



Australian Government

Defence Honours and Awards Appeals Tribunal

Butler and the Department of Defence [2018] DHAAT 32 (20 December 2018)

File Number 2018/024

Re **Mr Royal Butler**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr David Ashley AM (Presiding Member)
Mr Graham Mowbray

Hearing Date 30 November 2018 in Canberra

Appearances Mr Butler by telephone
Ms Allison Augustine, Directorate of Honours and Awards
Ms Jo Callaghan, Directorate of Honours and Awards

DECISION

On 20 December 2018 the Tribunal affirmed the decision of the Directorate of Honours and Awards of the Department of Defence of 2 December 2017 that Mr Royal Butler is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal

LEGISLATION

Defence Act 1903 – Part VIIIIC – Sections 110T, 110VB(2)
Defence Regulation 2016 – Section 36

Australian Defence Medal Regulations 2006, Commonwealth of Australia Gazette No. S48, 30 March 2006.

REASONS FOR DECISION

Introduction

1. On 25 April 2017, the Applicant, Mr Royal Butler, applied to the Directorate of Honours and Awards in the Department of Defence (the Directorate) for the Australian Defence Medal (ADM). On 2 December 2017, the Directorate informed Mr Butler that he is not eligible for the award of the ADM.¹

2. On 26 April 2018, Mr Butler applied to the Tribunal for a review of the decision by Defence not to award him the ADM.² Mr Butler enlisted in the Australian Army Reserves (ARES) under the Army Ready Reserve (RRES) Scheme in 1995 for 60 months and was first posted to Brisbane in the 6th Battalion, the Royal Australian Regiment (6 RAR). However the Scheme was abolished in 1996 and its members offered service in the Army Reserve. After some reserve service in 6 RAR, Mr Butler appears to have been transferred to the 2nd/17th Battalion, the Royal New South Wales Regiment (2/17 RNSWR) in Dundas and also paraded in Bathurst with the 1st/19th Battalion, the Royal New South Wales Regiment (1/19 RNSWR).

3. Central to Mr Butler's application for review is his statements, *'After the Scheme was abolished, the coordination and assistance dropped away and changed significantly. I was to attend Timor Barracks at Dundas, a 5 hour return trip (366km). The travel costs were no longer met by the Army. As a University student working part time in Regional NSW (Bathurst) this was financially impossible. I did attend a local unit (1/19 RNSWR) in Bathurst but found that the skill level and discipline was not commensurate with keeping my own skills up, and I didn't want to attend for any disingenuous reasons'*. Mr Butler also stated *'I would ask the Tribunal to consider the significant changes to the Scheme and the challenges that were placed upon Ready Reserve soldiers in maintaining suitable days of service when residing in regional areas at the time the Scheme was abolished'*.

4. On 10 May 2018, after establishing jurisdiction, the Tribunal wrote to the Secretary of the Department of Defence seeking a report on the decision of Defence not to award Mr Butler the ADM.³ On 20 June 2018, the Directorate, on behalf of the Secretary, provided a submission to the Tribunal.⁴

The Australian Defence Medal

5. 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.'

¹ Letter, Directorate of Honours and Awards to Mr Butler dated 2 December 2017.

² Application for Review of Decision by Mr Butler to DHAAT dated 26 April 2018.

³ Letter, DHAAT to Defence dated 10 May 2018.

⁴ Letter, Directorate of Honours and Awards to the Tribunal, dated 20 June 2018.

6. The Regulations are set out in the Schedule attached to the Letters Patent. Those Regulations were amended on 20 March 2006.⁵ 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 sub regulation (1), the Chief of the Defence Force or his or her delegate may determine that a period of the member’s qualifying service is efficient service.’⁶

ARES service and qualification for the ADM

7. Further eligibility criteria for the ADM are outlined in the *Chief of Defence Force Determination on Minimum Annual Periods of Qualifying Service for the Australian Defence Medal*, dated 6 February 2013. This instrument states that the annual obligation for members of the Army Reserve are:

Service Category	Minimum Qualifying Period	Effective Dates
Australian Army		
Army Reserve	26 days, including such periods of continuous training and home training as directed by the proper military authority	Until 30 June 1993
	14 days	From 1 July 1993 to 20 April 2000
All members	20 days	From 20 April 2000

⁵ *Australian Defence Medal Regulations 2006*, Commonwealth of Australia Gazette No. S48, 30 March 2006.

⁶ *Ibid.*

Summary of the Hearing

8. In his opening address, Mr Butler stated *'I acknowledge and never dispute the fact that the rules that set the days of service required; I have not met that'*, and then reiterated the substance of his argument addressed in his application, which is described in full at paragraph 3 of this report.

9. Mr Butler also added that he had *'a family history of military service with the Army and my daughter is currently going through the process of aptitude testing for ADFA and I guess its something of a sore point for me that I wear my deceased father's medals on ANZAC Day and I feel a bit let down that while I did sign a blank cheque with the Australian Defence Force that I would go to war, I don't have any form of acknowledgement that I did that'*.

10. Mr Butler also commented *'I realise that the rules don't allow for aggregate days or average days over a period of time based on the strict interpretation but I would ask the Tribunal to consider that my days of service considerably exceed the days per year required if it were looked at over the time during the service if you excluded the full-time year'*.

