



## Australian Government

---

### Defence Honours and Awards Appeals Tribunal

#### **Cicala and the Department of Defence [2017] DHAAT 10 (24 March 2017)**

File number 2016/007

Re **Warrant Officer Class One Joe CICALA**  
Applicant

And **The Australian Army** on behalf of the **Department of Defence**  
Respondent

**Tribunal** Ms Naida Isenberg (Presiding Member)  
Brigadier Kevin O'Brien CSC (Retd)  
Mr David Ashley AM

**Hearing Date** 2 March 2017

#### **DECISION**

On 24 March 2017 the Tribunal decided to recommend to the Minister that the decision not to recommend WO1 Cicala for the Conspicuous Service Medal be affirmed.

#### **CATCHWORDS**

*DEFENCE HONOUR – Conspicuous Service Medal – eligibility criteria - whether the service should be recognised.*

#### **LEGISLATION**

*Defence Act 1903 - ss 110V(1), 110VB(1)*

*Defence Amendment Regulations (No.1) 2010 - Schedule 3 Part 2*

*Commonwealth of Australia Gazette No. S108 dated 7 May 1990 (Letters Patent and Regulations for the Conspicuous Service Medal)*

## REASONS FOR DECISION

### Introduction

1. On 21 March 2016, Warrant Officer Class One (WO1) Joe Ernest Cicala, the Applicant, the Unit Reserve Liaison Officer of 16 Battalion, Royal Western Australian Regiment (16RWAR), applied to the Tribunal seeking a review of his eligibility for the Conspicuous Service Medal (CSM). WO1 Cicala's application for review sought review of two nominations for the CSM in the Queen's Birthday 2014 (QB14) and 2015 (QB15) honours lists. Both nominations were unsuccessful.

2. While WO1 Cicala's application to the Tribunal stated that there was 'no formal rejection', he supplied emails from officers who had served in his chain of command that indicated he had been recommended for the CSM, but that this recommendation had not progressed beyond 13 Brigade Headquarters.

### Tribunal Jurisdiction

3. Pursuant to s110VB(1) 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 or the Minister to refuse to recommend a person for an honour or award in response to an application. Regulation 93B of the Defence Force Regulations 1952 defines a defence honour as being those awards set out in Part 1 of Schedule 3.<sup>1</sup> Included in the defence honours set out in Part 1 is the CSM.

4. The Tribunal was satisfied that there had been a refusal to recommend the Applicant for the CSM in the QB14 and QB15 honours lists and that these were reviewable decisions as defined in s110V(1)(c) of the Defence Act. The Tribunal therefore has jurisdiction to conduct the review in respect of those matters. At the hearing, however, when the Tribunal sought confirmation of the matters the subject of the application for review, WO1 Cicala said that he did not press the application for review with respect to the QB15 nomination.

5. In his correspondence to the Tribunal dated 11 May 2016, WO1 Cicala cited a third nomination in the Queen's Birthday 2016 honours list. That matter, after his application to the Tribunal, was outside the scope of the Tribunal's review as it was not part of the decisions under review. Similarly, the Tribunal was informed that the Applicant had been unsuccessful when considered for a CSM in the Australia Day 2017 (AD17) honours list; this matter too was outside the scope of the Tribunal's review.

6. The role of the Tribunal is to determine the correct and preferable decision in relation to the application having regard to the applicable law and the relevant facts. In accordance with s110VB(1) of the Defence Act, as the matter under review is a defence honour, the

---

<sup>1</sup> Under Section 85 of the *Defence Regulation 2016*, the *Defence Force Regulations 1952* continue to apply to an application made under those regulations before their repeal on 1 October 2016.

Tribunal does not have the power to affirm or set aside the decision but may make recommendations regarding the decision to the Minister.

### **Conduct of the review**

7. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (as amended)*, on 19 May 2016, the Tribunal wrote to the Secretary of the Department of Defence informing him of WO1 Cicala's application for review and requested a report on the decision to deny the Applicant the CSM. On 25 August 2016 Brigadier Leigh Wilton, Director-General Personnel – Army (DGPERS-A) provided a report, which was forwarded to the Applicant on 26 August 2016. On 10 September 2016, the Applicant provided his response.

8. As required by the Procedural Rules the hearing was conducted in public on 2 March 2017. The Applicant gave evidence by telephone, as did Lieutenant Colonel (LTCOL) Rhogan Aitken, LTCOL Eric Gruber, WO1 Leanne Iseppi, and Brigadier David Thompson. Brigadier Wilton, assisted by LTCOL Emmet O'Mahoney, represented Defence.

### **The Conspicuous Service Medal**

9. The Australian Conspicuous Service Decorations were created on 18 October 1989 to provide recognition to members of the Australian Defence Force and certain other persons for outstanding or meritorious achievement or devotion to duty in non-warlike situations.

10. The Australian Conspicuous Service Decorations consist of the Conspicuous Service Cross (CSC) and the CSM. The Australian Conspicuous Service Decorations Regulations (the Regulations) specify that the CSM shall be awarded for:

*meritorious achievement or devotion to duty in non-warlike situations*<sup>2</sup>

11. The Defence Honours and Awards Manual defines non-warlike situations as 'a situation in which ADF service involves all service that has not been declared to be warlike, including declared non-warlike and hazardous and peacetime service.'<sup>3</sup> Whilst the Tribunal is not bound to apply policy guidelines of the kind referred to in the Manual, the Tribunal will usually apply the guidelines unless there are cogent reasons in a particular case for not doing so: see *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634 at 639-645.

