



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **Roderick Garcia and the Department of Defence [2014] DHAAT 8 (21 March 2014)**

File Number(s)      2013/031

Re                      **Roderick David Garcia**  
Applicant

And                     **Department of Defence**  
Respondent

**Tribunal**             Mr K. Woods CSC, OAM (Presiding Member)  
Air Commodore M. Lax OAM, CSM (Retd)

**Hearing Date**      27 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 Roderick Garcia is not eligible for the award of the Vietnam Logistic and Support Medal.

#### **CATCHWORDS**

*DEFENCE AWARD* – Vietnam Logistic and Support Medal

#### **LEGISLATION**

*Defence Act 1903* – ss 110V(1), 110T

*Defence Force Regulations 1952* - reg 93C and Schd 3

*Vietnam Medal Royal Warrant 1968*

*Vietnam Logistic and Support Medal Regulations 1993*

## REASONS FOR DECISION

### Introduction

1. The applicant, Mr Roderick David Garcia (Mr Garcia), a former member of the Royal Australian Air Force (RAAF), 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 Garcia's application for the award had been made on the basis of his service in Ubon, Thailand and Vietnam between 1967 and 1968.

2. Mr Garcia lodged an application with the Directorate for the award of the VLSM on 7 April 2013. The Directorate replied to him on 15 August 2013 and refused his application. It is this decision for which Mr Garcia seeks review. On 10 September 2013, Mr Garcia lodged his application for review with the Tribunal to appeal the Directorate's refusal to award him the VLSM. He also sought to 'remove discrimination against veterans who served in both Vietnam and Ubon'.<sup>1</sup>

### Tribunal Jurisdiction

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Garcia'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 1 October 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Garcia's application for review and requesting that he provide a submission. On 1 November 2013, the Directorate, on behalf of the Secretary, provided the Tribunal with a submission. In that submission, the Directorate confirmed its position that Mr Garcia's service did not meet the eligibility criteria for the award he sought. On 12 November 2013, a copy of the report of the Directorate was forwarded to Mr Garcia for comment. A written response was received on 2 December 2013. On 9 January 2014, Mr Garcia was provided with further material for information and response. Mr Garcia provided his response to this material on 19 January 2014.

5. The Tribunal met on 18 February 2014 to scope the review. A hearing was conducted on 27 February 2014 during which the Tribunal considered the material provided by Mr Garcia and the Directorate. It also heard oral evidence from Mr Garcia who agreed to be available by telephone that day.

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<sup>1</sup> Mr Garcia's application of 10 September 2013 and written submission of 21 November 2013.

## **Eligibility criteria for the award of the Vietnam Logistic and Support Medal**

6. The VLSM was established in February 1993 by Letters Patent to recognise those members of the Australian Defence Force and designated classes of civilians, who rendered service in support of Australian Armed Forces operations in Vietnam and who had not previously been recognised for that service.<sup>2</sup>

7. Under Regulation 4(1), the medal may be awarded for service of one day or more in the area of operations of Vietnam during the period 29 May 1964 to 27 January 1973:

- 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.

8. Furthermore and pertinent to Mr Garcia's case, under Regulation 4(3), a person who has been awarded the Vietnam Medal, or who is eligible for the award of the Vietnam Medal, is not eligible for the award of the VLSM.

9. In January 2013, Her Majesty signed further Letters Patent to the VLSM and issued a new Schedule to include members of the RAAF who served at Ubon, Thailand between 25 June 1965 and 31 August 1968. Also specifically included in the revised schedule was the reiteration under Regulation 4A (2) that 'a person who has been awarded the Vietnam Medal, or who is eligible for the award of the Vietnam Medal, is not eligible for the award of the Vietnam Logistic and Support Medal'.<sup>3</sup>

## **Eligibility criteria for the award of the Vietnam Medal**

10. The Vietnam Medal was created by Royal Warrant in June 1968 by Her Majesty, the Queen. The objectives of the Medal are described in the Royal Warrant as follows:<sup>4</sup>

'Whereas We have given consideration to the need for recognition of the service of members of the Australian Armed Forces ... in assisting the forces of the Republic of Vietnam to repel aggression ...'

