



## Australian Government

### Defence Honours and Awards Appeals Tribunal

## **Stoklasa and the Department of Defence [2018] DHAAT 014 (30 August 2018)**

File Number(s) 2018/013

Re **Mr Gary Glenn Stoklasa**  
Applicant

And **Department of Defence**  
Respondent

**Tribunal** Air Vice-Marshal John Quaife AM (ret'd) (Presiding Member)  
Ms Jane Schwager AO

**Hearing Date** 20 August 2018

### **DECISION**

On 30 August 2018, the Tribunal decided to set aside the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Stoklasa was not eligible for the Australian Defence Medal and refer the application to the Chief of Navy for reconsideration of Mr Stoklasa's discharge classification status. Should the Chief of Navy determine that Mr Stoklasa was actually discharged from the Navy for medical reasons, the Tribunal decided that Mr Stoklasa would be eligible for the award of the Australian Defence Medal.

### **CATCHWORDS**

*DEFENCE AWARD – refusal to recommend the award of the Australian Defence Medal.*

### **LEGISLATION**

*Defence Act 1903 – Part VIIIIC - Sections 110T, 110V, 110VB(2)*

*Defence Force Regulations 1952 – Reg 93C and Schedule 3.*

*Commonwealth of Australia Gazette No S48, Australian Defence Medal Regulations – Revocation and Determination - dated 30 March 2006.*

*Determination by the Chief of the Defence Force on Non-Compensable Medical Discharge – dated 8 November 2009.*

## **REASONS FOR DECISION**

### **Introduction**

1. Mr Gary Stoklasa has claimed eligibility for the Australian Defence Medal (ADM) on the basis that, even though he served for less than four years, he was discharged from the Navy because he was medically unfit. Mr Stoklasa's discharge was processed as '*services no longer required*'. The key issue for the Tribunal to consider is whether Mr Stoklasa meets the eligibility criteria for the ADM.

### **Does Mr Stoklasa qualify for the ADM under the provisions of the ADM Regulations?**

2. Mr Stoklasa served with the Royal Australian Navy for a period of three years, ten months and 17 days. To qualify for the ADM, Mr Stoklasa must have completed a period of efficient service of four years. To be eligible for a period of service of less than four years, Mr Stoklasa's discharge from the Navy would have to have been because of an inability to continue his service due to a compensable medical impairment. The eligibility criteria for the ADM are provided in full at Annex A.

3. As Mr Stoklasa did not complete four years of service, and his discharge was not recorded as being for medical reasons, the Tribunal considered that the decision to not award him the ADM on this basis was correct.

### **Does Mr Stoklasa fall within the provisions of the Chief of Defence Force determination regarding non-compensable injury or disease?**

4. In his determination of 8 November 2008, the CDF has extended the ADM eligibility provision for service of less than four years to include discharge due to *non-compensable* injury or disease. The CDF Determination (provided in full at Annex B), allows for the ADM to be awarded where a member is discharged prior to completing four years of service irrespective of whether the nature of the impairment is regarded as compensable or non-compensable.

5. Even though Mr Stoklasa's discharge is recorded as '*services no longer required*', the Tribunal considered that had his discharge been due to medical reasons, the 'compensability' of his medical condition would have no bearing on his eligibility for the ADM.

### **What was the nature of Mr Stoklasa's discharge?**

6. Mr Stoklasa joined the Royal Australian Navy when he was a 15-year-old adolescent. At the hearing, and in his submissions to the Tribunal, he has described his introduction to alcohol as a minor and his abuse of alcohol and other substances during his service. Mr Stoklasa has told the Tribunal that he drank alcohol for the first time at HMAS LEEUWIN. His subsequent access to alcohol included a nightly beer ration provided by the Navy when, at 17 years of age, he served as sailor on HMAS ANZAC and HMAS PARRAMATTA.

7. By the time of his discharge, Mr Stoklasa was an alcoholic at quite serious risk of harm. The destructive impact of Mr Stoklasa's drinking is clearly evident in his service record. His heavy drinking is recorded in clinical notes from February 1976 where he was diagnosed by a Navy Medical Officer as having experienced an alcohol-induced psychotic episode. Mr Stoklasa was referred for neurological assessment following this episode.

8. Dr Leonard Rail, a consulting neurologist, notes in July 1976 that Mr Stoklasa had a history of 'two turns'. Detail of the incidents includes loss of consciousness, shaking limbs, hysterical behaviour, a smashed window, and loss of memory. Dr Rail observes and notes no neurological abnormalities. It is apparent from data held on Mr Stoklasa's PM Keys record that he was subsequently the subject of a Medical Survey that assessed him as *fit for shore duty or for sea duty in a ship carrying a full-time Medical Officer*. Ironically, the date of this Survey report is the same date that Mr Stoklasa was discharged from the Navy as '*services no longer required*'.