### **The Applicant's evidence**

12. The Applicant submitted that '*due process was not adhered to*' because both nominations were rejected at Headquarters 13 Brigade '*without formal notice or reason*'. He contended that the QB14 and QB15 nominations for the CSM were unsuccessful because he was '*significantly disadvantaged by not being able to access due process and have been negatively targeted by certain individuals.*'

---

<sup>2</sup> Commonwealth of Australia Gazette No S108, 7 May 1990, *Letters Patent and Regulations for the Australian Conspicuous Service Decorations*

<sup>3</sup> DGPERS-A/OUT/2016/R26207351 dated 25 August 2016

13. WO1 Cicala provided evidence of a June 2013 email from the Regimental Sergeant Major (RSM) of 16RWAR to the RSM of 13 Brigade as demonstrating that a nomination existed as early as that time. He also relied on this email to cast doubt upon Brigadier Thompson's claim (see below) that the nomination arrived in an envelope which also contained a nomination for LTCOL Aitken signed by WO1 Cicala, and that the RSM of 16RWAR had no knowledge of the citations.

14. As to how he became aware of his nomination, WO1 Cicala said that in 2015, he had been directed to track nominations for his soldiers on the Department of Defence's 'Objectives' (sic) database and inadvertently came across his own nomination. He referred the Tribunal to an extract from that database, noting that there were nominations for three soldiers, on the same page as a nomination for himself. The Tribunal observed that the entry was undated, and neither was there a date as to when the information was accessed.

15. WO1 Cicala was asked what he did when he learned of his nomination. He said he 'had a look' in his personal file and 'asked some questions', although it was unclear of whom he made those enquiries. He said he accessed the information again to obtain the evidence in support of this review.

16. As to his understanding of what had occurred with respect to the nomination, he said he believed it was 'dismissed out of hand' because he believed there was a personal issue between himself and the then Brigade Commander, but conceded he did not know who might have been the relevant decision-makers.

17. He understood that there was also a nomination in 2014 for 2015 but this was solely on the basis that he had seen a draft citation that referred to 2015. He acknowledged that he had been considered again for the CSM for Australia Day 2017 by an independent board, but regarded this process as having been undertaken to 'appease him' because of the 'historic history' [of his assertions].

18. As to why he thought he met the eligibility criteria, WO1 Cicala referred to the draft citation which reads:

'For meritorious devotion to duty as a Company Sergeant Major in the 16th Battalion, The Royal Western Australia Regiment.

Warrant Officer Class Two Joe Ernest Cicala enlisted in the Army on 27 May 1982. Upon completion of his Recruit and Initial Employment Training he was allocated to the Infantry Corps. During that time he has served in a variety of regimental appointments including as an instructor at the West Australian University Regiment from April 1998 to October 2002. Since September 2009 Warrant Officer Cicala has served as a Company Sergeant Major in the 16th and 11/28th Battalions of The Royal Western Australia Regiment.

Warrant Officer Class Two Cicala displayed meritorious service to training members of the 13 Brigade Ready Reaction Force personnel, Low Risk Search Company in support of Operation AMULET and two rotations of Operation ANODE personnel. Warrant Officer Class 2 Cicala's exemplary performance and dedication to duty by acting as Company Sergeant Major roles in two different companies simultaneously,

was critical to the success of 13 Brigade deploying soldiers domestically in support of Operation AMULET and overseas in support of Operation ANODE. Warrant Officer Class 2 Cicala's distinguished performance to duty has been pivotal in providing increased capability to the 16th Battalion, The Royal Western Australian Regiment, the 13th Brigade and the Australian Army.

Warrant Officer Class Two Cicala has displayed exemplary professionalism and leadership throughout his service, particularly as a Company Sergeant Major, in both the 16th and 11/28th Battalions of The Royal Western Australia Regiment. Warrant Officer Class 2 Cicala's mentoring of subordinates and peers throughout his service has led to many soldiers successfully pursuing Army Reserve careers. Warrant Officer Class Two Cicala's performance throughout his service as a Company Sergeant Major has been of the highest standard and an example to other Warrant Officer Class Two's and the benchmark for Senior Non Commissioned Officers of the 13th Brigade to aspire.

Through his personal commitment and professionalism has (sic) had a direct effect on the ability of 13 Brigade and the 2nd Division in achieving its goals in throughout the Raise, Train and Sustain cycle. During his 31 years of service. Warrant Officer Class Two Cicala has served with the utmost dedication to duty and has upheld and embodied the finest traditions of the Australian Army and the Australian Defence Force.'

19. The Tribunal had called for the Applicant's Soldier Performance Appraisal Reports (PAR) for the period 1 February 2012 - 1 October 2016, in order to gain an understanding of the contemporaneous assessment of the Applicant's performance. The Applicant was provided with a copy of the PARs, and invited to comment.

20. In particular, the Applicant's attention was invited to the 2012<sup>4</sup> PAR, where, in each of the 14 assessment categories<sup>5</sup> he was rated by (then) Major Gruber at the second level (out of eight). He said there was a tendency to never rate a member at the very top, or for that matter, the very bottom of the range. There he was described by LTCOL Aitken, his senior assessing officer as having performed to a 'very high standard' and was a 'consistent contributor' to the Company.

