



Australian Government

Defence Honours and Awards Appeals Tribunal

Davidis and the Department of Defence [2018] DHAAT 18 (11 September 2018)

File number	2018/025
Re	Mr Dario Davidis Applicant
And	Department of Defence Respondent
Tribunal	Ms Naida Isenberg (Presiding Member) Rear Admiral James Goldrick AO, CSC RAN (Retd)
Appearances	Mr Davidis by telephone Ms J Callaghan, Directorate of Honours and Awards Mr M Jordan, Directorate of Honours and Awards
Hearing	4 September 2018 in Canberra

DECISION

On 11 September 2018 the Tribunal decided to affirm the decision under review.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal – period of qualifying service strictly calculated - no discretion

LEGISLATION

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

REASONS FOR DECISION

Introduction

1. The Applicant, Dario Davidis applied to the Directorate of Honours and Awards in the Department of the Defence (the Directorate) for an assessment of his medallic entitlement in recognition of his service with the Australian Regular Army (the Army). He was informed, on 25 March 2015, that he did 'not render any qualifying service towards medallic recognition'. He now seeks review by this Tribunal for the award of a 'service medal', subsequently clarified as the Australian Defence Medal (ADM).

Eligibility Criteria for the Australian Defence Medal

2. The ADM was instituted 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.'

3. The Regulations are set out in the Schedule attached to the Letters Patent. Those Regulations were amended on 20 March 2006.¹ As a result of the amendment the minimum period of service (with limited exceptions) became four years. Regulation 4 of the amended Regulations states, relevantly:

(1) The Medal may be awarded to a ... 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) ...;
- (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.²

4. The Chief of the Defence Force, in accordance with his delegation, made determinations under the ADM regulations, relating to circumstances where the

¹ *Australian Defence Medal Regulations 2006*, Commonwealth of Australia Gazette No. S48, 30 March 2006.

² *Ibid*

qualifying period is not met. In general terms, these related to national service, the ADF Gap Year Scheme, and discharge for a non-compensable injury. None of those circumstances is relevant to the present application.

5. The Tribunal is required to undertake a merits review and is bound to apply the eligibility criteria which applied at the date of the decision under review³. The Tribunal has no discretion in applying the eligibility criteria referred to above.

6. The Tribunal acknowledges Mr Davidis' concern that others are awarded the ADM for having completed their enlistment period, when their periods of service were shorter than four years.

Issue for the Tribunal

7. There was no dispute that either of the mitigating provisions in Regulation 4(d)(ii) and (iii) applied to Mr Davidis; his discharge was not due to his being medically unfit due to a compensable impairment nor due to a prevailing discriminatory Defence policy.

8. Consequently, the only issue for the Tribunal was whether Mr Davidis completed an initial enlistment period, or served for a period of not less than 4 years.

Did Mr Davidis complete an initial enlistment period?

9. According to Mr Davidis' Enlistment Advice and Personal Data Form PH 117, dated 27 February 1985, he enlisted in the Army for a period of six years from 10 April 1985. On 28 April 1988, he elected to change to an open-ended enlistment, in place of the initial enlistment period of six years. Mr Davidis confirmed that this accurately reflected his service.

10. The Tribunal finds that Mr Davidis did not complete his initial enlistment period.

Did Mr Davidis serve for a period of not less than 4 years?

11. From his service record Mr Davidis' service dated from 10 April 1985 until 22 March 1989. Although in his written submissions Mr Davidis stated that he 'ended up serving 4 years', he conceded that he was discharged on 22 March 1989. Mr Davidis' Service Record indicates that the decision to discharge him under AMR 176(1)(N) was made after due consideration of his circumstances and the events in which he had been involved, that Mr Davidis had been provided the opportunity to

³ Defence Act 1903: s 110VB(6)

show cause why he should not be discharged and that his submission had been considered before the final decision was made. The Tribunal finds Mr Davidis served 3 years 11 months and 13 days, as the Directorate had calculated. Mr Davidis was therefore only a number of days short of the 4 year requirement set out in the eligibility criteria. The eligibility criteria for the ADM are strict and no discretion is available to a decision-maker in Defence, or on review, to this Tribunal. Mr Davidis did not serve his initial period of enlistment, nor the requisite 4 years. No other provision applies.

12. Mr Davidis observed that a number of colleagues who found themselves 'in the same boat', which the Tribunal understood to mean were discharged for similar reasons, had been awarded 'a medal', but presumably, by the time of their discharge, they had served the requisite 4 years, or had a shorter initial enlistment period.

13. For the reasons given above, the Tribunal could not be satisfied that he met the eligibility criteria for the ADM.

DECISION

14. The Tribunal decided to affirm the decision under review.