11. The Tribunal asked Mr Butler if he was asserting that any of the exceptions to the Regulations regarding eligibility for the ADM applied to him. Mr Butler replied *'no I do not'*. The Tribunal also asked Mr Butler if he disputed the Directorate's summary of his service set out in their report. Mr Butler replied, *'no I do not'*.

12. The Tribunal spoke with Mr Butler about his service in 2/17 RNSWR and 1/19 RNSWR post his service with 6 RAR after the abolition of the RRES Scheme. Mr Butler was unclear about the manner in which he was able to parade at both units and commented that *'Mr Moriarty'* had offered for him to parade in Bathurst, where Mr Butler lived. The Tribunal pointed out to Mr Butler that his service record demonstrated that he was parading at various times with both units and that he was therefore being paid.

13. The Tribunal asked Mr Butler if he agreed, that notwithstanding his perspective of 1/19 RNSWR, that Army had provided him with a reasonable alternate means to continue parading in order for him to complete his initial period of service. Mr Butler replied *'I absolutely acknowledge that there was an opportunity to attend an alternative unit; it comes down to your interpretation of reasonable. If it was reasonable then I would show up and I would receive money for showing up and be able to tick a box and say I did something. It was reasonable in that sense but whether it was reasonable to continue at the standard or level that I had in 6 RAR, I don't know if that would have been the same standard'*.

14. The Tribunal asked Mr Butler if his decision not to continue parading at 1/19 RNSWR was a willing and conscious decision on his part. Mr Butler replied *'yes it was'*. The Tribunal asked if when he decided not to continue parading, he applied for discharge or just stopped parading. Mr Butler replied *'I did not apply for discharge, I just disengaged'*.

15. The Tribunal asked Mr Butler what he understood to be his initial period of enlistment. After a short period of discussion, Mr Butler agreed that this period was *'what he signed up for'*, full time and then part time afterwards and reiterated *'I know I didn't do the required days'*.

16. The Tribunal asked the Directorate what was meant by Mr Butler's initial period of enlistment. The Directorate replied that this meant his whole period of service for which he signed, being one year full time followed by four years part time. The Directorate then talked the Tribunal through the details of Mr Butler's service year by year and confirmed that Mr Butler had been offered reasonable opportunities to continue service both at 2/17 RNSWR and at 1/19 RNSWR.

17. The Tribunal asked Mr Butler if he agreed that technically he does not meet the eligibility criteria for the award of the ADM. Mr Butler replied '*that's correct, I've never sought to deny that*'. There being no closing statements, the hearing was concluded.

Issues for the Tribunal:

Does Mr Butler meet the eligibility criteria for the award of the ADM?

18. The Tribunal established that Mr Butler enlisted in the Army, to serve in the RRES Scheme, on 28 February 1995 for a period of 60 months or five years. He is recorded in his records of having served on full time service with 6 RAR until 18 August 1995, giving him his first year for eligibility, and then his records show that he commenced part time parading initially with 6 RAR, and then later with 2/17 RNSWR and 1/19 RNSWR.

19. Mr Butler's record then show that he paraded for 82 days between 28 February 1996 to 27 February 1997 making him eligible for his second year as the Regulations for the ADM outlined in the Chief of Defence Force Determination, requires a minimum of 14 days service as an annual obligation for members of the Army Reserve. Mr Butler, between 28 February 1997 and 27 February 1998, is recorded as having paraded for 17.83 days, giving him his third year towards eligibility. Mr Butler's last reported parade date is for one day on 22 February 1998 and he is not recorded as having again paraded until he was discharged on 18 June 1999. Mr Butler does not dispute his record.

20. The Tribunal is satisfied that Mr Butler completed three years of eligible service towards his entitlement for the ADM. The Tribunal also determined that the pertinent Regulations applicable to Mr Butler for the ADM required him to complete either an initial period of service, for Mr Butler this was 60 months or five years, or for a period of not less than four years. The Tribunal is satisfied that Mr Butler did not meet either of these eligibility requirements. Mr Butler does not claim that any of the exceptions set out in the Regulations apply to him and the Tribunal considers this to be the case. The Tribunal is satisfied that the Regulations do not allow days to be aggregated or '*averaged out over a period of time*' as suggested by Mr Butler.

21. The Tribunal notes that at the Hearing, Mr Butler agreed that he was not 'technically' eligible for the award of the ADM.

22. The Tribunal decided that Mr Butler is not eligible for the award of the ADM.

What weight should the Tribunal give to Mr Butler's argument that an exception should be made in his case?

23. The Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision.

24. The Tribunal noted that Mr Butler made a willing and conscious decision to cease parading at 1/19 RNSWR, when the opportunity and option to serve out his initial period of service, or four years, was available to him. This is not disputed by Mr Butler.

25. While the Tribunal respects and acknowledges Mr Butler's contribution to Australia through his service with Army, it can give no weight to his argument.

Finding

26. For the reasons stated in this report, the Tribunal considers that Mr Butler is not eligible for the award of the ADM.

Decision

27. The Tribunal affirms the decision of 2 December 2017 of the Directorate of Honours and Awards of the Department of Defence that Mr Royal Butler is not eligible for the award of the Australian Defence Medal.