21. Similarly, in the 2013 PAR, he was again rated by Major Gruber at the second level (out of eight) for all categories of assessment, except one where he was rated at the top level. He was described by LTCOL Aitken (his Commanding Officer) as having performed to a 'high standard' and was a 'valuable asset'.

22. In the 2014 PAR, where the format had changed, the options to assessing officers were those of three drop down alternatives e.g. below/at/above worn rank, not effective/effective/highly effective, does not meet/meets/exceeds expectations. In seven of the assessment categories he was rated at the highest of the three options, and at the middle rating for the remaining six criteria. He was assessed by the assessing officer, Major Holland, as having displayed a 'very good' understanding of the operating environment and displayed 'an understanding' of Army's strategic direction 'beyond his rank and position'. The then WO2 Cicala was rated 1st out of two Warrant Officers Class 2 for whom Major

---

<sup>4</sup> Period 1 February 2012 to 1 August 2012

<sup>5</sup> Every category bar one, where he was rated at level 3

Holland was assessing officer. LTCOL Gruber, now the Commanding Officer (CO) and the senior assessing officer (SAO), however, rated him as only 3rd out of the 8 Warrant Officers Class 2 for which he was the SAO in his Battalion. The Applicant said that the two rated ahead of him were 'Australian Regular Army (ARA)'.

23. LTCOL Gruber also recorded WO1 Cicala as being not suitable for promotion. WO1 Cicala explained that this was a common error, because it meant only that he had not done the courses for promotion.

24. It was discussed at the hearing that the 2015 and 2016 PARs<sup>6</sup> were in broadly similar terms.

25. WO1 Cicala said that he had never challenged any of his PARs; he said that 'young soldiers' did not know how to do that. He said that in the Army Reserve (ARES), there was no 'debriefing' about an assessment. He said that, in any event, prior to 2015, there was no opportunity to discuss PARs. He claimed that before that time, he was not aware it could be challenged. In any event, he said, he had never been unhappy with any of his PARs.

26. The Applicant also contended that there was a history of poor recognition of reservists in the honours system. He contended that of 44 CSMs awarded to West Australians, only one had been to a reservist. He agreed that for the award of a CSM one needed to be 'pretty special'. He said he had demonstrated extreme devotion to the ADF for over 30 years, and that LTCOL Gruber had thought he should be recognised.

### **LTCOL Gruber**

27. LTCOL Gruber wrote in a minute dated 9 August 2016 that as Officer Commanding B Company, 16RWAR, in 2013 he nominated WO2 (as he then was) Cicala for the CSM for award in 2014. At that time he was WO1 Cicala's direct supervisor. He drafted the required documents for the then CO, LTCOL Aitken to sign as the nominating officer. He did not keep a signed copy of the nomination.

28. He said in his evidence that he had been told to submit nominations bi-annually, but not to bother submitting reservists because their nominations would not be successful. He decided not to follow this course and put up those he considered appropriately deserving, in accordance with his own integrity. In that context, he had nominated WO2 Cicala, but knew the nomination would not succeed. As OC, B Coy, he based the nomination on WO1 Cicala's performance, and drafted a nomination which he put up to LTCOL Aitken, who 'ratified' it. He assumed if it were unsatisfactory to the CO, then it would have been sent back to him for amendment. He thought it was 'sent through as is', that is, without amendment. He was not informed of the outcome - neither positive nor negative, which he did not find unusual.

29. In January 2014 LTCOL (formerly Major) Gruber was appointed CO of 16RWAR. He believed that the nomination submitted in 2013 had either been lost or had otherwise not been processed due to the proximity to the posting out of key personnel i.e. CO, Regimental Sergeant Major (RSM), Adjutant, and also the Brigade Commander. In his evidence, he said

---

<sup>6</sup> For the periods 2 August 2014 to 1 August 2015, and 1 September 2015 to 1 October 2016, respectively

he assumed that the Brigade Commander did not look at it because he was at the end of his posting.

30. He therefore submitted a further nomination under his signature as CO for WO2 Cicala in 2014 for award in QB15. Following submission to 13 Brigade HQ he received advice via email from WO1 Iseppi, the RSM of 13 Brigade, in relation to wording of the citation. He amended the wording in line with the advice and resubmitted the nomination to 13 Brigade HQ. He was not informed of the outcome. In his evidence, he said he had never had a nomination that had not been returned for some further input.

31. As to why he had nominated WO1 Cicala he said that the Applicant had conducted a role outside his routine employment. He was undertaking ancillary roles, beyond what was required of him. For example, he was responsible for two companies and was training for operations in addition to his normal roles as company sergeant major. He said WO1 Cicala gave up his personal time to assist junior members. He regarded him as most devoted. As to the reference to '31 years' he said this was to demonstrate WO1 Cicala's ongoing devotion.

32. He said he had never told WO1 Cicala that he had been nominated and did not remember when he became aware that the then WO2 Cicala had made that discovery.

33. He said that he did not have any documents relating to a nomination in 2015 for QB16 and does not recall submitting a nomination in that year.

