



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **Karwel and the Department of Defence [2019] DHAAT 10 (12 September 2019)**

File Number(s)      2019/013

Re                      **Mr Eric James Karwel**  
Applicant

And                     **Department of Defence**  
Respondent

**Tribunal**            Ms Naida Isenberg (Presiding Member)  
Major General Simone Wilkie AO (Retd)

**Hearing Date**      3 September 2019

#### **DECISION**

On 12 September 2019, the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Eric James Karwel is not eligible for the award of the Australian Defence Medal.

#### **CATCHWORDS**

DEFENCE AWARD – Australian Defence Medal – enlistment period – reasons for cessation – limited exceptions to mandatory period of efficient service - no discretion.

#### **LEGISLATION**

*Defence Act 1903* – ss 110T, 110V(1), 110VB(2).

*Defence Regulation 2016* – s 36.

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

## REASONS FOR DECISION

### Background

1. The Applicant, Mr Eric James Karwel seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) dated 16 May 2019 that he is not eligible for the award of the Australian Defence Medal (ADM).

2. Pursuant to s.110VB of the *Defence Act 1903* the Applicant sought review of that decision in his application to the Tribunal dated 17 June 2019. There was no issue as to jurisdiction.

3. A hearing was held on 3 September 2019 at which Mr Karwel appeared by conference telephone from the United States, where he now resides. The Directorate was represented by Ms Jo Callaghan, assisted by Mr Wayne Parker.

### Eligibility criteria for the Australian Defence Medal

4. The ADM was instituted by Her Majesty The Queen by Letters Patent on 20 March 2006, *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.* The *Australian Defence Medal Regulations 2006* (the Regulations) are set out in the Schedule attached to the Letters Patent and were subsequently amended, notably to reduce the period of qualifying service to 4 years. Regulation 4 of the amended Regulations provides:

(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 subregulation (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.*

## **Does the Applicant meet the eligibility criteria for the award of the ADM?**

5. There was no dispute that, on 10 February 1996, Mr Karwel enlisted in the Australian Army Reserve (ARES) at the 16th Royal Western Australia Reserve (16 RWAR) in Perth, Western Australia, for an enlistment period of four years and a requirement to serve a minimum of 14 days per enlistment year. On 21 June 1999, Mr Karwel discharged at his own request, having served for three years, four months and 12 days.

6. In all Mr Karwel served:

Year 1	10/02/1996 to 09/02/1997	21.5 days
Year 2	10/02/1997 to 09/02/1998	48.5 days
Year 3	10/02/1998 to 09/02/1999	69.33 days
Year 4	10/02/1999 to 21/06/1999	NIL

7. In his application for review, Mr Karwel acknowledged that he did not meet the minimum enlistment period required to be awarded the medal. However, he asked the Tribunal to consider 'compassionate reasons' for his early separation. He wrote that his decision to prematurely depart the ARES was predicated on the need to provide care and assistance to his disabled father who (along with his mother, younger sister and brother) had moved from Perth to Cairns in November 1998. His intention had been to stay in Perth, finish his studies at Edith Cowan University, and continue with the ARES. However, his assistance in caring for his father in Cairns was requested by his family.

8. His intention, he said, was to continue his reserve service when he moved to Cairns, where he would also continue his studies at James Cook University. Due to the prohibitive cost (and risk of loss) of transferring a large amount of equipment to Cairns, in or about January 1999, he returned all his issued equipment and uniforms to his unit (16 RWAR) in Karrakatta Barracks; he proposed to obtain a new issue of equipment in Cairns.

9. He wrote that in about February 1999, his father's medical condition had deteriorated greatly to the point where he was obliged to provide him with full-time care while still undertaking a full-time study load at James Cook University. He was unable to see how he could continue his ARES service while providing care to his father. Consequently, it was around this time that he wrote to a WO2 Marsh of 16 RWAR requesting discharge.

10. Mr Karwel provided a copy of his father's death certificate, which indicated that his father suffered from chronic arthritis and had succumbed to pneumonia in May 1999 as a result of his weakened condition. A year prior to this, Mr Karwel said, his father had suffered lung cancer. It was during this time that he, the Applicant, assumed duties as his primary caregiver such as providing transportation to doctors and hospital appointments - driving him, transferring him in/out of a wheelchair. This high level of caregiving was required, to an even greater extent, for the last few months of his father's life.

11. Mr Karwel concluded his application comments by stating that it had been an honour and a privilege to have had the opportunity to serve with the ARES.

12. At the hearing Mr Karwel gave evidence that his father had suffered lung cancer in 1998, but had made a reasonable recovery. He had decided that he would like to spend his remaining years in Cairns. Mr Karwel said it was all something of a whirlwind – he helped his parents and younger siblings (then aged about 19 and 14) to move to Cairns in about November 1998, and he returned to Perth with a view to completing his studies and continuing in the ARES. However, within a short period of time - from about December or January - his father's health started to decline; he suffered debilitating arthritis and discovered that the climate in Cairns did not assist. It was then that Mr Karwel's parents acknowledged that they needed his full time assistance, and he decided to move to Cairns. He enrolled in James Cook University to finish his degree. As far as the ARES was concerned, he handed in his equipment, with a view to a re-issue in Cairns. However, his father's health continued to deteriorate – he was wheelchair-bound, and could no longer drive. The Applicant's mother did not drive and his sister was unable to assist with lifting their father, and his brother was too young to drive their father to medical appointments. In all, it was a very stressful time, especially as the rest of the family was unable to cope with his father, neither physically nor emotionally. He said he wrote to WO2 Marsh and told him he could not continue in the ARES. He did not explore if he could take leave, not thinking that it was possible to take a period of time off. His separation was not effected until June 1999.

13. Sadly, the Applicant's father passed away in May 1999. When the Applicant completed his degree later that year he contemplated joining the RAAF as a Direct Entry Administration Officer but was unsuccessful.

14. The Regulations set out the requirements to be met in order to be eligible for the ADM. Pursuant to Reg 4(1)(a), (b) and (c) the Applicant needed to have given qualifying service that is effective service in the Australian Defence Force by completing his initial enlistment period, or alternatively, have served for at least four years. Mr Karwel did not serve for his initial enlistment period and nor did he serve for a period that totalled four years.

15. The Tribunal accepts that the Applicant was in difficult circumstances: his father was gravely ill and, as a dutiful son, it fell to him to be his father's primary caregiver. At the same time, he was trying to balance his fulltime studies. It is understandable that he was unable to continue in the ARES. Mr Karwel clearly enjoyed his time in the ARES, completing well in excess of the number of days as efficient service in the first 3 years of his enlistment. The Tribunal accepts that, had it not been for his personal circumstances it is likely he would have continued with the ARES.

16. However, Regulation 4(1)(d) clearly sets out only three very limited exceptions to the requirement that a person must serve their initial enlistment period or a period of four years in order to qualify for the ADM. Unfortunately for Mr Karwel, none of those exceptions apply to his circumstances, and the Tribunal has no discretion to waive the requirement to have served his initial enlistment period or a period of four years, despite the compelling reasons for Mr Karwel's inability to continue his reserve service.

## **DECISION**

17. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Eric James Karwel is not eligible for the award of the Australian Defence Medal.