



Australian Government

Defence Honours and Awards Appeals Tribunal

Lear and the Department of Defence [2019] DHAAT 11 (23 September 2019)

File Number 2019/007

Re **Flight Lieutenant Anthony Foster Lear**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Anne Trengove (Presiding Member)
Mr Graham Mowbray

Hearing Date 26 August 2019

Appearances Flight Lieutenant Lear (by telephone)
Ms Jo Callaghan & Ms Tiffany Dawes from the
Directorate of Honours and Awards, Department of Defence

DECISION

On 23 September 2019, the Tribunal affirmed the decision of the Directorate of Honours and Awards of the Department of Defence that Flight Lieutenant Anthony Foster Lear is not eligible for the award of the Iraq Medal or the award of the Afghanistan Medal.

CATCHWORDS

DEFENCE AWARD – Iraq Medal - Afghanistan Medal - eligibility criteria –
insufficient days service for each medal - no discretion

LEGISLATION

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

Defence Regulation 2016

Commonwealth of Australia Gazette No S421 dated 22 October 2004 - *Iraq Medal Regulations – Letters Patent*

Commonwealth of Australia Gazette No S154 dated 28 September 2009 *Iraq Medal Regulations - Declaration and Determination*

Commonwealth of Australia Gazette No S422 dated 22 October 2004 - *Afghanistan Medal Regulations – Letters Patent*

Commonwealth of Australia Gazette – Government Notices 20 April 2015 - *Afghanistan Medal Instrument* dated 13 April 2015

REASONS FOR DECISION

Decision under review

1. The applicant, Flight Lieutenant Anthony Foster Lear, seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence dated 18 March 2019 that he is not eligible for the award of the Iraq Medal or the Afghanistan Medal. The Applicant sought review of that decision in the Tribunal on 19 March 2019.

2. On 4 April 2019, the Chair of the Tribunal wrote to the Secretary of the Department of Defence seeking a report on the decision to deny Flight Lieutenant Lear both the Iraq Medal and the Afghanistan Medal. On 16 May 2019, the Directorate, on behalf of the Secretary, provided its report to the Tribunal and this report was provided to Flight Lieutenant Lear.

Flight Lieutenant Lear's Service

3. Flight Lieutenant Lear enlisted in the Permanent Air Force on 17 January 1977 as an Aircraftman Recruit. After completing over 20 years of service, he discharged on 18 August 1997. He transferred to the General Reserve Air Force on 19 August 1997 to 30 June 1998. On 1 July 1998, Flight Lieutenant Lear transferred to the Active Reserve Air Force. Following his Permanent Air Force service, Flight Lieutenant Lear commenced employment with the Department of Defence with 92 Wing Logistic Operations at RAAF Edinburgh. Flight Lieutenant Lear is still employed in this capacity and continues to provide Reserve service.

4. For his service, Flight Lieutenant Lear has been issued with the following awards:-

- Australian Active Service Medal (AASM) with Clasp 'IRAQ 2003' and 'ICAT'
- Australian Service Medal with Clasp 'SE ASIA'
- Defence Long Service Medal with First, Second, Third and Fourth Clasps
- Australian Defence Medal

5. Relevant to this application, during his service, Flight Lieutenant Lear was deployed overseas as follows:

- 1 to 15 October 2008 - Operation CATALYST (Iraq)
- 9 to 23 September 2009 - Operation SLIPPER (Afghanistan)

Eligibility criteria for the award of the Iraq Medal

6. The Iraq Medal was instituted by Her Majesty the Queen by Letters Patent on 30 September 2004 for the purpose of according recognition to members of the Australian Defence Force and certain other persons who render service in operations in Iraq and support operations in surrounding areas.

7. The eligibility criteria for awarding the Iraq Medal are set out in the Commonwealth of Australia Gazette No. S421, *Iraq Medal Regulations 2004* - dated 22 October 2004, which provide:

3 Declaration of prescribed operations

The Governor-General, on the recommendation of the Minister, may declare an operation in Iraq, ... , in which members of the Defence Force are engaged or have been engaged on or after 18 March 2003, to be a **prescribed operation** for the purposes of these Regulations.