34. In 2016, however, he was directed to resubmit the nomination for the 2017 honours list. He said he consciously chose not to amend the content of the previous nominations beyond updating Cicala's rank to WO1 to reflect his promotion in January 2016. This was submitted via 13 Brigade on 1 June 2016. He clarified that the stated meritorious service in support of Operations AMULET and ANODE was not WO1 Cicala's sole position but that these duties were carried out in addition to the already demanding role of CSM in a rifle company over an extended period of time, encompassing three rotations of personnel. It was his direct performance that resulted in the Army Reserve meeting its domestic and international operational commitments. He believed that the service delivered by the then WO2 Cicala meets the criteria of meritorious devotion to duty. To put it into context, WO1 Cicala, he said, is a reserve member who works in and manages his own business, has a family and was meeting his commitment as an Army Reserve Warrant Officer as a Company Sergeant Major. In addition to this, he willingly devoted himself to the preparation of reserve soldiers over three rotations to support Army's operational commitments both domestically and internationally.

35. When the 2016 nomination was also unsuccessful he observed, in relation to the Board's comments in review of the nomination, that he was disappointed that the Board indicated that the nomination reflected responsibilities that would be expected to be undertaken in the nominated role. He re-iterated that the narrative states that the cited service was not only in addition to his role as a CSM but that it was an achievement above that expected of the nominee. In addition the Board indicated a query in relation to why the nominee as a WO1 was cited for service in a WO2 position. WO1 Cicala was only promoted in January 2016 and was indeed a WO2 at the time of the cited service.

36. In his evidence, LTCOL Gruber said that he regarded the whole honours system as being rife with jealousy, avarice and that it was mean-spirited. He noted that a nomination could be 'stopped at any stage'.

37. LTCOL Gruber's attention was invited to the Applicant's PARs, where he had consistently rated the then WO2 Cicala almost exclusively at less than the top level. He said that his practice was to rate conservatively and that a level 2 rating, as far as he was concerned, was 'outstanding'. He said he had never met anyone who rated the 'top box', although, as was pointed out to him, he had, as against one criteria on one occasion, rated the then WO2 Cicala at that level. It was also pointed out to him that in respect of some criteria, the top rating specifically uses 'outstanding'.

38. As to why he had rated WO1 Cicala as 'not suitable' promotion in 2014, he said he thought it was an error and did not think he would have made that selection.

39. As to the two Warrant Officers Class 2 rated higher than WO1 Cicala, he said that in 2014 a new form of personal assessment reporting was introduced, and it was the first to include a rating against those of the same rank. He said, with the new format, there was confusion as to how to rank ARES members as against ARA members and he had felt compelled to rank two ARA members ahead of WO1 Cicala because of a perceived impact on their careers.

### **LTCOL Aitken**

40. LTCOL Aitken was the CO of 16RWAR from January 2011 to January 2014. He said he encouraged his officers to make nominations for honours and that he considered all the nominations that were put up to him, but there were few. They were submitted to him through the RSM. He set up a nominations board which consisted of himself, the Adjutant, RSM and senior Battalion Officers.

41. In emails dated 23 February 2016 and 15 June 2016 LTCOL Aitken wrote that the only nomination for the Applicant of which he was aware was when CO of 16RWAR was when he endorsed a nomination made by the then Major Gruber for a CSM in the QB14 honours list. It was processed by the Battalion Orderly Room and submitted to 13 Brigade Headquarters but he understood it to have been rejected by the Brigade Commander, for reasons that were not conveyed to him, nor did he seek an explanation as to why the nomination had not been supported. Successful nominations, including that for the then WO2 Cicala, 'went through' to the Brigade. He heard nothing, but that was not unusual. When asked if he enquired as to outcomes generally he said he may have done 'unofficially'. He acknowledged that the process of nominating a person was a laborious one. When asked if enquiry might inform subsequent nominations, he said that he did not remember ever receiving feedback, and, as he had followed the appropriate nomination forms, did not make enquiries. He said he could not recall if he edited the nomination for WO1 Cicala put up to him by the then Major Gruber, but said it was 'in [his] nature' to edit submissions. He had no recollection of any discussion about the nomination but it was not in his nature to do that.



## **Brigadier Thompson**

42. Brigadier Thompson wrote in a minute dated 9 August 2016 that for a Queen's Birthday Honour to be made in 2014 it would have required submission in 2013. He said in his evidence that he had arranged an extensive review of HQ 13 Brigade Honours and Awards records and these showed no indication of receipt of a nomination for a CSM for (then) WO2 Cicala in 2013.

43. The records showed, however, that a CSM nomination for (then) WO2 Cicala was made in 2014 for QB15. Discussions between the then RSM 13 Brigade, WO1 Iseppi and the RSM 16RWAR cited the nomination as lacking sufficient 'staff rigour' at 16RWAR and the narrative lacked detail and needed amendment to accord with award requirements to identify specific acts or achievements.

44. He recorded that, according to the then RSM 13 Brigade, WO1 Cicala's nomination arrived in a single envelope together with a CSC nomination for LTCOL Aitken which, had been signed by the then WO2 Cicala. When asked about what he knew of both nominations, the RSM 16RWAR stated he had no knowledge of them. For those reasons the RSM 13 Brigade elected not to process the nominations citing that they needed to go through the unit staff processes to ensure their integrity and completeness. She had considered the Brigade Commander would therefore not be aware of the nomination, as it had not progressed to him.

45. He stated that the HQ 13 Brigade Honours and Awards Register records a nomination for the then WO2 Cicala for the QB16 honours list which was received at HQ 13 Brigade after the HQ 2 Division (Div) submission cut-off date of 29 September 2015. He also determined the content of the narrative again lacked sufficient detail and description of acts or achievements to warrant the award of the CSM and directed the nomination form to be returned to 16RWAR for amendment.

