



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **Reeves and the Department of Defence [2016] DHAAT 30 (11 August 2016)**

File Number(s)        2015/080

Re                        **David Reeves**  
Applicant

And                      **Department of Defence**  
Respondent

**Tribunal**                Naida Isenberg (Presiding Member)  
The Hon. Peter Lindsay

**Hearing Date**        13 May 2016

#### **DECISION**

On 11 August 2016 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that David Reeves is not eligible for the award of the Australian Active Service Medal with Clasp 'RWANDA'.

#### **CATCHWORDS**

DEFENCE AWARDS – Australian Active Service Medal with Clasp 'RWANDA'.

#### **LEGISLATION**

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

*Defence Force Regulations 1952 – Reg 93C*

*Commonwealth of Australia Gazette (CAG) No. S 335, Australian Active Service Medal Regulations - dated 2 November 1988*

*CAG No. S 79, Declaration and Determination under the Australian Active Service Medal Regulations - dated 23 May 2006*

*Australian Active Service Medal Regulations, Instrument of Delegation, dated 9 August 2014*

## **REASONS FOR DECISION**

### **Introduction**

1. The applicant, Mr David Reeves (Mr Reeves) submitted an *Application for the Issue of Medals and/or Clasps* to the Directorate of Honours and Awards of the Department of Defence (the Directorate) on 3 June 2011 requesting a review of his eligibility for the Australian Active Service Medal (AASM) with Clasp 'RWANDA'. On 29 June 2011, Mr Reeves was advised by letter of his non eligibility for the award. Mr Reeves provided the Directorate with further information relating to his eligibility for the AASM with Clasp 'RWANDA', but, on 6 November 2012, after examining the new information, Mr Reeves was again advised that he did not qualify for the award.
2. Mr Reeves now seeks review of the decision of the Directorate that he is not eligible for the award of the AASM with Clasp 'RWANDA'.

### **Tribunal Jurisdiction**

3. Pursuant to s110VB(2) of the Defence Act 1903 (the Defence Act) 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 s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an 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. Included in the defence awards set out in Part 2 is the AASM. Therefore the Tribunal has jurisdiction to review decisions in relation to this award.

### **Conduct of the review**

4. In accordance with the Tribunal's Procedural Rules, the Chair of the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Reeves' application for review and requesting that he provide a report and copies of any material on which the Department sought to rely in coming to its Decision. The Directorate, on behalf of the Secretary, provided the Tribunal with a report which was then forwarded to Mr Reeves, who provided further comments.
5. On 13 May 2016 the Tribunal held a Hearing with Mr Reeves, at which he appeared by telephone. The Directorate was represented at the hearing by Francey Felsman. Evidence was given by Donna Burdett, the delegate who made the decision under review. The hearing was also attended by David Burdett, Assessments Manager, as an observer.

### **Australian Active Service Medal with Clasp 'RWANDA'**

6. The Australian Active Service Medal was established by Letters Patent on 13 September 1988 for the purpose of 'according recognition to members of the Defence Force and certain other persons who render service in certain warlike

operations'.<sup>1</sup>

7. The award of the medal is governed by Regulations set out in the Schedule attached to the Letters Patent. Regulation 3 states:

*The Governor-General, on the recommendation of the Minister, may declare a warlike operation in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations.*

8. On 23 May 2006, a Declaration with respect to service in Rwanda made by the Governor-General was gazetted:

*... under regulation 3 of the Regulations, warlike operation in which members of the Australian Defence Force were engaged, with the United Nations Assistance Mission for Rwanda (UNAMIR) with the force known as:*

*“Operation Tamar” – Service as a member of the Australian Defence Force commencing on 25 July 1994 and ending on 8 March 1996, as part of the United Nations Assistance Mission for Rwanda (UNAMIR) while in the area comprising Rwanda and the areas in Uganda, Zaire, Burundi, Tanzania, that are not more than 50km from the border of Rwanda.*

*to be a prescribed operation for the purposes of the Regulations<sup>2</sup>.*

9. Regulation 4(1) provided that the Medal may be awarded for service in or *in connection with* a prescribed operation, and the conditions for the award of the medal are the conditions determined by the Governor-General on the recommendation of the Minister.

