



Australian Government

Defence Honours and Awards Appeals Tribunal

Herta Trost (on behalf of Bevan Rodgers) and the Department of Defence [2013] DHAAT (19 February 2014)

File Number(s) 2013/032

Re **Mrs Herta Trost on behalf of the late Mr Bevan Leslie
Rodgers**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Air Commodore M. Lax (Retd) (Presiding Member)
Dr J. Harte

Hearing Date 13 February 2014

DECISION

On 19 February 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that the late Mr Bevan Leslie Rodgers is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal; the Defence Medal

LEGISLATION

Defence Act 1903 – ss 110V(1), 110T

Defence Force Regulations 1952 - reg 93C and Schd 3

Australian Defence Medal Regulations 2006

REASONS FOR DECISION

Introduction

1. The applicant, Mrs Herta Trost (Mrs Trost), the widow of the late Mr Bevan Leslie Rodgers (Mr Rodgers) a former member of the Royal Australian Navy (RAN), seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend Mr Rodgers for award of the Australian Defence Medal (ADM). Mrs Trost's application for the award had been made on the basis of her husband's service in the Navy between 1943 and 1946.

2. Mrs Trost lodged an application with the Directorate for the award of the ADM on 22 July 2013. On 20 August 2013, the Directorate refused her application. On 5 September 2013, Mrs Trost lodged an application for review with the Tribunal to appeal the Directorate's refusal to award Mr Rodgers the ADM.

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mrs Trost's application for review (see ss 110V, 110VA and 110VB(2) of the *Defence Act 1903* and reg 93C of the *Defence Force Regulations 1952*). The role of the Tribunal is to determine whether the decision of the Directorate is the correct and preferred decision having regard to the applicable law and the relevant facts.

4. In accordance with its *Procedural Rules 2011*, on 1 October 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mrs Trost's application for review and requesting that he provide a report. On 21 October 2013, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Rodgers' service did not meet the eligibility criteria for the award sought by Mrs Trost. On 30 October 2013, a copy of the report of the Directorate was forwarded to Mrs Trost for comment. Mrs Trost made comment on the Defence submission on 5 November 2013.

5. The Tribunal met on 13 February 2014. During its meeting the Tribunal considered the material provided by Mrs Trost and the Directorate. It also heard oral evidence from Mrs Trost. Mrs Trost was accompanied by a representative of the local sub-branch of the Returned and Services League of Australia (RSL), Mrs Pip Need.

Eligibility criteria for the award of the Australian Defence Medal

6. On 26 June 2004, the Minister Assisting the Minister for Defence announced that the Government would introduce a new service medal, the ADM. The features of the ADM were to be as follows:

- it would be retrospective to service, from the end of World War Two;
- it would be awarded for six years' service;

- it was a medal for both regular and reserve personnel of the ADF (i.e. volunteers);
- it would not be available to former National Service personnel unless they had completed the requisite six years volunteer service after the completion of their National Service.

7. On 8 September 2005, Her Majesty The Queen instituted the ADM by Letters Patent, but these were never formally gazetted.

Changes to the Regulations

8. There was considerable criticism of the eligibility criteria for the ADM, particularly the six years' service requirement. It was pointed out that there were servicemen and women, including Vietnam veterans, who had enlisted for a shorter period and had completed their period of service.

9. Following representations relating to these concerns and other matters, the Government decided to revise the six year qualifying period of service for the ADM to 'satisfactory completion of an individual's initial enlistment period or four years, whichever is the lesser'. At the same time the Government decided that the award would also be available to National Servicemen.

10. On 20 March 2006, pursuant to further Letters Patent, Her Majesty revoked the 2005 Regulations and declared that the ADM was to be governed by the *Australian Defence Medal Regulations 2006* ('the 2006 Regulations').¹

The 2006 Regulations

11. The medal was thus implemented in 2006 with the proposed changes to the eligibility criteria now adopted. Revised Regulation 4 provides:

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 totals 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;

¹ *Commonwealth of Australia Gazette* S 48, dated 30 March 2006 – Australian Defence Medal Regulations 2006.

- (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.

12. The eligibility criteria for the medal therefore specified a length of service after the end of World War II (being the completion of the shorter of four years or initial enlistment period) and for efficient service. Both elements were required to be demonstrated. The member must have also re-enlisted after the end of World War II or continued on for a further four years (to September 1949).

The Defence Honours and Awards Tribunal Inquiry in 2008

13. Following further representations to the Government from the public, on 29 August 2008, the Parliamentary Secretary for Defence Support directed the Defence Honours and Awards Tribunal (the Old Tribunal) to inquire into the eligibility criteria for the award of the ADM.

14. In its report of the Inquiry, the Tribunal recommended and the Government agreed to a change to the Regulations relating to non-compensable medical discharge. This amendment is not relevant to this case and no other changes were made.