46. In relation to the most recent nomination, (for AD17), this was forwarded to HQ 2 Div in June 2016 for recommendation by MAJGEN Porter, per a directive by CAPT Fietz to the RSM 13 Brigade.

47. He wrote that he did not support recommending WO1 Cicala for the award of the CSM because the narrative does not identify or discuss specific acts or achievements. The narrative reflects on his length of service, posting history and the fact he performed (at that time) as a CSM in two companies. The descriptors also broadly emphasise his Army history but they do not list tasks he has undertaken which would distinguish a higher level of performance than other warrant officers in his cohort; no mention is made of the reasons why his service was described as 'meritorious' or his professionalism as 'exemplary'. He believed the narrative is reflective of the level of performance expected of an infantry warrant officer with his level of training and experience but it does not describe service and acts worthy of the CSM.

## **WO1 Iseppi**

48. In her evidence WO1 Iseppi said that she had 'managed' honours and award for 13 Brigade. As such she notified units as to timing for nominations, and received the nominations from RSMs. She would check that the information was correct and in the

appropriate format; she would ensure that the spelling was correct and the narrative contained tangible references. If she determined a re-write was necessary, she would provide tips on how to improve the nomination, and the time frame by which the re-submission was required. She would prepare the nominations for consideration by the advisory Board - consisting of the Brigade Commander, two Colonels and herself, in which four to ten nominations were usually considered in each round, however, the Commander made the final decision.

49. She did not recall any nomination for WO1 (the then WO2) Cicala in 2013 for AD14. At the hearing WO1 Cicala did not invite her attention to an email dated 23 June 2013 wherein the RSM of 16RWAR emailed her the draft citation 'so far' for WO1 (then) WO2 Cicala.

50. WO1 Iseppi said that only one nomination for WO2 Cicala was received: in 2014 for AD15. As to why she recalled that nomination, she said that it had not been delivered to her in the normal way, that is, there was a nomination for WO1 Cicala and also one for LTCOL Aitken, nominated by WO1 Cicala. Usually, nominations are forwarded through the RSM of a unit, but when she had asked the RSM of 16RWAR about the nominations he told her he was unaware of them. As to the nomination for WO2 Cicala, in her view it needed work: reformatting and 'tangible' details, which, she explained, information about work undertaken over and above normal duties. She thought it had 'some potential' because WO2 Cicala was performing two roles at once, although on the face of the nomination it did not look like WO2 Cicala had done anything more than any other company sergeant major. She said she had sent it back to 16RWAR but the nomination was never returned to her, and consequently was never formally considered. She thought she would have asked about it, but could not recall doing so. If she mentioned the nomination to the Commander it would have been only to inform him that she was not satisfied as to 'its integrity'.

### **The Army's submission**

51. The Army's position was to apply the approach used by the Tribunal in its *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry). The Army conducted a 'desktop review' of the Applicant's submissions to ascertain if there was evidence of maladministration, a failure in due process or any compelling new evidence. As the review determined that due process has been followed, and there was no maladministration or new evidence, Army's position was that the original decision should remain unchanged. As part of its process review, Army not only contacted certain individuals in WO1 Cicala's chain of command at the time of the nominations, and also sought further information from WO1 Cicala himself.

52. Army's submission was that at the time of the QB14 and QB15 nominations, the Defence Honours and Awards Manual was the extant policy governing the procedures for nominations for honours, with the Regulations for each honour being the overarching documents detailing the criteria. The procedure for making nominations was largely without guidance, other than that all nominations were to be submitted on an AD 104 - *Nomination for Half-Yearly Honours* (nomination form) accompanied by a one page narrative and six line citation. The nominations were passed from unit level through the chain of command to the Army Honours and Awards Board (the Board). Nominations required two-star endorsement prior to consideration of the Board. Prior to the 2016 honours lists nominations not recommended anywhere along the nominating chain of command were struck out, often

without explanation, and there was no policy governing the provision of feedback on nominations or notification of outcomes. In most cases, the nominating chain of command first became aware of the outcome of their nomination when the honours list was publicly announced.

53. From 2015, Army began introducing new internal policy governing the procedure for making nominations within Army with the aim of ensuring that the process conformed to good decision-making and procedural fairness. This came into effect for the AD16 honours list and was first raised in the call for nominations sent out by the DG PERS-A as the Chair of the Board.

54. The call for nominations required all nominating officers to provide a reason for decision when making a recommendation. The chain of command was also instructed that all nominations were required to continue up the chain of command to the Board for consideration by the Chief of Army (CA), irrespective of the recommendation.

55. This policy was formalised in CA Directive 06/16 -*Army Honours and Awards, Defence Commendations and Medallions* as well as the release of the new nomination form which included the requirement to provide reasons for decisions.

56. Army's review was to the effect that a nomination for a CSM was submitted by (then) Major Gruber as the Officer Commanding B Company, for an award in QB14 list and again for an award in the QB15 list when he became CO of the Battalion.

57. Although LTCOL Gruber had no recollection or records relating to a nomination for QB16, 13 Brigade records confirm a nomination was submitted for QB16 after the Headquarters 2 Division submission cut-off date of 29 September 2015. The submission referred to the Brigade Commander, Brigadier Thompson's view that the narrative lacked sufficient detail and description of the acts or achievements to support the nomination at that time and that the Unit was provided advice and directed to review the narrative and resubmit the nomination.

58. Defence submitted, to the effect, that the Tribunal should find that none of the above nominations in respect of the then WO2 Cicala were submitted to Headquarters 2 Division, in keeping with the practice at the time of not forwarding unsupported nominations.