10. The Declaration also amended the conditions for the award and Regulation 4 states, relevantly:

(2) ...

(i) *The Medal may be awarded to a member of the Australian Defence Force who rendered assigned service for a prescribed period while posted to or serving as a member of the Australian element of the prescribed operation.*

11. A member serving in Operation TAMAR need only have served in that capacity for a period of not less than one day.<sup>3</sup>

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<sup>1</sup> Commonwealth of Australia Gazette (CAG) No. S 335, Australian Active Service Medal Regulations - dated 2 November 1988

<sup>2</sup> CAG S79 dated 23 May 2006, Declaration and Determination under the Australian Active Service Medal Regulations

<sup>3</sup> Reg 4(2)(iv)(A)(1)

## **Background: Operation TAMAR**

12. On 25 July 1994, the Australian Government announced that it would deploy an Australian Medical Support Force of over 300 personnel to support the United Nations Assistance Mission in Rwanda (UNAMIR). Later known (and here referred to) as AUSMED, the unit distinguished itself by providing medical aid to the UN Force and to the Rwandan people.

13. The force, to be based in Kigali Central Hospital, was to be deployed for six months, with an option for a second six-month deployment. A second contingent of approximately 300 personnel deployed to Rwanda in February 1995.

14. We were informed by the Directorate, and we accept that the AUSMED Force comprised the following elements:

- Commander Australian Services Contingent and staff;
- Headquarters Medical Support Force;
- Personnel Support Section;
- Medical Company;
- Rifle Company Group; and
- Logistic Support Company.

## **Mr Reeves' Service Record**

15. According to his service record, on 24 March 1974, Mr Reeves enlisted in the Royal Australian Air Force (RAAF). He was discharged at his own request on 18 February 1996, having completed more than 20 years' service. During his service, Mr Reeves undertook the following postings:

- 3 Squadron Butterworth Malaysia from 24 September 1979 to 8 September 1981;
- 75 Squadron Butterworth from 8 September 1981 to 4 February 1982; and lastly
- 36 Squadron from 8 December 1987 to 14 February 1996.

16. For his service, Mr Reeves has been awarded the following:

- Australian Active Service Medal with Clasps 'SOMALIA' and 'CAMBODIA';
- Australian Service Medal with Clasp 'SE ASIA';
- Defence Force Service Medal with First Clasp;
- Australian Defence Medal; and
- Returned from Active Service Badge.

## The evidence and submissions

17. Mr Reeves seeks the Clasp 'RWANDA'. In his statement and in his evidence Mr Reeves said that he was the Flight Engineer on Aircraft A97-010 that flew into Kigali International airport on the 21 November 1994 in support of AUSMED. In his submission the Applicant said his operational service is currently listed as Somalia 18-25 November 1994 (8 days) but believes his operational service should be amended to: Somalia 18-20 November, Rwanda 21-22 November and Somalia 23-25 November (a total of 8 days). He believes the error has occurred because of an administrative problem.

18. Mr Reeves contended that he met the eligibility criteria for the AASM with Clasp 'RWANDA' because:

- he was a member of 36 SQN at the time and rendering continuous full-time service
- 36 SQN was allotted for duty in the area
- The mission was in support of UNAMIR of which AUSMED was part

19. In support of his application for review Mr Reeves provided a DVD copied from his old VHS tapes, but it was not necessary for the Tribunal to view the footage, which we understand, was taken from the aircraft of the flight from Mogadishu Airport (in Somalia), via Nairobi Airport (in Kenya), over Musoma Airport on the shores of Lake Victoria, then the approach to Kigali Airport and then on ground at Kigali (in Rwanda).