11. The Royal Warrant provided at paragraph 4 that the 'Medal shall be awarded to those members of Our Australian Armed Forces who, on or after 29 May 1964, have rendered service in operations in Vietnam in accordance with the conditions specified hereinafter'.

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<sup>2</sup> *Commonwealth of Australia Gazette* No. S 251, Friday 13 August 1993.

<sup>3</sup> *Commonwealth of Australia Gazette* No. S 27, 14 February 2013.

<sup>4</sup> Available for download at [www.defence.gov.au/medals](http://www.defence.gov.au/medals).

12. The Warrant also specifies the conditions for award of the medal at clause 7 such that:

...[it] shall be common to members of the three Services and shall be:

- (i) service of twenty-eight days, continuous or aggregated, in ships or craft employed in operations on inland waters or off the coast of Vietnam;
- (ii) service of one day or more on the posted strength of a unit or formation on land in Vietnam;
- (iii) one operational sortie over Vietnam or Vietnamese waters by aircrew on the posted strength of a unit allocated for direct support of operations in Vietnam; or
- (iv) service of thirty days, continuous or aggregated, for official visits, inspections or, other occurrences of a temporary nature on duty in Vietnam, or in ships or craft engaged in operations off the Vietnamese coast.

13. For his service in Vietnam, Mr Garcia was awarded the VM.

### **Previous Consideration of the VM and VLISM Awards**

14. There have been five previous considerations of the VM and VLISM with regards to ADF service in Ubon and Vietnam.

#### *The Committee of Inquiry into Defence and Defence Related Awards*

15. In 1994 the Committee of Inquiry into Defence and Defence Related Awards (CIDA) first considered the case for some form of recognition for those members of the ADF (primarily RAAF) who served at Ubon between 1962 and 1968. The Committee at their Principle 2 stated that:

Normally only one medal within the Australian system of honours and awards should be given in recognition of a single period of service.

16. CIDA did not support the award of the VM for those who served at Ubon, but:

... was persuaded that the direct involvement of Ubon air base with the tactical air war in Vietnam, and the level of real enemy threat against the base, were such that would today attract an award of the Australian Service Medal.<sup>5</sup>

17. The ASM 1945-75 with Clasp 'THAILAND' was approved and after the Mohr Review, this was upgraded to the AASM 1945-75 with Clasp 'THAILAND'.

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<sup>5</sup> CIDA, p 59.

*Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75 (the Mohr Review)*

18. In 2000, Major General The Hon. R. F. Mohr also considered the case of awarding both the VM and the VLISM. In his review of February 2000, Mohr stated:

A number of submissions were received seeking the award of either the VM in lieu of the VLISM, or the award of both the Vietnam Medal and the VLISM where a member of the ADF performed service that satisfied the conditions of both in separate deployments.<sup>6</sup>

19. The Mohr Review concluded that ‘in relation to the double award, this offends against the CIDA principle that a member of the ADF should receive the award of only one Australian campaign medal in respect of any one campaign’. The Mohr Review recommended no further action and Government agreed.

*The Riding Review*

20. In 2004, an independent panel chaired by Air Marshal D. Riding was appointed to review the award of the VLISM to those who served at Ubon. The Riding review recommended awarding the VM, but this was rejected by the Government at that time.

*The Abigail Review*

21. Following representations by the ex-Service community, the Government appointed Major General P. Abigail to conduct a further review of the Ubon case in 2007. The Abigail Review found that there should be no further medallic recognition for those who served at Ubon.

*The Defence Honours and Awards Tribunal’s Inquiry into Unresolved Recognition Issues for Royal Australian Air Force personnel who served at Ubon between 1965 and 1968*

22. In 2010, the Parliamentary Secretary to Defence tasked the old Tribunal<sup>7</sup> to inquire into Unresolved Recognition Issues for Royal Australian Air Force personnel who served at Ubon between 1965 and 1968. The Terms of Reference required the

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<sup>6</sup> Major General The Hon. R F Mohr, RFD ED (Retd), *The Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, Commonwealth of Australia, Defence Publishing Service, 2000, p 89.