### **The nomination for Australia Day 2017**

59. Defence informed the Tribunal that, in light of WO1 Cicala's application for review and his assertion that due process was not followed in handling the nominations, Army directed that a new nomination be submitted for WO1 Cicala for consideration in the AD17 honours list. Defence's submission was to the effect that the Tribunal should be reasonably satisfied that that nomination was processed in accordance with the revised procedures referred to above.

60. As LTCOL Gruber said in his evidence, in raising the nomination no new information was inserted into the previous QB15 narrative and citation other than to update the rank to reflect WO1 Cicala's promotion in January 2016. The nomination was processed through the chain of command from LTCOL Gruber through the Commander 13 Brigade to Headquarters 2 Division and thence to Headquarters Forces Command. The nomination was not supported

by Commander 13 Brigade, Commander 2 Division or Commander Forces Command, nor when considered by the Army Honours and Awards Board. Chief of Army endorsed the Board's recommendation. Brigadier Wilton, who chaired the Board, stated that at the time of both the Board's and the Chief of Army's consideration of the nominations, none of the parties were informed of WO1 Cicala's appeal to the Tribunal. Brigadier Wilton said that that the only material before the Board was the nomination.

61. As to the CSM generally, Army submitted that conspicuous service is demonstrated through actions or service that are above that normally expected in the position or of the rank of the nominee, and deliver tangible benefits to the group. Army further submitted that it is not sufficient to have done the job required and done it well.

### **Tribunal Consideration**

62. The Tribunal is required to review a reviewable decision on the merits. The facts, law and policy aspects of the decision are all considered afresh and a new decision is made.<sup>7</sup> The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the original decision was correct.<sup>8</sup> The Tribunal is bound to make what it regards as the 'correct and preferable' decision and must reach a decision that is legally and factually correct.

63. In considering any application for review the Tribunal is bound by the relevant eligibility criteria for the claimed honour or award: s 110VB(6) of the Defence Act. The Tribunal is to apply the eligibility criteria at the date of the decision under review, namely 2013 for QB14 honours list.

64. On the basis of the evidence of both LTCOL Gruber and LTCOL Aitken the Tribunal was reasonably satisfied that, in 2013, Major Gruber (as he then was) submitted to LTCOL Aitken, a draft nomination for WO1 Cicala to receive a CSM in the QB14 honours list. The Tribunal also finds, having regard to the email of 25 June 2013 from the RSM of 16RWAR forwarding the nomination to WO1 Iseppi that WO1 Iseppi and Brigadier Thompson are likely to have been mistaken in their views that no nomination was received at Brigade Headquarters. The Tribunal considers that, given the nomination was resubmitted by LTCOL Gruber, as CO, the following year in the same format, it is likely that WO1 Iseppi would have had the same concerns about the content of the nomination when received in 2013, and returned it for modification. It remains unclear if it was in fact returned to Brigade Headquarters, but it is consistent with the search conducted on Brigadier Thompson's behalf that no information could be located, that it was not returned. The Tribunal places no weight on WO1 Iseppi's concerns, albeit according to her recollection in respect of the 2014 nomination that it 'arrived in the same envelope as a nomination for LTCOL Aitken'.

65. In reaching the correct and preferable decision in relation to the 2013 nomination (for QB14), in accordance with *Shi v Migration Agents Registration Authority* [2008] HCA 31, the Tribunal is entitled to take into account facts and circumstances up until the time of review. The Tribunal therefore took into account what had occurred in relation to the 2014 (for QB15) nomination and the 2016 (for AD 17) nomination.

---

<sup>7</sup> Pearson, Linda, 'Merit Review Tribunals', in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

<sup>8</sup> *McDonald v Director-General of Social Security* (1984) 1 FCR 354

66. The Tribunal accepts LTCOL Gruber's evidence that, on each occasion – in 2014 and again in 2016 - he submitted a nomination for WO1 Cicala which had the same content. The Tribunal finds that the process described by WO1 Iseppi, namely that, in 2014 she returned the nomination for redrafting, is likely to equally have applied to the nomination in 2013. The Tribunal finds though, that neither nomination was in fact formally considered, because WO1 Iseppi had returned the nominations for further drafting. The Tribunal is reasonably satisfied that the QB15 nomination also was either not returned, returned too late for consideration, or was misplaced because of the end of year posting activities.

67. As to the Applicant's contention that '*due process was not adhered to*' because both nominations were rejected at Headquarters 13 Brigade '*without formal notice or reason*', the Tribunal is reasonably satisfied that, at the time of both the nominations for QB14 and QB15, there was no requirement to inform either the nominator or the chain of command of the outcome of a nomination. However, in view of the Tribunal's findings, it is more likely than not that up until the 2016 nomination (for AD17) that WO1 Cicala's nomination was not considered at Brigade level. As such, there was no evidence of interference in the process by the Brigade Commander.

68. Irrespective of whether the nomination was considered but rejected in 2013 and 2104, it was for the Tribunal to determine whether the available evidence supports a finding that, in relation to the nomination for QB14, the remaining decision under review, WO1 Cicala's service was sufficiently meritorious so as to come within the eligibility criteria for the CSM.

69. There was no dispute that WO1 Cicala's service was in 'non-warlike situations'. It remained for consideration if he demonstrated 'meritorious achievement or devotion to duty'.

