – 2205895 Blackman dated 30 May 1967

¹⁴ Record of Service – 2205895 Ronald Anthony Blackman

18. The Tribunal was satisfied that the Directorate decision was made by an appropriately authorised Delegate and the correct legislation was applied in the making of the decision - being the *Australian Defence Medal Regulations 2006*.¹⁵

19. The Tribunal is bound by the eligibility criteria that govern the award of the ADM as stated in Regulation 4(1). Accordingly, in order for Mr Blackman to be eligible for the award of the ADM, the Tribunal must be satisfied that he either completed his initial enlistment period (which in his case was two years), or that his reason for discharge fell within one of the prescribed exceptions.

20. The Tribunal, relying on the service record and Mr Blackman's own evidence, found that he did not complete his initial two-year enlistment period in the CMF as his service commenced on 30 May 1967 and ceased on 30 March 1968.

21. The Tribunal turned to Mr Blackman's claim that his discharge be considered to have been caused by 'a prevailing discriminatory policy'. The Tribunal noted that Mr Blackman did not provide any details of how or why he was discriminated against and, during the hearing, indicated that he had formed the view that he may not have been the subject of a discriminatory policy. The Tribunal noted that the 2009 *Inquiry into Eligibility Criteria for the Award of the Australian Defence Medal* considered discrimination and provided examples such as women who were discharged on grounds of marital status or pregnancy and soldiers who were discriminated against due to sexual preference.¹⁶ The Tribunal advised Mr Blackman of these circumstances during the hearing and informed him that there appeared to be no evidence that he had been the subject of a specific discriminatory policy. He stated that he agreed with this conclusion.

22. The Tribunal also reviewed the other exception clauses – death and medical discharge - and found that there was no evidence to suggest Mr Blackman was discharged as a result of these clauses. The Tribunal therefore found that Mr Blackman was not discharged from the CMF for reasons which would meet the prescribed exception criteria.

23. The Tribunal turned to Mr Blackman's assertion that his circumstances be considered as discretionary by the Chief of the Defence Force and specifically that he exercises that discretion by deeming Mr Blackman's service to be 'qualifying service and therefore efficient'. During the hearing the Tribunal asked Mr Bell of the Directorate to comment on this assertion. Mr Bell stated that the context under which Regulation 4(2) applied was in relation to annual attendance requirements and the need for individuals to complete a mandatory period of training each year to be classified as an efficient member of the Reserve. He indicated that this provision was not a substitute for Regulation 4(1) which required the completion of a specified enlistment period which also needs to be 'efficient service' in order to qualify for the ADM.

24. The Tribunal was satisfied that the explanation provided by the Directorate at the hearing was correct. Having reviewed Regulation 4(2), the Tribunal was satisfied

¹⁵ *Commonwealth of Australia Gazette No S48 dated 30 March 2006 – Australian Defence Medal*

¹⁶ *Defence Honours and Awards Tribunal - Inquiry into Eligibility Criteria for the Award of the Australian Defence Medal* dated 11 February 2009

that Mr Blackman's efficiency in the 10 months he served was not at issue, however there was no scope in the Regulations for discretion to be applied to his circumstances or for his attendance to be deemed as qualifying service. The Regulations were specific: Mr Blackman needed to have completed his two-year enlistment period or have met one of the exception clauses. He did not.

Finding

25. For the above reasons the Tribunal finds that Mr Blackman was discharged from the CMF at his own request after a total of 10 months of service and is not eligible for the award of the ADM. The Tribunal therefore finds that the decision of the Directorate is correct. This finding does not in any way diminish the contribution Mr Blackman made to his country for the period he did serve.

DECISION

26. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Ronald Blackman is not eligible for the award of the Australian Defence Medal.