<sup>7</sup> On 16 July 2010, when the Parliamentary Secretary gave the direction to inquire into and report on the *unresolved recognition issues for Royal Australian Air Force (RAAF) personnel who served at Ubon (Thailand) between 1965 and 1968* the Defence Honours and Awards Tribunal operated administratively. On 5 January 2011, on the commencement of the provisions in Schedule 1 of the *Defence Legislation Amendment Act 2010* (the Defence Amendment Act), the Defence Honours and Awards Tribunal (the old Tribunal) became the Defence Honours and Awards Appeals Tribunal (the new Tribunal, or the Tribunal). Part 1 of Schedule 1 of the Defence Amendment Act inserted a new Part VIIIIC into the *Defence Act 1903* (the Defence Act), which contained the provisions for the establishment of the new Tribunal, its members and its powers and functions. The transitional provisions in Part 2 of Schedule 1 of the Defence Amendment Act provides that any inquiry commenced by the old Tribunal is to be completed by the new Tribunal in accordance with the provisions in Part VIIIIC of the Defence Act.

Tribunal to consider the case for the VLSM, but not the VM. The Tribunal concluded that service at Ubon from 25 June 1965 to 31 August 1968 should be recognised with the award of the VLSM. The Tribunal found that:

The VLSM was struck to recognise service personnel who had given essential and direct logistic support to Australian forces in Vietnam. The Tribunal considers that service at Ubon from July 1965 equates with the type of service for which the VLSM has been awarded. The USAF air war directed against North Vietnam was an integral part of the conflict in which Australian forces were engaged. There is no doubt in the Tribunal's view that the Australian personnel at Ubon performed an essential support role for the USAF. As recognised by the government, they were engaged in warlike activities and that war was the Vietnam War.<sup>8</sup>

23. The Tribunal recommended the award of the VLSM to members who served at RAAF Ubon and the Government agreed. The VLSM Regulations were subsequently changed to reflect that recommendation.<sup>9</sup>

24. The Tribunal made no mention of the VM and there was no consideration of those who served in both Vietnam and Ubon, as such were outside the Tribunal's Inquiry Terms of Reference.

### **Mr Garcia's Service Record**

25. Mr Garcia joined the RAAF on 21 January 1953 and served until 31 December 1975. He had numerous postings in South-East Asia including Malaysia, Singapore, Vietnam and Thailand. During his service, Mr Garcia served as an armorer with No. 2 Squadron in Vietnam from 16 June to 21 October 1967 for which he was awarded amongst other medals, the VM. He later served with No. 79 Squadron in Ubon, Thailand from 14 May to 9 July 1968.

26. For his service, Mr Garcia was awarded:

- The Australian Active Service Medal 1945-75 with Clasps 'MALAYA', 'VIETNAM', 'MALAYSIA' and 'THAILAND';
- The General Service Medal 1918-62 with Clasp 'MALAYA';
- The Vietnam Medal;
- The Australian Service Medal 1945-75 with Clasp 'SE ASIA';
- The Defence Force Service Medal with First Clasp;
- The National Medal;
- The Long Service and Good Conduct Medal (RAAF); and
- The Australian Defence Medal.

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<sup>8</sup> *Inquiry into Unresolved Recognition Issues for Royal Australian Air Force personnel who served at Ubon between 1965 and 1968*, Executive Summary, 18 February 2011, para 18.

<sup>9</sup> *Commonwealth of Australia Gazette* S No. 27, 14 February 2013.

27. Mr Garcia has also been awarded the United States of America Air Force Outstanding Unit Award with Valour Device and the Pingat Jasa Malaysia. These are both foreign awards.

