



Australian Government

Defence Honours and Awards Appeals Tribunal

Selkirk and the Department of Defence [2018] DHAAT 06 (14 June 2018)

File Number(s) 2017/001

Re **Mr David Healey** on behalf of **Wing Commander Charles Selkirk**
Applicant

And **Department of Defence**
Respondent

Tribunal Air Vice-Marshal John Quaipe AM (ret'd) (Presiding Member)
Ms Naida Isenberg

Hearing Date 27 April 2018

DECISION

On 14 June 2018, the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Wing Commander Charles Selkirk is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'MALAYA' or the General Service Medal 1918-1962 with Clasp 'MALAYA'.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Active Service Medal 1945-1975 with clasp MALAYA – General Service Medal 1918-1962 with clasp MALAY – Malayan Emergency – Exercise SEA LION.

LEGISLATION

*Defence Act 1903 – Part VIIIIC - Sections 110T, 110VB(2)
Defence Amendment Regulations (No1) 2010 – Schedule 3 Part 2
United Kingdom Command Paper 7907: Terms of Award of the Naval General Service Medal and the General Service Medal (Army and Air Force) for service in Malaya since 16 June 1948.*

Commonwealth of Australia Gazette No S18, Letters Patent for the institution of the Australian Active Service Medal 1945-1975, dated 19 January 1998

Commonwealth of Australia Gazette No S54, Declaration and Determination for the conditions of the award with Clasp 'MALAYA', dated 10 February 1998 (NGSM & GSM)

Commonwealth of Australia Gazette No S102, Revocation and Declaration for the conditions of the award with Clasp 'MALAYA', dated 27 May 2001.

REASONS FOR DECISION

Introduction

1. Wing Commander Charles Selkirk (WGCDR Selkirk) has claimed eligibility for the General Service Medal 1918-1962 with clasp 'MALAYA' (GSM) and the Australian Active Service Medal 1945-1975 with clasp 'MALAYA' (AASM) for service in connection with the Malayan emergency. The basis of WGCDR Selkirk's claim is that he completed two operational missions whilst deployed to Singapore with No 10 Squadron RAAF as part of Australia's contribution to a Southeast Asia Treaty Organisation exercise: Exercise SEA LION.

2. In 2001, WGCDR Selkirk received both the GSM and AASM in recognition of his service. However just three years later, WGCDR Selkirk was advised by the Defence Director of Honours and Awards, that the medals had been issued in error and were to be returned. On behalf of WGCDR Selkirk, Mr David Healey has applied to the Tribunal for a review of this decision.

3. As the decision to withdraw previously issued medals constitutes a refusal to recommend WGCDR Selkirk for the awards, the Tribunal has jurisdiction to review this decision. While the administration of this matter is regrettable, the key issue for the Tribunal to consider is whether WGCDR Selkirk meets the eligibility criteria for the GSM and AASM.

Does WGCDR Selkirk meet the eligibility criteria for the GSM?

4. WGCDR Selkirk served with No 11 Squadron from 27 April 1959 to 17 December 1962. His service record includes his participation in Exercise SEA LION between 28 April 1960 and 17 May 1960. WGCDR Selkirk, then a Flight Sergeant, participated as 'signaller' crewman of one of three No 11 Squadron P2V5 Neptune aircraft deployed for the Exercise. Exercise SEA LION involved over 60 ships and 100 aircraft from all of the SEATO participating nations.¹

5. To qualify for the GSM with Clasp 'MALAYA' WGCDR Selkirk must have completed a period of service of one day or more on the posted strength of a unit or formation stationed in the Federation of Malaya or the Colony of Singapore, within a specified eligibility period. The eligibility period for service in Singapore ceased prior to

¹ Exercise SEA LION participant nations included Australia, United Kingdom, United States of America, Thailand, New Zealand, the Philippines, Pakistan and France. SEATO Press Release VI(1)/60-48

WGCDR Selkirk's arrival on deployment for Exercise SEA LION. The eligibility criteria for the GSM and AASM are provided in full at Annex A.

6. There is no record of WGCDR Selkirk serving on the posted strength of a unit or formation stationed in the Federation of Malaya or the Colony of Singapore during the period specified for the award of the GSM. At the hearing WGCDR Selkirk confirmed that he did not meet the eligibility criteria for this award. The Tribunal considered that the decision with respect to the GSM was correct.

Does WGCDR Selkirk meet the eligibility criteria for the AASM?

