



Australian Government

Defence Honours and Awards Appeals Tribunal

McGlashan and the Department of Defence [2018] DHAAT 013 (23 August 2018)

File Number(s) 2017/011

Re **Mrs Janelle Denniss on behalf of Mr Stanley Gregory McGlashan**
Applicant

And **Department of Defence**
Respondent

Tribunal Brigadier K J O'Brien, CSC (Retd) (Presiding Member)
Ms J Lumb

Hearing Date 8 August 2018

DECISION

On 23 August 2018 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Stanley McGlashan is not eligible for the award of the Australia Service Medal 1939-45.

CATCHWORDS

DEFENCE AWARD – Australia Service Medal 1939-45

LEGISLATION

Defence Act 1903 – ss 110T, 110V, 110VA, 110VB(2)

Defence Force Regulations 1952 - Reg 93C

Commonwealth of Australia Gazette No. 91, Royal Warrant, The Australia Service Medal 1939-45 – 30 November 1949

Commonwealth of Australia Gazette No. S309, Amendment of Royal Warrant for Award of the Australia Service Medal 1939-45 – 21 August 1996

REASONS FOR DECISION

Introduction

1. Mr Stanley Gregory McGlashan enlisted in the Australian Army on 12 June 1942. He saw active service in New Guinea with the 2/5 Battalion from 4 December 1942 until 29 September 1943. After he had returned to Australia, he was found guilty of desertion at a District Court Martial and sentenced to 1 year detention. This sentence was later remitted and he was discharged from the Army on 19 July 1945. His Discharge Certificate recorded that he was ineligible for any medallic recognition for his service.
2. The applicant, Mrs Janelle Denniss, on behalf of her father Mr Stanley Gregory McGlashan (deceased), seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate), that he is not eligible for the award of the Australia Service Medal (ASM) 1939-45 because of the nature of his discharge which was deemed by Army to constitute a dishonourable discharge.
3. The issues that arise are:
 - a) What does Mrs Denniss seek?
 - b) Does Mr McGlashan's service qualify for the ASM 1939-45?
 - c) If not, are there any grounds for discretion in awarding Mr McGlashan the ASM 1939-45?

What does Mrs Denniss Seek?

4. In her application she stated she was seeking the Australian Service Medal (1939-45) for her father. She stated that: "I believe any man who puts his life on the line for his country deserves every accolade his country has to offer".

Does Mr McGlashan's service qualify for the ASM 1939-45?

5. The ASM 1939-45 eligibility criteria was developed following the conclusion of the Second World War when the Australian Defence Committee recommended that Australia institute a medal of its own in connection with the war. An 18 month qualifying period for full time personnel was recommended for those who served between 3 September 1939 and 15 August 1945. This was approved by Cabinet on 17 January 1946.¹ Subsequently His Majesty King George VI instituted the Australia Service Medal 1939-45 by Royal Warrant on 30 August 1949. The Royal Warrant was published in the *Commonwealth of Australia Gazette* in November that year.² There is provision in the Warrant for the Governor-General to make Regulations to carry out the purposes of the Warrant,

¹ Cabinet Agendum No 1002A: Proposal for an Australian Decoration, National Archives of Australia (NAA): A816, 66/301/251.

² *Royal Warrant, Australia Service Medal 1939-45, Commonwealth of Australia Gazette* No. 91, dated 30 November 1949.

but no Regulations have ever been made. Pertinent to this review, the Warrant in part states:

1) *The persons eligible for the Medal shall be those of Our faithful subjects and others, male and female, who between the 3rd September 1939 and the 2nd September 1945, rendered the required service in the Australian Armed Forces ...*

2) ...

3) *Eligibility shall not be affected by the grant of any other general award for service in the war of 1939-45...*

4) *Only those who have received, or would be entitled to receive, an honourable discharge shall be eligible.* (Highlight added for clarity)

5) *The period of qualifying service for full-time duty shall be eighteen months at home or overseas.*

...

6. The power to vary the conditions of the 1949 Royal Warrant was delegated to the Governor-General in 1995 by way of an exchange of letters between Prime Minister Paul Keating and Her Majesty the Queen. This delegated power was used in 1996 to reduce the qualifying period for the ASM 1939-45 from eighteen months to 30 days for full time service; and from three years to 90 days for part-time service.³

7. Mr McGlashan's Service Record shows that he enlisted in the Army on 12 June 1942 and was discharged on 19 July 1945. As such there is no doubt that he meets the eligibility criteria for length of service in the Army during the qualifying period. The critical issue is that he did not receive an honourable discharge. His service record shows a number of convictions for being absent without leave. In his final conviction he was sentenced to 12 months detention. This sentence was later remitted. Clarification of the dishonourable discharge policy was issued in 1949 through Military Board Instructions which provided that:

*...a member discharged for any of the following reasons will be deemed to be discharged dishonourably...(b) in the case of a soldier...that he has been sentenced during his service to detention for a period of not less than six months...*⁴

Consequently Mr McGlashan cannot be awarded the ASM 1939-45.

Are there any grounds for discretion in awarding Mr McGlashan the ASM 1939-45?

8. Mr McGlashan's Discharge Certificate indicates that all his medallic recognition entitlements were forfeited. However his entitlement to campaign awards was

³ Commonwealth of Australia Gazette No. S 309 dated 21 August 1996.

⁴ Military Board Instruction 115/1949 dated 8 July 1949.

reassessed in 1998 and for his active service he had the following awards restored and issued:

- 1939-45 Star,
- Pacific Star, and
- War Medal 1939-45.

9. These medals were restored under provisions that allowed for restoration where an applicant had not been convicted of a serious offence in the ten years prior to the application being made. Mrs Denniss stated at the Hearing that he proudly wore these medals at ANZAC Day Marches until he died. Mrs Denniss also indicated that she and the family were unaware that he had also forfeited the ASM, only becoming aware when she went to have a replica set of medals produced. She stated that she was proud of his service as a volunteer for the Army and for his service in New Guinea fighting the Japanese Army. She further indicated that she was aware that his record was not good.
10. The Tribunal commended Mrs Denniss for her efforts in seeking to honour her father's memory via an award of the ASM. The Tribunal considered, however, that the Royal Warrant underpinning the award of the ASM 1939-45⁵ leaves no discretion in that it clearly stipulates that only those who have received or would be entitled to receive an honourable discharge shall be eligible for the award.

DECISION

10. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Stanley McGlashan is not eligible for the award of the Australia Service Medal 1939-45.

⁵ Royal Warrant, Australia Service Medal 1939-45, *Commonwealth of Australia Gazette* No.91 dated 30 November 1949