5 Conditions for award of Medal

- (1) The Medal may be awarded for service in the operational area of Iraq in connection with a **prescribed operation**.
- (2) The persons to whom the Medal may be awarded are:
 - (a) Persons who served in a prescribed operation as members of the Defence Force; and
 - (b) Persons included in a class of persons determined by the Minister for the purposes of this regulation.
- (3) The other conditions for the award of the Medal are the conditions determined by the Governor-General on the recommendation of the Minister.
- (4) **The Medal may only be awarded to a person who fulfils the conditions for the award of the Medal.**

8. Further eligibility criteria for awarding the Iraq Medal are set out in the Commonwealth of Australia Gazette No. S 154, *Declaration And Determination Under The Iraq Medal Regulations 2004* – dated 28 September 2009 which:

- (b) **declare**, under regulation 3 of the Regulations, warlike operations in which members of the Australian Defence Force who render service with the forces known as:
 - (i) “Operation Falconer”
.....
 - (ii) **“Operation Catalyst”** – the Australian Defence Force contribution to the United States led coalition operations in Iraq to support the Australian effort to assist with the rehabilitation of Iraq and remove the threat of weapons of mass destruction, that commenced on 16 July 2003 in the specified areas comprising the total land areas, territorial waters, inland waterways and superjacent airspace boundaries of Iraq, Kuwait, Bahrain, Qatar, United Arab Emirates, Saudi Arabia North of 23 degrees North, the Persian Gulf and the Strait of Hormuz;
 - (iii) “Operation Riverbank”
....
 - (iv) “Operation Kruger”
....to be a *prescribed operation* for the purposes of the Regulations;
- (c) **determine**, under subregulation 5(3) of the Regulations, that the conditions for the award of the Iraq Medal for that *prescribed operation* are:
 - (i) the Medal may be awarded to a member of the Australian Defence Force who rendered assigned service as such a member while posted as a member of an Australian element for duty to the *prescribed operation* for a *prescribed period*;

- (ii) ...
- (iii) ...
- (iv) ...
- (v)
- (vi) (A) in this paragraph "**prescribed period**" for the *prescribed operation* at subparagraphs b(i)(B), **b(ii)**, b(iii) and b(iv) means:
 - (1) in relation to subparagraphs **c(i)**, c(ii) and c(iv) a period of not less than **30 days**;

8. Flight Lieutenant Lear accepts he did not meet all the necessary essential criteria for the Iraq medal, noting the 30 day requirement.

Eligibility criteria for the award of the Afghanistan Medal

9. The Afghanistan Medal was instituted by Her Majesty the Queen by Letters Patent on 30 September 2004 for the purpose of according recognition to members of the Australian Defence Force and certain other persons who render service in operations in Afghanistan and support operations in surrounding areas.

10. The eligibility criteria for awarding the Afghanistan Medal are set out in the Commonwealth of Australia Gazette No. S422, *Afghanistan Medal Regulations*, dated 22 October 2004 which provide:

3 Declaration of prescribed operations

The Governor-General, on the recommendation of the Minister, may declare an operation in Afghanistan, ... , in which members of the Defence Force are engaged or have been engaged on or after 11 October 2001, to be a **prescribed operation** for the purposes of these Regulations.

5 Conditions for award of Medal

- (1) The Medal may be awarded for service in the operational area of Afghanistan in connection with a **prescribed operation**.
- (2) The persons to whom the Medal may be awarded are:
 - (a) Persons who served in a prescribed operation as members of the Defence Force; and
 - (b) Persons included in a class of persons determined by the Minister for the purposes of this regulation.
- (3) The other conditions for the award of the Medal are the conditions determined by the Governor-General on the recommendation of the Minister.
- (4) **The Medal may only be awarded to a person who fulfils the conditions for the award of the Medal.** (*emphasis added by the Tribunal*)

11. Further eligibility criteria are contained in the *Afghanistan Medal Instrument* of 13 April 2015 which states:

6 Prescribed operations

For section 3 of the Afghanistan Medal Regulations, the Afghanistan Operation is a prescribed operation comprising the following operations in the following areas and within the following dates:

- a. **Operation Slipper** involving activities of ADF members, that:
 - (i) ...
 - (ii) ...
 - (iii) ...
 - (iv) ...
 - (v) commenced on **31 July 2009 and ended on 19 February 2012** within the area bounded by:
 - 39 00 N Latitude, 78 00 E Longitude
 - 39 00 N Latitude, 32 00 E Longitude
 - 05 00 S Latitude, 32 00 E Longitude
 - 05 00 S Latitude, 78 00 E Longitude