Mr Rodgers' Service Record

15. Mr Rodgers enlisted in the Royal Australian Naval Volunteer Reserve (RANVR) on 17 March 1943 for a period of three years or the duration of the war plus six months (whichever was the lesser). For most of his war service, Mr Rodgers served on the Bathurst-class Auxiliary Minesweeper (sometimes referred to as a Corvette in the record) HMAS *Inverell*.² A summary of Mr Rodgers' RAN service as listed on his service record held at the National Archives of Australia is at Annex A.³ At the end of the war, he was demobbed and returned to civilian life on 28 March 1946. Mr Rodgers had no further military service.

16. For his service, Mr Rodgers was awarded the 1939-45 Star; the Pacific Star; the War Medal 1939-45; and the Australia Service Medal 1939-45.

Mrs Trost's Case

17. Mrs Trost seeks recognition for her late husband's service on several grounds. She believes he is deserving of the ADM as she had been advised by an RSL Funeral Officer, Mr Neal Longden from the Maroochy RSL sub-branch, that Mr Rodgers was eligible. She further based her claim on her late husband's physical and mental health conditions attributed to his war service, stating that he is deserving of the medal because:

² Johnathan Nally, *Australian Warships and Auxiliaries of the 1940s*, Topmill Pty Ltd, Silverwater, undated, p 34.

³ National Archives of Australia: Series A6770 Item 4510104 - Rodgers Bevan Leslie.

- ‘He was permanently impaired and severely disabled as a result of his service; Those three years of World War II were the ones that destroyed my late husband Bevan L. Rodgers physical and mental health;
- He is a hero;
- He deserves 100 medals;
- The Department of Defence should recognise and honour my husband with the ADM medal and NOT be so legalistic. Their attitude of disqualifying a man like Bevan is nothing less than **scandalous** (emphasis in original); and
- I am proud of him and fully convinced that he has earned this ADM medal.’⁴

18. Mrs Trost provided her late husband’s medical and Department of Veterans’ Affairs (DVA) documents dating from 2005 to support her assertions.

The Directorate’s Case

19. In its written submission to the Tribunal, the Directorate responded to Mrs Trost’s claim for the award. The Directorate advised that Mr Rodgers does not qualify for the ADM for the following reasons:

- he had not completed an initial enlistment period after 3 September 1945;
- he had not served for a period of not less than four years after September 1945; and
- he was not medically discharged.

In essence, Mr Rodgers does not meet the eligibility criteria as specified in the ADM Regulations.

Tribunal Consideration

20. The Tribunal carefully considered all the material before it and considered the criteria for the ADM.

21. There is no dispute about Mr Rodgers’ service record and his subsequent demobbing after World War II after completing his term of enlistment.

22. The Tribunal did not consider Mr Rodgers’ post-2005 medical conditions or DVA documents as they were not relevant to the medal claim.

23. Preliminary to hearing the claim, Dr Harte spoke with Mrs Trost and confirmed she wished to go ahead with a formal hearing. The Tribunal then organised a hearing on 13 February 2014 in Caloundra, Queensland, with Mrs Trost and with Mrs Pip Need, her RSL representative present.

24. At the hearing, the Tribunal discussed the criteria for the ADM which Mrs Trost argued should be flexible enough to recognise her late husband. Mrs Trost

⁴ Written submission from Mrs Trost, 5 November 2013.

felt there should be some discretion for the Department to make this award because her husband had suffered greatly from his war service and it was due recognition. During the interview, the Tribunal presiding member explained the history behind the ADM and that the criteria for the ADM only allowed for the award for those who re-enlisted after the end of World War II.

25. The Tribunal advised Mrs Trost that her husband was not eligible for the ADM. However, while researching Mr Rodgers' case, it became evident to the Tribunal that Mrs Trost and her advocate may have been seeking the award of the Defence Medal for Mr Rodgers rather than the ADM. Upon inquiring of the Directorate and requesting they review the case for the Defence Medal, the Directorate found that Mr Rodgers did qualify for the Defence Medal and have taken steps to issue the award.

DECISION

26. The decision of the Directorate not to award Mr Rodgers the ADM is affirmed.

ANNEX A

Date From	Date To	Posting	Location
17 March 1943	22 July 1943	HMAS <i>Cerberus</i>	Victoria
23 July 1943	16 Nov 1943	HMAS <i>Melville</i> (HMAS <i>Inverell</i>) ⁵	Darwin ashore
17 Nov 1943	22 Nov 1943	HMAS <i>Lonsdale</i>	Victoria
23 Nov 1943	9 Mar 1945	HMAS <i>Inverell</i>	At Sea in Northern Waters
10 Mar 1945	4 April 1945	HMAS <i>Lonsdale</i>	Victoria
5 April 1945	20 March 1946	HMAS <i>Cerberus</i>	Victoria
21 March 1946	28 March 1946	HMAS <i>Lonsdale</i>	Victoria

Able Seaman Bevan Rodgers' Service History

⁵ During this period, Mr Rodgers was posted to the Darwin shore based HMAS *Melville* as the ship HMAS *Inverell* was in refit at Williamstown naval dockyard in Melbourne. Between 17 and 22 November 1943, Mr Rodgers travelled to Melbourne to sail HMAS *Inverell* back to the Northern Australian waters.