7. WGCDR Selkirk does not claim AASM eligibility for service while allotted and posted as a member of the Australian element to the Malayan Emergency or for service while on secondment or exchange with a foreign Defence Force. Neither does WGCDR Selkirk claim to qualify for the AASM on the basis of being eligible for the Naval General Service Medal. That leaves only one remaining criterion under which he may be eligible this award: on the basis of having completed one operational sortie within the duration of the prescribed operation.

8. WGCDR Selkirk's claim is based on two missions conducted during his deployment to Singapore on 9 May 1960 and 11 May 1960.

What was the nature of the missions flown and WGCDR Selkirk's role?

9. No 11 Squadron's Exercise SEA LION participation commenced in the Philippines where the deployed aircraft conducted anti-submarine exercises from Sangley Point. In accordance with the Exercise plan, the aircraft then deployed from the Philippines to the Royal Air Force base at Changi in Singapore. This pre-planned move coincided with the transit of the Exercise fleet. WGCDR Selkirk told the Tribunal that on arrival in Singapore, the tasking for No 11 Squadron no longer focused on anti-submarine exercises. It was WGCDR Selkirk's belief that the Far East Air Force took advantage of the presence of No 11 Squadron aircraft in Singapore to task 'opportunity' electronic surveillance missions in support of the Malayan Emergency.

10. WGCDR Selkirk described his role as 'signaller' crewman was to operate his aircraft's electronic surveillance equipment to scan for radio emissions on specifically briefed frequencies. WGCDR Selkirk stated that the target of his search during missions conducted from Singapore were emissions associated with ground-based radar systems operating on VHF band frequencies listed in the Exercise Operations Order. When WGCDR Selkirk made contact on any of the frequencies being searched, he would simply log a bearing; the time of the contact; and note the aircraft's current position in latitude and longitude as provided by the aircraft's navigator. WGCDR Selkirk stated that this log was collected by a British intelligence officer after landing.

11. WGCDR Selkirk also outlined his recollection of receiving a specific and separate briefing from a British intelligence officer prior to these missions and of being '*sworn to secrecy*'. WGCDR Selkirk did not know which country was using the nominated frequencies.

Where were the missions conducted?

12. WGC DR Selkirk told the Tribunal that the missions were flown in an area to the north of Singapore. He was unsure of the aircraft's actual location during the mission as he described his duty station on the aircraft as denying him any external visual references. He thought they had followed a meandering route '*across the Malay jungle, across the Gulf [of Thailand] and down the other side of the Gulf to Borneo*'.

13. Although unsure of the specific location, WGC DR Selkirk told the Tribunal that the navigator and the '*skipper*' had said the aircraft was operating over land at an altitude of 500 feet.

14. WGC DR Selkirk had no knowledge of the location of the radar systems that were the subject of his search.

Were the missions operational or exercise tasks?

15. The Tribunal noted that WGC DR Selkirk's flying log book records the missions of 9 and 11 May 1960 as *Casex 43 "Sea Lion"* and *Casex 73 "Sea Lion"* respectively. WGC DR Selkirk told the Tribunal that 'Casex' is an acronym for 'Combined Air Sea Exercise' and the serial numbers reflect specific exercise activity.

16. The No 11 Squadron Flight Authorisation Book describes the Duty or Practice Ordered for the mission flown 9 May 1960 as *Sea Lion Op as briefed a/c land Paya Lebar to refuel* and for the mission flown on 11 May 1960 as "*Sea Lion*" - *distant and close support*. There are no entries in either WGC DR Selkirk's log book or the Squadron Flight Authorisation Book, during the entire period that No 11 Squadron aircraft were operating from RAF Changi, that are not annotated as Exercise SEA LION.

17. At the hearing, WGC DR Selkirk suggested that from his perspective, the end of anti-submarine exercising also meant the end of No 11 Squadron's Exercise SEA LION involvement and that the flying conducted from RAF Changi was therefore not part of the Exercise.

18. Appearing in support of WGC DR Selkirk, Air Commodore John Trinder (ret'd) gave evidence that because No 11 Squadron received their tasking for these missions from Headquarters Far East Air Force, the missions were not Exercise serials. However, as the Tribunal observed, the Exercise Operation Order clearly records operational control being exercised by Commander-in-Chief Far East Air Force for those Exercise serials allotted to Maritime Headquarters Singapore, i.e. the serials flown from RAF Changi.²

19. This shift in Exercise tasking authority was also anticipated by the Deployment Plan, which states that the aircraft were to be employed by Commander

² RAAF Headquarters Operational Command Operation Order No 4/60 dated 28 March 1960, Para 3 sub-para e. (5) and Annex B Para 1 sub-para f.

