



Australian Government

Defence Honours and Awards Appeals Tribunal

Espin and the Department of Defence [2017] DHAAT 08 (7 June 2017)

File Number(s) 2016/015

Re **William Richard Espin**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Brigadier K. J. O'Brien CSC (Retd) (Presiding Member)
Ms J. Schwager AO

Hearing Date 3 March 2017

DECISION

On 7 June 2017 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr William Richard Espin is not eligible for the award of the Australian Service Medal with Clasp 'SE ASIA'.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Service Medal with Clasp 'SE ASIA'.

LEGISLATION

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

Defence Force Regulations 1952 - Reg 93C and Schd 3

Commonwealth of Australia Gazette No S336 Australian Service Medal Regulations, dated 2 November 1988

Commonwealth of Australia Gazette No 64 Australian Service Medal Regulations, dated 28 February 2002

Commonwealth of Australia Gazette No S102 Australian Service Medal Regulations, dated 27 March 2001

REASONS FOR DECISION

Introduction

1. The applicant, Mr William Richard Espin (Mr Espin), seeks review of the 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 Australian Service Medal (ASM) with Clasp 'SE ASIA'. Mr Espin lodged applications with the Directorate for the award of the ASM with Clasp 'SE ASIA' on 7 February 2016 and 26 April 2016. His applications were on the basis that he should have received the award for service with the Australian Army Rifle Company Butterworth (RCB) in Malaysia, despite having already been awarded the ASM 1945-75 with Clasp 'FESR' for prior service with the Royal Australian Navy.
2. The Directorate wrote to Mr Espin on 4 May 2016 informing him that he was not eligible for the award of the ASM with Clasp 'SE ASIA'. In that letter the Directorate explained that Mr Espin was not eligible for the award of the ASM with Clasp 'SE ASIA' as he had already been awarded the ASM 1945-75 with Clasp 'FESR'.
3. Being dissatisfied with the decision of the Directorate, Mr Espin lodged his application for review with the Tribunal on 3 August 2016. In his application for review, Mr Espin stated that he totally disagreed with the logic and reasoning that led to the Directorate's decision emphasising that his service was different to that envisaged by the legislation for the awards.

Tribunal Jurisdiction

4. Pursuant to s 110VB(2) of the *Defence Act 1903* 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 s 110V(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 93C of the *Defence Force Regulations 1952* defines a defence award as being those awards set out in Part 2 of Schedule 3.¹ Included in the defence awards set out in Part 2 is the ASM.

Steps taken in the conduct of the review

5. On 11 August 2016, in accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011* (as amended), the Tribunal wrote to the Secretary of the Department of Defence advising the Department of Mr Espin's application for review and invited it to make submissions and to provide the Tribunal with any material on which it sought to rely. A written submission was received from the Directorate on 6 October 2016.

¹ Under s 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

6. On 11 October 2016, Mr Espin was provided with a copy of the Directorate's written submission and was invited to respond and submit any further material he may have in support of his claim for the award of the ASM with Clasp 'SE ASIA'.

Mr Espin provided a written response to the Directorate's submission on 14 November 2016. In his response Mr Espin indicated that he had nothing further to add to earlier submissions other than to reiterate that his service was not usual, having served in two services.

7. The Tribunal met and conducted a telephone hearing with Mr Espin on 3 March 2017. During the hearing the Tribunal considered the material provided by Mr Espin and the Directorate. It also heard oral evidence from Mr Espin and from Defence. Defence was represented at the hearing by Ms Margot Kropinski-Myers, Ms Francey Felsman and Mr Brett Mitchell.

Mr Espin's service

8. Mr Espin enlisted in the Royal Australian Navy on 10 July 1965 and discharged at his own request on 18 January 1972. During his service in the aircraft carrier HMAS *Melbourne* and the destroyer escort HMAS *Yarra*, he served in the Far East Strategic Reserve (FESR). For this service, he was awarded the ASM 1945-75 with Clasp 'FESR'.

9. On 5 July 1977, Mr Espin enlisted in the Australian Regular Army, and discharged at his own request on 2 January 1991. During this service, he was a member of RCB in Malaysia from 16 February to 20 May 1982.

10. For his service, Mr Espin has been awarded the following defence awards:

- the Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- the Vietnam Logistic and Support Medal;
- the Australian Service Medal 1945-75 with Clasp 'FESR';
- the Defence Force Service Medal with First Clasp; and
- the Australian Defence Medal.

Eligibility Criteria for the ASM 1945-75 with Clasp 'FESR'

11. The ASM 1945-75 is an Australian award instituted by Letters Patent on 22 February 1995. The Medal is awarded to recognise military service in a prescribed non-warlike operation from 1945 to 1975. The Schedule to the Letters Patent sets out the *Regulations Governing the award of the Australian Service Medal 1945-1975* (the Regulations).²

12. Regulation 3 states that the Governor-General, on the recommendation of a Minister may declare a non-warlike operation in which members of the Defence Force were engaged, between 3 September 1945 and 16 September 1975, to be a declared operation.

² Letters Patent, Australian Service Medal 1945-75, *Commonwealth of Australia Gazette S*, 3 April 1995.

