



Australian Government

Defence Honours and Awards Appeals Tribunal

Belinda RICE on behalf of Leslie RICE, and the Department of Defence [2018] DHAAT 019 (13 September 2018)

File Number 2018/033

Re **Ms Belinda RICE on behalf of Mr Leslie RICE**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms N Isenberg (Presiding Member)
 Ms A Trengove

Hearing Date Hearing on the papers

Date of Decision 13 September 2018

DECISION

The Tribunal decides to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Leslie Raymond Clive Rice is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal – enlistment period – – period of qualifying service strictly calculated - no discretion

LEGISLATION

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

REASONS FOR DECISION

Background

1. The Applicant, Ms Belinda Rice, on behalf of her uncle, Mr Leslie Rice, seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) dated 9 June 2018 that Mr Rice is not eligible for the award of the Australian Defence Medal (ADM).

2. At the request of the parties the Tribunal considered the application for review on the material before it, which included the application and supporting documentation, the Directorate's submissions and Ms Rice's response to those submissions.

Eligibility criteria for the Australian Defence Medal

3. The ADM was instituted on 8 September 2005, *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.*

4. The Regulations are set out in the Schedule attached to the Letters Patent. Those Regulations were amended on 20 March 2006.¹ As a result of the amendment the minimum period of service (with limited exceptions) became four years. Regulation 4 of the amended Regulations states, relevantly:

- (1) *The Medal may be awarded to a ... 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*
 - (b) *...*
 - (c) *...*
 - (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) *...;*
 - (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*

¹*Commonwealth of Australia Gazette No. S48, Australian Defence Medal Regulations 30 March 2006.*

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.*

5. The Chief of the Defence Force, in accordance with his delegation, made determinations under the ADM Regulations, relating to circumstances where the qualifying period is not met. In general terms, these related to national service after 1971, the ADF Gap Year Scheme, and discharge for a non-compensable injury. None of those circumstances are relevant to the present application.
6. The Tribunal is required to undertake a merits review and is bound to apply the eligibility criteria which applied at the date of the decision under review². The Tribunal has no discretion in applying the eligibility criteria referred to above.

Issue for the Tribunal

7. There was no dispute that either of the mitigating provisions in Regulation 4(d)(ii) and (iii) applied to Mr Rice; his discharge (discussed below) was not due to his being medically unfit due to a compensable impairment nor due to a prevailing discriminatory Defence policy. Consequently, the only issue for the Tribunal was whether Mr Rice completed his initial enlistment period.

Did Mr Rice complete an initial enlistment period?

8. According to Mr Rice's service record he enlisted in the Australian Regular Army (Special Force) on 4 June 1952 for a period of 2 years. He served in Korea with the Special Forces.
9. His service record also notes that he spent a short time in Japan before leaving, on 15 May 1954, for Sydney, where he arrived 2 days later. His service record notes his discharge, 'at his own request', was dated 1 June 1954. Contemporaneous material in his file confirms that date of discharge. Although his file does not contain a copy of his Discharge Certificate, an Interim Discharge Certificate records his discharge date as 1 June 1954. The (official) Discharge Certificate was to be posted to his local post office, as he had nominated as his address for

² *Defence Act 1903: s 110VB(6)*

correspondence. There was no reason for the Tribunal to find that his discharge was on a date other than 1 June 1954. Consequently, his period of service falls 2 days' short of his 2 year enlistment period.

10. Ms Rice submitted that it was unfair, given her uncle's 'front line' service that he does not qualify for the ADM. The Tribunal also notes Ms Rice's submission that, if he served during a leap year he may have in fact served an additional day but this contention is unsustainable; the requirement is strict. The Tribunal has no discretion.

Does Mr Rice meet any of the other eligibility criteria for the award of the ADM?

11. The Regulations set out the requirements to be met to be awarded the ADM. Pursuant to Regulation 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 Rice did not serve for his initial enlistment period and nor did he serve for a period that totaled four years, which, in any event, is longer than his enlistment period.

12. Regulation 4(1)(d) sets out only three very limited exceptions to the requirement that a person serve their initial enlistment period or a period of four years; in this regard the Tribunal has no discretion. None of those exceptions apply to the Applicant's circumstances.

13. For the reasons given above, the Tribunal could not be satisfied that Mr Rice met the eligibility criteria for the ADM.

DECISION

14. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Leslie Rice is not eligible for the award of the Australian Defence Medal.