20. The 36 SQN unit history records, relevantly, in respect of Mr Reeves (FSGT D.P. Reeves) that:

*16 Nov 94 ... FSGT D.P. Reeves (FENG) ...departed Richmond, NSW on ATO 140 for Pearce, Cocos Is, Diego Garcia, Seychelles, Mogadishu, Nairobi, Kigali, Nairobi, Mogadishu, Diego Garcia, Cocos Is, Pearce, Richmond, NSW returning safely on 26 Nov 94. This task was in support of OPERATION IGUANA...*

21. Mr Reeves invited attention to his flight log book which, although it contains a correction, matches that of other crew members on the flight and the flight times match and are consistent with the distance travelled in a C-130 H aircraft. At the hearing Defence, referring to the Unit history, did not dispute that the Applicant had deployed on 16 November 1994 from Richmond to Pearce, Cocos Is, Diego Garcia, Seychelles, Mogadishu, Nairobi, Kigali, and returned on 26 November 1994. Despite having initially expressed concerns about the alteration to the log book, Defence did not dispute that he undertook a flight from Nairobi to Kigali and return and that he was the flight engineer.

22. Defence submitted that as Mr Reeves' service records and flying log book show no evidence that he was allotted to Operation TAMAR he is not entitled the AASM with Clasp 'RWANDA'. Defence submitted that Mr Reeves flew into Kigali

as part of Operation IGUANA, and not as part of Operation TAMAR. Mr Reeves submitted that his unit must have been allotted/assigned to fly from Nairobi to Kigali and return to Nairobi in support of Operation TAMAR as a secondary role to their primary role which was Operation IGUANA.

23. Attached to the Defence submission, was a copy of Instrument of Allotment of Persons, Somalia 20 October 1992 to 30 November 1994, under the *Veterans' Entitlement Act 1986*, listing Mr Reeves' service with Operation IGUANA between 18 and 25 November 1994'. Ms Burdett said this formed the basis of her decision.

24. The Applicant said that prior to deploying in November 1994 he and the other crew members received weapons training and undertook specialist training with respect to their aircraft such as take-offs and landings that might have to be executed in hazardous conditions. The Applicant wrote in his submissions that the crew had been briefed by intelligence officers prior to departure from Richmond that there was a risk of small arms fire from outside the airfield perimeter and a possible risk of surface to air missiles. He was armed with a loaded Browning 9MM pistol (with an extra magazine of ammunition) which was to be used in self-defence only.

25. Mr Reeves' evidence, which was uncontested, was that, before they left Australia, the crew knew that their ultimate task was to convey cargo to Rwanda. At the hearing Defence conceded that, on departure from Australia, Mr Reeves was en route to Rwanda. Mr Reeves said he understood that in Mogadishu they had taken on board 'dangerous cargo' but did not know what it was, because the details were known to the loadmaster and was not his concern; he believed though that they transported medical supplies in support of AUSMED.

26. Mr Reeves gave evidence that the flight to Kigali from Nairobi was about 1.8 hrs duration. After parking at Kigali airport all 4 engines were shut down but the auxiliary power unit was kept running. He inspected the aircraft for serviceability whilst on the ground and no damage from small arms fire was apparent. The aircraft and crew were on the ground in Kigali for about 2 hours whilst arrangements were made to offload the supplies for the Australian force based in Kigali. The return trip to Nairobi was about 1.7 hrs in duration. The total flying time of 3.4 hours.

## **CONSIDERATION**

27. As discussed above, there was no dispute that Mr Reeves had flown into Kigali from Nairobi. The flight, according to the Unit history records, was in support of Operation IGUANA.

### **Was Mr Reeves' flight into Rwanda 'in connection with' Operation TAMAR?**

28. Mr Reeves' contention was in effect that, his flight was actually in support of Operation TAMAR because it was providing support to UNAMIR, by the delivery of cargo to Australian forces based at Kigali, and that that was the correct characterisation of the flight, irrespective of how it was described in the Unit history. In the Tribunal's view this raised the issue of whether it could be said that the flight was *in connection with* Operation TAMAR.