70. The Regulations do not define what amounts to 'meritorious achievement' or 'devotion to duty'. The Tribunal referred to the recent policy<sup>9</sup> which describes 'Conspicuous Service Decorations' as follows:

Conspicuous Service Decorations are awarded for *either* outstanding *or* meritorious devotion to duty or achievement in the application of exceptional skills, judgment and or dedication. ...

71. In the Tribunal's view this reference conflates the Conspicuous Service Cross and the CSM and does not properly describe either of the decorations.

72. Noting the evidence that the only information which is available in the recommendation process is the nomination itself, the Tribunal took the view that in order to determine if there had been 'meritorious achievement or devotion to duty', it would place considerable weight on the PARs as observations made in the ordinary course of assessing a member's performance, rather than relying solely on the account in the nomination.

73. The Tribunal observed that the 2012 and 2013 PARs were especially relevant to the nomination in 2013 for QB14 as they fall across the same period in which the performance of the then WO2 Cicala was considered in the nomination for the CSM. In both those PARs, in all of the 14 assessment categories the Applicant was not rated by (then) Major Gruber at the top level of performance. The Tribunal rejects WO1 Cicala's assertion that the top (and

---

<sup>9</sup> CA Directive 06/16 Army Honours and Awards, Defence Commendations and Medallions

bottom) ratings are rarely, if ever, used, as it is open to assessing officers to use the full range of assessment, noting that in one category in 2013, he himself was rated at the top level. The Tribunal also rejects LTCOL Gruber's claim that he routinely rates his subordinates conservatively, for the same reason. The Tribunal considered his approach to be inconsistent with the requirement as set out in the preamble to the PARs:

'Performance Appraisal is a vital component of the Career Management System. Its purpose is to provide feedback to individuals, identify strengths and weaknesses and provide constructive guidance for further development. As such the data from the appraisal will be used to develop career plans and identify potential for promotion, postings and courses as well as to support administrative action resulting from unsatisfactory performance. Depersonalised aggregated data may also be used for research activities.'

74. Overall, the Tribunal did not consider the ratings to be consistent with those that might be expected for a member who was considered to have performed with 'meritorious achievement or devotion to duty', as required by the eligibility criteria.

75. In 2012 WO2 Cicala was described by LTCOL Aitken, his SAO as having performed to a 'very high standard' and was a 'consistent contributor' to the Company and in the 2013 PAR as having performed to a 'high standard' and as a 'valuable asset'. The Tribunal did not consider that the descriptors by the SAO to be consistent with those that might be expected for a member who was considered to have performed with 'meritorious achievement or devotion to duty'.

76. Further, in 2014, in only seven of the 13 assessment categories was the Applicant rated at the highest of the three options, and was at the middle rating for the remaining six criteria. The assessing officer, Major Holland, wrote that the Applicant had displayed a 'very good' understanding of the operating environment and displayed 'an understanding' of Army's strategic direction 'beyond his rank and position'. While WO2 Cicala was rated first out of two Warrant Officers Class 2 for whom Major Holland was assessing officer, he was only rated as third out of the eight Warrant Officers Class 2 for whom LTCOL Gruber was the senior assessing officer. This was explained by LTCOL Gruber, to the effect that ARA members were rated ahead of ARES members because of likely career consequences. The Tribunal also observed that in 2014 LTCOL Gruber had recorded WO2 Cicala as being unsuitable for promotion, but claimed that was a mistake and WO1 Cicala, in his evidence, claimed that it meant only that he had not done the courses for promotion.

77. The Tribunal considered that there were a number of entries in the PARs which were inconsistent with what might amount to 'meritorious achievement or devotion to duty'. While explanations were provided, the Tribunal did not accept, that when taken together, they overcame the Tribunal's concerns.

78. The Tribunal observed that WO1 Cicala had never challenged any of his PARs and stated in his evidence that 'he has never been unhappy with his PARs', and the Tribunal considered this was an acceptance of his ratings and the comments about his performance. While it may be, as he claimed, that 'young soldiers' did not know how to mount such a

challenge, the Tribunal rejects that he, as a senior warrant officer with considerable service, would be similarly inhibited.

79. As to the Applicant's contention that there was a history of poor recognition of reservists in the honours system, the Tribunal had no evidence before it to that effect, other than WO1 Cicala's assertions. In any event, each case is to be considered on its merits, and the capacity in which a member serves is not a relevant consideration to merit.

80. The Tribunal also reviewed the 2016 PAR, as this coincided with the 2016 (for AD17) nomination. WO1 Cicala's duties were described there as:

- Unit Recruiting Liaison Officer and Indigenous Liaison Officer
- Liaise between 16RWAR Battle Group and 13 BDE Recruiting
- Facilitate all recruiting activities for 16RWAR BG on multiple levels
- Manage indigenous space at unit level and report to the CO and RSM on relevant Army HQ direction IOT (in order to) maintain Situational Awareness
- Maintain AIRN (Army Individual Readiness Notice) compliance

81. This contrasts with his duties described, somewhat more fully, in his 2014 and 2015 PARs:

**'2014:**

As the CSM you are responsible for the administration of company personnel. Be responsible to mentor, monitor and provide advice and guidance to the soldiers within his Chain of Command. Addition (sic) responsibilities as follows:

Be conversant with 11/28 RWAR BG Unit Standing Orders and CO Directives;  
Responsible for monitoring and reporting on the OR's performance;  
Ensure high standards of soldier skills and discipline are maintained;  
Advise on matters relating to personnel management;  
Maintain liaison with PL SGTs & PI COMDS;  
Provide advice on the conduct of training;  
Assist the 2IC and TRG WO in the management of the units Competency Log Books;  
Assist the OC in managing and sustaining the company AIRN at 80% or greater;  
Provide advise (sic) to subordinates, peers and superiors as required;  
Advise on the application of discipline IAW the DFDA; and  
Maintain AIRN compliance

**2015:**

As CSM of D Coy, 16RWAR your duties will include:

1. Ensure that D Coy AIRN remains about 80% compliant
2. Assist the OC and 2IC by effective managing the administration of D Coy.