13. The eligibility criteria for the ASM 1945-75 with Clasp 'FESR' are contained in the Commonwealth of Australia Gazette No. S102, Declaration and Determination under the Australian Service Medal 1945-75 Regulations - dated 27 March 2001. The Declaration states that:

'non-warlike operations in which members of the Australian Defence Force were engaged in, namely participation by ships of the Royal Australian Navy in the Far East Strategic Reserve that commenced on 2 July 1955 and ended on 31 October 1971, and during such periods as those ships were formally allocated or assigned to the Far East Strategic Reserve, to be a declared operation for the purpose of the Regulations'

and:

'the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted to or serving as a member of the Australian element of the declared operation for a period of 30 days, or for periods amounting in the aggregate to 30 days'

and:

'...for the purposes of this determination... a member of the Australian Defence Force is not eligible for an award of the Medal where:

...a separate award of the Australian Service Medal with Clasp 'SE ASIA' has been awarded.'

Eligibility Criteria for the Australian Service Medal with Clasp 'SE ASIA'

14. The ASM is an Australian award instituted by Letters Patent on 13 September 1988. The Medal is awarded to recognise military service in a prescribed non-warlike operation from 1975. The Schedule sets out the *Regulations Governing the award of the Australian Service Medal* (the Regulations).³

15. Regulation 3 states that the Governor-General, on the recommendation of a Minister may declare a non-warlike operation in which members of the Defence Force were engaged, from 14 February 1975, to be a prescribed operation.

16. The eligibility criteria for the ASM with Clasp 'SE ASIA' are contained in the Commonwealth of Australia Gazette No. S 64, Declaration and Determination under the Australian Service Medal Regulations - dated 28 February 2002. The Declaration states that:

'the following non-warlike operations in which members of the Australian Defence Force were engaged with elements of the Australian, New Zealand and United Kingdom (ANZUK) Forces; Australian Army Rifle Company (Butterworth); Five Power Defence Arrangement; and Australian Army Survey Operations in South East Asia during the following periods to be a declared operation for the purpose of the Regulations:

³ Letters Patent, Australian Service Medal, *Commonwealth of Australia Gazette* S336, 2 November 1988.

and:

‘that the following non-warlike operations in which members of the Australian Defence Force were engaged with elements of the Australian, New Zealand and United Kingdom (ANZUK) Forces; Australian Rifle Company (Butterworth); ... during the following periods to be a declared operation for the purpose of the Regulations:

- (i) *Defence Force activities on land in Malaysia during the period that commenced on 14 February 1975 and ended on 31 December 1989;*

and:

determine, for the purposes of this determination, that a person is not eligible for an award of the Medal where;

- (i) *a separate award of the Australian Service Medal 1945-75 with Clasp ‘FESR’ has been awarded...*

Summary of the Claims of Mr Espin

17. In summary, Mr Espin’s written submissions stated that he disagreed with the logic of being ineligible for the award of the ASM with Clasp ‘SE ASIA’, having already been awarded the ASM 1945-75 with Clasp ‘FESR’.

18. Mr Espin put forward that the time he served in Malaysia was 13 years later, in two different services, ‘in two completely un-associated areas of operation’, and that the medals themselves were different.

19. In his oral evidence Mr Espin reiterated what he had previously stated in his written submission. He said that he understands that the Determination clearly states that he is ineligible but believes that the reasoning behind the determination is flawed. He also indicated that he was very proud of both periods of service and did not rate one award more highly than the other.

Summary of the Claims of Defence

20. In its written submission, the Directorate reiterated what it had previously communicated to Mr Espin, namely that he was not eligible for the ASM with Clasp ‘SE ASIA’ as he had previously been awarded the ASM 1945-75 with Clasp ‘FESR’.

21. Defence witnesses at the hearing explained the logic behind the Determination. They acknowledged that although the two awards were different, they each essentially existed with the one aim – to provide security within the South East Asian region.

22. In response to a query from the Tribunal as to whether dual service (i.e. service in two different arms of the Defence Force) was unusual, Defence indicated that dual service was not unusual, but conceded that Mr Espin's case was an unusual one, given he had rendered dual service, in different qualifying periods for the ASM and ASM 1945-75.

Tribunal Consideration

23. In conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the ASM with Clasp 'SE ASIA'. Accordingly, in order for Mr Espin to be eligible for the award of the ASM with Clasp 'SE ASIA' it must be established that he meets the eligibility criteria as stated in the Declarations and Determinations made under the Regulations.

24. There is no dispute that Mr Espin served in Butterworth in the South East Asian region from 16 February 1982 until 20 May 1982. However, Mr Espin has previously been awarded the ASM 1945-75 with Clasp 'FESR' for his service in the Royal Australian Navy. The Determination for the ASM with Clasp 'SE ASIA' is expressly clear that he is ineligible for this award as he has already received the ASM 1945-75 with Clasp 'FESR'.

Findings

25. The Tribunal finds that because Mr Espin has been awarded the ASM 1945-75 with Clasp 'FESR', he is ineligible for the ASM with Clasp 'SE ASIA'.

26. This finding does not in any way diminish the commitment and contribution Mr Espin made to his country during his service.

DECISION

27. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr William Richard Espin is not eligible for the award of the Australian Service Medal with Clasp 'SE ASIA'.