9. While Mr Stoklasa's struggle with alcohol is clearly apparent from his service record, there is nothing to suggest that he was ever referred for treatment for his alcoholism. There is no evidence to suggest that Mr Stoklasa was discharged from the Navy for any reason other than episodes directly related to his abuse of alcohol. From the report of the Medical Survey it is clear to the Tribunal that the Navy was well aware that Mr Stoklasa was suffering a medical impairment requiring his access to full time Medical Officer support.

#### **What is Defence doing to resolve this matter?**

10. In its report to the Tribunal, The Department of Defence has concluded that if Mr Stoklasa's reason for discharge were changed to reflect a discharge on medical grounds, his eligibility for the ADM would be impacted. At the hearing, Ms Allison Augustine of the Defence Honours and Awards Directorate told the Tribunal that the ADM would likely be awarded. The Tribunal noted that the question of whether Mr Stoklasa's medical status was of a compensable nature has no direct bearing on his eligibility and hence can only affirm Ms Callaghan's view that Mr Stoklasa would be eligible for the ADM.

11. At the hearing, Mr Stoklasa's advocate, Dr Stephen Karsai, told the Tribunal that an application for Mr Stoklasa's discharge to be amended was lodged with Defence on 30 May 2018. The officers appearing at the hearing for the Department of Defence were unable to advise the status of this application.

#### **Can the Tribunal grant Mr Stoklasa's request?**

12. The Tribunal has no jurisdiction to amend Mr Stoklasa's reason for discharge. Notwithstanding, the Tribunal did form the view that the Royal Australian Navy failed Mr Stoklasa in its' duty of care and heard evidence of a nightly beer ration that suggests Defence was complicit in providing alcohol to a minor. Rather than dealing with Mr Stoklasa's addiction, it appears that the Navy chose to discharge Mr Stoklasa under the euphemism '*services no longer required*'. From his evidence to the

Tribunal it appears that Mr Stoklasa was very lucky to survive his adolescence. His marriage was not so lucky.

## **DECISION**

13. The Tribunal decided to set aside the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Stoklasa was not eligible for the Australian Defence Medal and refer the application to the Chief of Navy for reconsideration of Mr Stoklasa's discharge classification status. Should the Chief of Navy determine that Mr Stoklasa was actually discharged from the Navy for medical reasons, the Tribunal decided that Mr Stoklasa would be eligible for the award of the Australian Defence Medal.



**Commonwealth  
of Australia**

**Gazette**

No. S 48, Thursday, 30 March 2006  
Published by the Commonwealth of Australia

**SPECIAL**



**COMMONWEALTH OF AUSTRALIA**

20 March 2006

It is notified for general information that Her Majesty The Queen has approved the establishment of the *Australian Defence Medal* as detailed in the following Letters Patent and Regulations.

The medal is to be worn in *The Order of Wearing Australian Honours and Awards* immediately below the '*National Medal*'.



*Elizabeth II*

ELIZABETH THE SECOND, by the Grace of God Queen of Australia  
and Her other Realms and Territories, Head of the Commonwealth:

TO ALL to whom these Presents shall come,

*GREETING:*

WHEREAS by Letters Patent dated 8 September 2005 We instituted an Australian medal, designated and styled the Australian Defence Medal, 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:

AND WHEREAS the Letters Patent ordained that the award of the Australian Defence Medal be governed by the Regulations Governing the Award of the Australian Defence Medal set out in the Schedule to the Letters Patent:

AND WHEREAS it is desirable to make new regulations to govern the award of the Australian Defence Medal:

KNOW YOU that We do, by these Presents, declare Our Pleasure that the Letters Patent dated 8 September 2005 are amended to the extent that:

- (a) the Regulations Governing the Award of the Australian Defence Medal are revoked, without prejudice to anything lawfully done thereunder; and
- (b) the award of the Australian Defence Medal is governed by the Australian Defence Medal regulations set out in the Schedule.

IN WITNESS whereof We have caused these Our Letters to be made Patent.

GIVEN under the Great Seal of  
Australia at Our Court at  
St James's on 20 March 2006

By Her Majesty's Command

*John Howard*  
Prime Minister

---

## Schedule

### **Australian Defence Medal Regulations 2006**

**1 Name of Regulations**

These Regulations are the *Australian Defence Medal Regulations 2006*.

