



Australian Government

Defence Honours and Awards Appeals Tribunal

Gregory Daly and the Department of Defence [2014] DHAAT 7 (21 March 2014)

File Number(s) 2013/027

Re **Mr Gregory Daly**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Mr Alan Rose AO (Presiding Member)
Dr Jane Harte

Hearing Date 25 February 2014

DECISION

On 21 March 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Gregory Daly is not eligible for the award of the Vietnam Logistic and Support Medal (VLSM).

CATCHWORDS

DEFENCE AWARD – Refusal to award the Vietnam Logistic and Support Medal (VLSM) for service in South East Asia with the Permanent Naval Forces (Royal Australian Navy) in 1962.

LEGISLATION

Defence Act 1903 – ss 110V(1), 110T
Defence Force Regulations 1952 - reg 93C and Schd 3
Commonwealth of Australia Gazette No. S 79, Vietnam Logistic and Support Medal Letters Patent and Regulations, 24 February 1993
Commonwealth of Australia Gazette No. S 251, Vietnam Logistic and Support Medal Letters Patent and Regulations, Declaration, 2 August 1993
Vietnam Logistic and Support Medal Letters Patent and Regulations - Amendments, 18 January 2013.

REASONS FOR DECISION

Introduction

1. The applicant, Mr Gregory Duncan Daly (Mr Daly), a former member of the Permanent Naval Forces, now known as 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 him for the award of the Vietnam Logistic and Support Medal (VLSM). Mr Daly's application for the medal was on the basis of his service in HMAS *Vampire*, which visited South Vietnam in January 1962.

2. Mr Daly lodged applications with the Directorate for the award VLSM on 3 April 2002 and again on 1 May 2013. On 19 April 2002, and subsequently 19 June 2013, the Directorate refused his applications. On 23 July 2013, Mr Daly lodged an application for review (with supplementary paperwork provided by him on the 16 August 2013) with the Defence Honours and Awards Appeals Tribunal (the Tribunal) to appeal the Directorate's refusal to award him the VLSM.

Tribunal Jurisdiction

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Daly'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.

Steps taken in the conduct of the Review

4. In accordance with its *Procedural Rules 2011*, on 4 September 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Daly's application for review and requesting that he provide a report. On 9 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 Daly's service did not meet the eligibility criteria for the award he sought. On 18 October 2013, a copy of the report of the Directorate was forwarded to Mr Daly for comment. Mr Daly made comment on the Defence submission on 25 October 2013.

5. The Tribunal met on 25 February 2014. During its meeting the Tribunal considered the material provided by Mr Daly and the Directorate. It also heard oral evidence from Mr Daly.

Eligibility criteria for the award of the Vietnam Logistics and Support Medal (VLSM)

6. The VLSM was instituted by Her Majesty The Queen on 24 February 1993 to allow recognition to certain members of the Australian Armed Forces and certain other persons who rendered service in support of the Australian Armed Services in Vietnam.

7. The eligibility criteria for the VLSM is contained in the following documents:
 - a. *Commonwealth of Australia Gazette No. S 79*, Vietnam Logistic and Support Medal Letters Patent and Regulations, 24 February 1993,
 - b. *Commonwealth of Australia Gazette No. S 251*, Vietnam Logistic and Support Medal Letters Patent and Regulations, Declaration Under Regulation 3, 2 August 1993, and
 - c. *the Vietnam Logistic and Support Medal Regulations – Amendment*, 18 January 2013.

8. According to paragraph 4(1) of the Regulations of 24 February 1993, the VLSM may be awarded for service of one day or more in the area of operations of Vietnam during the relevant period:
 - a. as a member of the crew of a ship or aircraft operating in support of the Australian Armed Forces; or
 - b. while attached to a unit or organisation operating in support of the Australian Armed Forces; or
 - c. while attached to, or serving with, a unit of the Australian Armed Forces or allied forces as an observer.

9. The ‘relevant period’ as stipulated in paragraph 2(b) of the 1993 Regulation, ‘from 29 May 1964 to 27 January 1973’, remains extant. The subsequent Declaration under Regulation 3 of 1993 related to the land, sea and air areas of operation and the Amendments of 2013 related only to service in the area of Ubon Air Base in Thailand between 25 June 1965 and 31 August 1968.

Mr Daly's Service Record

10. Mr Daly enlisted in the Permanent Naval Forces (now known as the Royal Australian Navy, RAN) on 23 November 1959 for a nine year engagement, which was extended by 188 days on 23 November 1968. He was subsequently discharged on 26 May 1969. During his service, Mr Daly completed a variety of land and sea postings.

11. During the periods 31 January 1961 and 20 March 1961, 30 June 1961 to 14 February 1962, 30 June 1962 to 13 December 1962 and 14 January 1963 to 27 August 1963, Mr Daly was posted to HMAS *Vampire*. During the period of Mr Daly's postings to HMAS *Vampire*, the ship, in company with HMAS *Quickmatch*, visited South Vietnam from 20 to 31 January 1962 ‘to mark the occasion of Australia Day’¹.

12. For his service, Mr Daly has been awarded the Australian Service Medal 1945-75 with Clasp 'FESR', the Australian Defence Medal and the Pingat Jasa Malaysia.

¹ Carroll, Dr John R, *Out of Sight, Out of Mind - the Royal Australian Navy's Role in Vietnam, 1965-1972*, Rosenberg, Sydney, 2013, page 90.

Mr Daly's Case

13. Mr Daly's case is based on his belief that in the Regulations pertaining to the eligibility criteria of the VLSM, the 'relevant period' should be extended to the date in 1962 when HMAS *Vampire* and HMAS *Quickmatch* visited South Vietnam. He believes that evidence is provided in an historical analysis as published in the 2013 publication by Dr John Carroll *Out of Sight, Out of Mind - the Royal Australian Navy's Role in Vietnam*. The author outlines motives other than those on public record as being the primary motivators for the visit to South Vietnam by the two ships in January 1962. The principal argument proposed is that during this time, because of the nature of the unofficial tasks required of the ships' crews, as well as the political context, the area 'could only be termed as an active war zone'.²

The Directorate's Case

19. In its written submission to the Tribunal, the Directorate responded to Mr Daly's claim for the award. The Directorate advised that Mr Daly does not qualify for the VLSM as he was not in Vietnam during the qualifying period.

Tribunal Consideration

20. The Tribunal carefully considered all the material before it and considered the criteria for the VLSM and finds that the visit of HMAS *Vampire* to South Vietnam in January 1962 is outside the Regulations which clearly stipulate the relevant period as 'from 29 May 1964 to 27 January 1973'.

21. During the Hearing on 25 February 2014, the Tribunal explained to Mr Daly that its principal authority is to look at decisions in the appeal cases of individuals and as such, it is not able to make recommendations to change what stands in terms of law, unless a full inquiry is initiated by the Government.

DECISION

23. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Gregory Daly is not eligible for the award of the Vietnam Logistic and Support Medal.

² Carroll, page 91.