29. At the hearing the Tribunal referred the Defence representatives to Reg 4(1), and invited Defence's submission as to the interpretation it said should be applied to the phrase 'in connection with [a prescribed operation]'. The Defence representatives conceded that there were differing approaches by delegates within the Directorate, and that it was a reasonable interpretation that 'in connection with' was broader than the conservative interpretation which relied on whether a member had been assigned to a prescribed operation'. The Tribunal allowed Defence an opportunity to provide written submissions that would address Defence's formal position. In its written submissions in relation to interpretation dated 14 June 2016, Defence submitted, in effect, that 'in connection with' could be no broader than the prescribed operation to which the award referred. However, Defence did not address the legislative intention that might have given rise to the use of both *in a prescribed operation* and *in connection with a prescribed operation*. Consequently, the submissions in this regard, were, in the Tribunal's view, overall, unhelpful.

30. For the reasons that follow, it was not necessary for the Tribunal to come to a final view in this matter in relation to the distinction between *in a prescribed operation* and of *in connection with a prescribed operation*. Having said that though, the Tribunal considered that if the intention was that only those who serve *in a prescribed operation* should be eligible for the AASM, then close consideration should be given to the purpose to be served by the addition of *in connection with a prescribed operation*; the Tribunal observes that it is likely that this issue will continue to arise. The Tribunal also noted that, as a minimum, there should be a consistency of approach by delegates, which, from the oral submissions, does not appear to presently be the case.

### **What is the requirement for the minimum time in country to qualify for the Clasp 'RWANDA'?**

31. Reg 4(2)(iv)(A)(1) provides that a member serving in Operation TAMAR need only have served in that capacity for a period of not less than one day. There was no dispute, and the Tribunal accepts, that the time in country (Rwanda) was about 2 hours, that the sortie from Nairobi to Kigali (and return) was less than 10 hours,

32. It was also discussed with Defence at the hearing whether, on the broader reading of Reg 4(1), that is in relation to the effect of *in connection with a prescribed operation*, there was a minimum time requirement in order to qualify for the Clasp 'RWANDA'. Ms Burdett noted that some prescribed operations specify a minimum number of sorties, but as the Tribunal observed, this this did not apply with respect to Operation TAMAR. In its written submissions of 14 June 2016 Defence referred to a number of cases said to be relevant to the interpretation of 'not less than' a day. Only *Bear v Official Receiver* [1941] HCA 1 was on point, referring to a requirement that 'an interval of not less than 7 days must elapse' as meaning 7 clear days. The Tribunal was of the view that to satisfy Reg 4(2)(iv)(A)(1) a whole day (24 hrs) in the theatre of operations relevant to the Operation was required.

33. Defence was also invited to make written submissions about whether, if the broader interpretation of Reg 4(1) was correct, whether the parameters of Reg 4(2) were also broadened. It was noted that the journey from Australia (and return), for which Rwanda was the ultimate destination, was of 9 or 10 days' duration. While the Tribunal accepts that the Applicant had left Australia on 16 November 1994,

travelling ultimately to Nairobi and onto Kigali, and then returning on 26 November 1994, the Tribunal did not accept that the whole of this period could properly be considered as service in connection with Operation TAMAR and that only the period of service within the geographical area described in relation to Operation TAMAR could be taken into account.

34. Even if the broader interpretation of 'in connection with' Operation TAMAR were to be adopted, the Tribunal took the view that the required service in this ancillary role which would attract the Clasp 'RWANDA' can be no broader than the requirement for those whose service was *in* Operation TAMAR. Consequently, as the Applicant has less than one day's service he would not be eligible for the Clasp 'RWANDA', even if it could be said he served *in connection with* Operation TAMAR.

## **DECISION**

35. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that David Reeves is not eligible for the award of the Australian Active Service Medal with Clasp 'RWANDA'.