**2 Definitions**

In these Regulations:

*Chief of the Defence Force* means the Chief of the Defence Force appointed under section 9 of the *Defence Act 1903*.

*Defence Force* means the Defence Force constituted under the *Defence Act 1903*.

*Medal* means the *Australian Defence Medal* instituted under the Letters Patent establishing these Regulations.

*Minister* means the Minister of State for Defence or the Minister Assisting the Minister of State for Defence.

*Register* means the Register mentioned in regulation 11.

*Registrar* means the Registrar mentioned in regulation 11.

**3 Design of the Medal**

The design of the Medal is as determined by the Governor-General.

**4 Award of the Medal**

- (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.

## Schedule

- 
- (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.
  - (3) The other conditions for the award are as determined by the Governor-General on the recommendation of the Minister.

**5 Award of Medal — member of philanthropic organisation**

- (1) The Medal may be awarded to a person who performed philanthropic services for the Defence Force while a member of a philanthropic organisation; as if the person was rendering qualifying service during the period the person was performing the philanthropic services.
- (2) In this regulation, *qualifying service* means:
  - (a) a period of at least 4 years; or
  - (b) periods that total at least 4 years.

**6 Award of Medal has no effect on entitlement to other awards**

The award of the Medal does not affect the entitlement of a person to any other award.

**7 Making of awards**

- (1) An award of the Medal may be made only by:
  - (a) the Governor-General on the recommendation of the Chief of the Defence Force or his or her delegate; or
  - (b) a person to whom, under regulation 12, the Governor-General has delegated the power to make an award of the Medal.
- (2) The Medal may be awarded posthumously.

**8 Cancellation of award**

- (1) The Governor-General may, on the recommendation of the Chief of the Defence Force or his or her delegate, cancel an award of the Medal.
- (2) If an award of the Medal is cancelled:
  - (a) the Registrar must note the cancellation in the Register; and
  - (b) the person holding the Medal must return it to the Registrar.

**9 Reinstatement of award**

- (1) The Governor-General may, on the recommendation of the Chief of the Defence Force or his or her delegate, reinstate an award that has been cancelled.
- (2) If an award is reinstated, the Registrar must:
  - (a) note the reinstatement in the Register; and
  - (b) reissue the Medal to the person to whom it was awarded.



---

**10 Wearing of medal**

The manner of wearing the Medal is as determined by the Governor-General.

**11 Registrar of awards**

- (1) The Governor-General must appoint a Registrar of Awards.
- (2) The Registrar must maintain:
  - (a) a Register containing the name of each person to whom the Medal has been awarded; and
  - (b) such other records relating to the Medal as determined by the Governor-General.

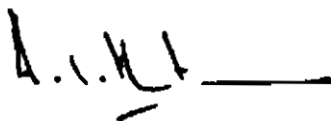
**12 Delegation**

- (1) The Governor-General may, in writing, delegate the power to award the Medal to:
  - (a) the Chief of the Defence Force; or
  - (b) a person from time to time holding or occupying an office in the Defence Force or the Department of Defence specified in the instrument of delegation.
- (2) The Governor-General may, in writing, revoke a delegation under subregulation (1).
- (3) A person who is the delegate of the Governor-General mentioned in subregulation (1) must not:
  - (a) make a recommendation for the award of the Medal if the person is also likely to consider the recommendation; or
  - (b) consider a recommendation for the award of the Medal if that recommendation was also made by the person.
- (4) The Chief of the Defence Force may, in writing, delegate the power to make a recommendation for the award of the Medal to a person from time to time holding or occupying a position in the Defence Force or the Department of Defence and mentioned in the instrument of delegation.
- (5) The Chief of the Defence Force may, in writing, revoke a delegation under subregulation (4).

**COMMONWEALTH OF AUSTRALIA**  
**AUSTRALIAN DEFENCE MEDAL REGULATIONS 2006**  
**DETERMINATION BY THE CHIEF OF THE DEFENCE FORCE**

I, ALLAN GRANT HOUSTON, Chief of the Defence Force, being designated as the person to determine a period of a members qualifying service as efficient service for the award of the Australian Defence Medal, exercise my power under the said determination to designate that where a member or former member was discharged as medically unfit to serve due to a non-compensable injury or disease, and the period of service of that member or former member is less than that prescribed under regulations 4(1)(a) to (c), that lesser period may, subject to the individual circumstances, be considered as being efficient service for the award of a medal to members or former members of the Defence Force who qualify for the award of the medal under section 4 of the regulations.

Dated 8 Nov 2009



Chief of the Defence Force