US Naval Forces Pacific for the period they were operating in the Philippines and by Commander-in-Chief, Far East Air Force when in Singapore.³

20. From the description of the Exercise in other documents⁴, the deployment of the aircraft from the Philippines to Singapore coincided with Exercise SEA LION entering its second phase. This phase of the Exercise is described in the Operation Order as a *'passage of surface forces from their respective ports to a rendezvous position off Cambodia Point and thence to Singapore'*.⁵ The Order notes naval forces sailing from Manilla on 6 May 1960 and from Bangkok on 9 May 1960. The Tribunal therefore came to the view that the tasking of No 11 Squadron by elements of the Far East Air Force was entirely consistent with the Exercise plan and not evidence of the missions being operational tasks.

21. In his application, Mr Healey submitted a paper prepared by WGCDR Selkirk in which he notes that the Exercise Operations Order also includes direction that No 11 Squadron Neptune aircraft are to be fitted with AN/APX6 equipment set up with frequencies listed in ASI 1/D/5. WGCDR Selkirk has concluded that this instruction implies signals intelligence work was planned and approved at a higher authority and therefore more likely to be an operational task than an exercise activity. The Tribunal can give little weight to this conclusion as the subject equipment was actually an L Band Identification Friend or Foe (IFF) wireless receiver transponder, not equipment associated with electronic surveillance.

22. Both WGCDR Selkirk and AIRCDRE Trinder also gave evidence to the Tribunal that during the time of the deployment to Singapore, WGCDR Selkirk was denied leave to return to Australia following the death of his father. The inference of this rather callous decision being that the nature of the missions must have been operational in order to deny WGCDR Selkirk's request for compassionate travel. The Tribunal accepts WGCDR Selkirk's evidence that the request was denied on the basis of his role being a key capability but cannot speculate further.

23. As No 11 Squadron conducted its missions on 9 and 11 May 1960, Exercise SEA LION surface vessels were assembling in the Gulf of Thailand to the north and east of Kota Bharu. The Tribunal has no doubt regarding the missions being flown by No 11 Squadron on those dates; however, there is no evidence that provides any support to WGCDR Selkirk's contention that his activity was either not part of Exercise SEA LION or operationally relevant to the Malayan Emergency.

Did WGCDR Selkirk participate in Malayan Emergency operations?

24. The area where WGCDR Selkirk and AIRCDRE Trinder told the Tribunal No 11 Squadron aircraft were operating, while possibly in the vicinity of the Malay-Thai border, was also consistent with Phase 2 of Exercise SEA LION. No evidence was presented to the Tribunal that suggested the monitoring of radar transmission

³ Operation Order No 4/60, Annex B, Para 1 sub-paras c and f.

⁴ NAA A1945, 249/6/16 - SEATO Press Release VI(1)/60-62 dated 11 May 1960 (P424) and SEATO Appendix 1 to Annex A to SCR/60/D-58 ; NAA C1273, 22/39/4/AIR - Minute 22/39/Air (5A) dated 25 Feb 60

⁵ OP ORDER 4/60, Para 1,b, (2).

frequencies in this location had any particular relevance to Malayan Emergency operations.

25. WGCDR Selkirk told the Tribunal that he was searching for ground-based radar transmissions in support of Malayan Emergency operations. WGCDR Selkirk made reference to frequencies listed in Exercise Operations Order that he believes were the subject of his search. However, the listed frequencies are all VHF frequencies typically associated with voice communication. As the Exercise Operations Order does not associate these frequencies with signals intelligence equipment, the Tribunal was unable to draw the conclusion that these frequencies were indeed the subject of the surveillance task described by WGCDR Selkirk.

26. WGCDR Selkirk suggested that the special briefing and de-briefing of aircrew engaged in these serials is evidence of covert real-world intelligence gathering. The Tribunal was unable to accord much significance to this debriefing process, given that no distinction would be made between the process and personnel used to debrief and handle data collected for Exercise SEA LION and the process and personnel used for collecting and handling real-world data. The inability to readily distinguish between exercise and real-world intelligence gathering is likely to account for WGCDR Selkirk not having any knowledge of the true nature of the signals information he collected.