7 Conditions

- (1) For subsection 5(3) of the Afghanistan Medal Regulations, the following conditions are determined for the award of the medal:
 - (a) a person must have given service on deployment during the period of the Afghanistan Operation; and
 - (b) **a person must have given service on 30 days**, during one or more such deployments, whether or not the service continued throughout the whole day and whether or not the 30 days were continuous; and
 - (c) a person must have given the service while assignment for duty (however described) on one or more operations that comprise the Afghanistan Operation; and
 - (d) a person must have given the service as an ADF member; and
 - (e) a person must not have been awarded, nor be eligible to be awarded, an Iraq Medal in relation to the same service on a deployment during which the service is given; and
 - (f) a person must have given service that involves the performance of Operational Duties; and
 - (g) No other period of service can have been completed.

12. Again, Flight Lieutenant Lear accepts he did not meet all the necessary essential criteria for the Afghanistan medal, noting the 30 day requirement.

Flight Lieutenant Lear's evidence

13. Flight Lieutenant Lear states that he deployed on Active Service (Force Assigned) on *Operation Catalyst* on 22 August 2008. He also deployed on Active Service (Force Assigned) on *Operation Slipper* 7 September 2009. To date he has only been awarded the AASM with IRAQ and ICAT Clasps, which he does not believe sufficiently acknowledge his operational experience in the Middle East.

14. Flight Lieutenant Lear accepts that he deployed on 1 October 2008 to 15 October 2008 on Operation CATALYST (Iraq) and 9 September 2009 to 23 September 2009 on Operation SLIPPER (Afghanistan). There is no dispute that he did not serve in the relevant prescribed areas for more than 15 days and therefore less than the requisite periods of time. Rather, he sought the Tribunal's discretion to apply the two periods of 15 days in each operational area in the Middle East together. He could not 'understand why there was no caveat for accumulative service that would have met the 30 Day criteria.' He contends that in his circumstances, this would be a fair result.

15. Flight Lieutenant Lear said that his service in the Middle East had contributed to his failing mental health. He was 'growing tired of explaining to people why I don't also have [these medals]. I personally feel incomplete.' He appealed to the Tribunal's 'sense of fair play' to exercise a discretion in arriving at what he considered to be the preferred decision given his particular circumstances.

Defence's submission

16. The Department of Defence relied upon the evidence as set out in the Defence Report¹ prepared in this matter. It is submitted that Flight Lieutenant Lear is not eligible for the Iraq Medal as he had completed 15 of the required 30 days on Operation CATALYST within the prescribed area. Further, Defence submitted that Flight Lieutenant Lear is not eligible for the Afghanistan Medal as he had completed 15 of the required 30 days on Operation SLIPPER within the prescribed area.

17. Defence submitted that the respective Regulations did not allow for service completed on Operation CATALYST and Operation SLIPPER to be aggregated as eligible qualifying service for either the Iraq Medal or the Afghanistan Medal. Only service on each of the prescribed operations under the Regulations can be qualifying service for the relevant award. Defence therefore submitted that Flight Lieutenant Lear is not eligible for either award.

Determination

18. The Tribunal agrees that the respective Regulations do not allow for any discretion to be applied to the eligibility criteria. The Tribunal finds that Flight Lieutenant Lear completed 15 days of the 30 day requirement for each of the medals. The respective Regulations do not allow for service completed on Operation CATALYST and Operation SLIPPER to be aggregated as eligible qualifying service for either the Iraq Medal or the Afghanistan Medal. Only service on each of the prescribed operations under the Regulations can be qualifying service for the relevant award. As Flight Lieutenant Lear was unable to meet the eligibility criteria for the award of the Iraq Medal or award of the Afghanistan Medal he was not entitled to either award.

DECISION

19. The Tribunal therefore affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Flight Lieutenant Anthony Foster Lear is not eligible for the award of the Iraq Medal or the award of the Afghanistan Medal.

¹ Defence Submission to the Defence Honours and Awards Appeals Tribunal – Review of Recognition for O510221/8203798 - Flight Lieutenant Anthony Lear, May 2019.