3. Ensure all members at the company have completed the Brigade readiness form and have a career plan
4. Provide ideas to the Coy OC for a growth and retention plan at the Geraldton and Kalgoorlie Depots
5. Advise the OC on matters of discipline IAW the DFDA and ensuring high levels of discipline, dress and deportment are maintained
6. Mentoring the junior NCOs and soldiers within the company
7. Provide advice to the OC on the performance of NCOs and soldiers of the company.

82. It is unclear why, in 2016, WO1 Cicala's duties were less prescriptive than in 2014 and 2015.

83. In the 2016 PAR WO1 Cicala was assessed by the OC, Major Lequaietermaine, at effective/at worn rank/meets expectations in all but one of the 12 assessment categories; in only one category – interpersonal relations - was he rated as highly effective'. His overall performance rating by both the assessing officer and the senior assessing officer (LTCOL Gruber) was 'prefer to most', which indicates that there were others who were preferred to the Applicant. He was described as having 'performed well, having been 'an asset' and being 'reliable and competent'.

84. LTCOL Gruber rated him as second out of two WO1s for whom he was the senior assessing officer. The Tribunal did not place much weight on this ranking, given the small group and also because of LTCOL Gruber's stated preference, at least in the early days of rankings, for ranking ARA members ahead of ARES members. However, by 2016 the revised format had been in place for 2 years and any LTCOL should, by that time, have dispelled any confusion. The Tribunal observed, in any event, that WO1 Cicala had only been promoted to that rank on 16 January 2016, so a conservative ranking was to be expected.

85. To his credit, the Applicant was described as a 'passionate and dedicated senior soldier who actively seeks for (sic) the betterment of the unit'. In respect of points of differentiation from his peers it was recorded:

'Dedication to the roles of URLO and ILO which may not be as exciting as other WO1 roles. Regardless of this he performs these roles with enthusiasm and professionalism.'

86. The Tribunal also notes that in 2010 he received a Commendation from Commander 2 Div.

87. The Tribunal placed significant weight on the assessment of his performance through the PAR process during the 2016 reporting period. The Tribunal did not find the overall assessment and the accompanying comments to be indicative of a superior level of performance as might be expected for 'meritorious achievement or devotion to duty'. Further, the Tribunal observed that there were some inconsistencies in the 2016 nomination with the 2016 PAR. For example, WO1 Cicala's performance was described in the citation as being 'of the highest standard', when this was not reflected in any of his PARs. While he was described as having the 'utmost dedication to duty', the Tribunal did not find that reflected in his PARs. Similarly, he was said to have displayed 'exemplary professionalism



and leadership’ whereas his leadership was rated, in 2016 as ‘at worn rank’. To the extent there were inconsistencies the Tribunal preferred the objective appraisals set out in the PAR.

88. As to WO1 Cicala’s assertion that the 2016 nomination (for AD17) had been undertaken to ‘appease him’, the Tribunal accepted that the nomination had been submitted by LTCOL Gruber and had progressed through the chain of command, but had not been recommended by the first or second reviewing officer, or the Army Board. For reasons which are unclear, it was forwarded directly to HQ 2 Div, and was not considered by Brigadier Thompson, the Commander of 13 Brigade. It appears though that he may have been consulted, because MAJGEN Porter, the first recommending officer, did not positively recommend WO1 Cicala, after ‘receiving feedback from COMD and RSM 13 BDE’, although it is unclear why the RSM would have had any input at that stage of the review.

89. Brigadier Thompson did not consider the narrative in the draft citation to identify or discuss specific acts or achievements. He considered the narrative reflected on WO1 Cicala’s length of service, posting history and the fact he performed as a company sergeant major in two companies. The descriptors also broadly emphasise his Army history but they do not list tasks he has undertaken which would distinguish a higher level of performance than other warrant officers in his cohort; no mention is made of the reasons why his service was described as ‘meritorious’ or his professionalism as ‘exemplary’, although the Tribunal observes that there is no requirement in the eligibility criteria for the service to be ‘exemplary’. Brigadier Thompson believed the narrative is reflective of the level of performance expected of an infantry warrant officer with his level of training and experience but it does not describe service and acts worthy of the CSM.

90. The Tribunal was of the view that WO1 Cicala has been, and no doubt continues to be, a valuable member of 16RWAR. However, the Tribunal finds that WO1 Cicala’s performance in 2013 did not meet the criteria for the CSM in QB14. Furthermore, the Tribunal finds that at no time to date has WO1 Cicala met the criteria. The decision of the Tribunal does not diminish WO1 Cicala’s long and valuable service to Army, particularly in the Army Reserve.

## **DECISION**

91. The Tribunal decided to recommend to the Minister that the decision not to recommend WO1 Cicala for the Conspicuous Service Medal be affirmed.