27. Given the sensitivities that surround the active gathering of Signals Intelligence data during any routine peacetime operations, the Tribunal considered it highly likely that the capability of Neptune P2V5 aircraft to collect such intelligence would have been a classified capability irrespective of the data collected. The Tribunal is unable to reach any conclusion regarding the nature of the likely intelligence targets other than that while the missions were probably conducted in the general vicinity of the Malay-Thai border, the tasking, conduct and location were consistent with planned Exercise SEA LION activity.

Can the Tribunal be reasonably satisfied as to WGCDR Selkirk's claim?

28. In summarizing WGCDR Selkirk's claim at the hearing, Mr Healey made note of doubt around a number of aspects of his application. Mr Healey was of the view that the absence of supporting evidence surrounding WGCDR Selkirk's claim entitles him to the benefit of the doubt and that on this basis WGCDR Selkirk should retain the subject awards. To preserve the integrity of the Australian Honours and Awards system, the Tribunal takes a contrary view.

29. The Tribunal was unable to be reasonably satisfied that there is sufficient evidence that supports, on the balance of probabilities, WGCDR Selkirk's assertion that he flew an operational sortie during the Malayan Emergency. That he participated in two sorties from RAF Changi on 9 and 11 May 1960 is in no doubt, but his role in collecting signals intelligence information cannot be determined to be an operational task given that the only available evidence suggests this activity was conducted as part of Exercise SEA LION.

30. The Tribunal concluded that the advice provided to WGCDR Selkirk on 24 May 2001 that he was eligible for the AASM was made in error. While this advice

and the entire process must have generated great disappointment for WGCDR Selkirk, he cannot be assessed as eligible under the provisions made for these awards. However, we acknowledge WGCDR Selkirk's service to his country over many years, and his efforts during Exercise SEA LION.

DECISION

31. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Wing Commander Charles Selkirk is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'MALAYA' or the General Service Medal 1918-1962 with Clasp 'MALAYA'.

Annex A

The Australian Active Service Medal 1945-1975 with Clasp ‘MALAYA’: eligibility criteria

The Regulations for the award of the Australian Active Service Medal 1945-75 (AASM) are provided vide *Commonwealth of Australia Gazette No S18 of 19 January 1988*. These Regulations define the process of declaration of warlike operations as a *prescribed operation* for the purposes of the AASM regulations.

The Regulations for the award of the AASM with Clasp ‘MALAYA’ are set out in the *Commonwealth of Australia Gazette No S102 of 27 May 2001*. These Regulations describe *warlike operations in which members of the Australian Defence Force were engaged in during the Malayan Emergency in the Federation of Malaya and the Colony of Singapore during the period that commenced on 16 June 1948 and ended on 31 July 1960 to be a prescribed operation for the purposes of the regulations*. Five conditions for the award are provided vide sub paragraph (c) as follows:

- (i) *The Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while allotted and posted as a member of the Australian element to the prescribed operation;*
- (ii) *The Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member allotted as part of the contribution of a foreign Defence Force to the prescribed operation while on secondment or exchange with the foreign Defence Force;*
- (iii) *The medal may be awarded to a member of the Australian Defence Force who rendered service as such a member and who completed one operational sortie within the duration of the prescribed operation;*
- (iv) *The medal may be awarded to a person who, as a member of the Defence Force, qualified for the Naval General Service Medal with clasp ‘MALAYA’ ...*
- (v) *The Medal may be awarded to a person who, as a member of the Defence Force, qualified for the General Service Medal with clasp ‘MALAYA’ in accordance with the conditions for that award set out in Command Paper 7907 dated March 1950.*

The General Service Medal 1918-1962 with Clasp ‘MALAYA’: eligibility criteria

The General Service Medal 1918-1962 (GSM) was instituted in 1923 to recognise numerous campaigns that required Commonwealth intervention, and that did not have any other medallic recognition. The GSM with Clasp ‘MALAYA’ was established in March 1950 vide Command Paper 7907. To qualify for the GSM with Clasp ‘MALAYA’ the member must have completed a period of service of one day or more on the posted strength of a unit or formation stationed in the Federation of Malaya or the Colony of Singapore since 16 June 1948. Members who served at least 30 days on official visits, inspections or similar duties also qualify. Eligibility for service in Singapore ceased on 31 January 1959, and for Malaya it ceased on 31 July 1960.