### **Mr Garcia's Case**

28. Mr Garcia seeks further recognition for his service at RAAF Ubon from 14 May to 9 July 1968, with the award of the VLSM. He considers the VLSM an 'appropriate campaign award for his Ubon service' and should rightly go with the AASM 1945-75 with Clasp 'THAILAND'. He further stated that the clause in the VLSM Regulations that precludes those with the VM from receiving the VLSM is 'discriminatory' and should be repealed such that:

I believe, in the interest of natural justice and to remove a long standing anomaly and to maintain the value and integrity of the Australian Honours and Awards system, there is a strong grounds for Repeal, and therefore removal of discrimination against some veterans, of paragraph 4 (A) 2 of the Conditions for the award of the VLSM for Ubon Service.

29. He desires that: '[this] Government imposed condition, added to the Tribunal's Determination, be repealed so that the appropriate recognition can be awarded in accordance with the honours and awards convention for services in Vietnam and Ubon'.

30. At the hearing, Mr Garcia reiterated that he considered the VLSM a campaign medal and stated he thought that the AASM 1945-75 with Clasp 'THAILAND' 'was the only AASM that did not have a campaign award go with it'.

### **The Directorate's Case**

31. The Directorate stated in their submission that Mr Garcia is not eligible for the VLSM because under VLSM Regulation 4A (2), 'he [Mr Garcia] has been awarded the Vietnam Medal and is not eligible for the award of the Vietnam Logistic and Support Medal'.

### **Tribunal Consideration**

32. The Tribunal carefully considered all the material before it and considered the criteria for the VLSM and the VM. The Tribunal also noted the consideration given to the issue by previous reviews and remained cognisant of the need to maintain the integrity of the Australian honours and awards system.

33. There is no dispute about Mr Garcia's service record, or that he served in Vietnam and Ubon during the periods stated. The Tribunal also acknowledged the awards he has received.

### **Tribunal Consideration of Double Medalling**

34. The Tribunal first examined Mr Garcia's proposal that two medals be awarded for the same operation as this is the nub of Mr Garcia's case. The awarding of two medals for the one operation has become known over the years as 'double medalling'. Mr Garcia seeks to be awarded both the VM and VLSM as he claims he meets both eligibility criteria and that both are campaign medals to go with his AASM 1945-75 and clasps.

35. The Directorate informed the Tribunal that it has been long-standing Government policy not to award two medals for the same operation. The changes made to Declarations and Determinations over recent years were deliberate so as to give effect to this policy. The Tribunal notes that there is no reference to, or elaboration of such a policy in the Defence Honours and Awards Manual but understands that this 'policy' has indeed been long-standing and has been a consideration in previous Tribunal reviews.

36. The Tribunal noted that both CIDA and the Mohr Review commented on the proposal to allow the award of two medals for the same operation and that neither supported the idea. CIDA also had as Principle 2 the deliberate intent not to award two medals for the same service.

37. In considering Mr Garcia's comment at paragraph 30 above, the Tribunal examined all previous AASM 1945-75 awards and found that at least three others were awarded without a campaign medal.<sup>10</sup>

### **Tribunal Consideration of the Current Regulations**

38. The Tribunal noted that medallic recognition is conditional on prerogative instruments such as Letters Patent and the subsequent Regulations that flow from them and not from political decisions or court rulings. As such, it is not possible for the Tribunal to overlook medal regulations as they are the law.

39. While the Letters Patent to the VM make no mention of eligibility for other awards, Regulation 4(3) to the VLSM specifically prohibits ADF members who have the VM from being eligible for the VLSM. Amended Regulation 4A(2) also re-emphasises this prohibition.

40. As such, the Tribunal finds that in accordance with VLSM Regulation 4A (2), Mr Garcia is not eligible for the VLSM as he already has the VM.

### **Tribunal Consideration of the Alleged Discriminatory Policy**

41. Mr Garcia in his submission also claimed that the Regulations were discriminatory to veterans who had served in both Vietnam and Ubon. The Tribunal disagrees. The Tribunal was not persuaded by Mr Garcia's claim that veterans of

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<sup>10</sup> Examples are: Clasp 'MALAYA'; Clasp 'MALAYSIA'; and Clasp 'THAI-MALAY'.



Vietnam who had also served in Ubon had not received 'appropriate recognition' and thus were somehow discriminated against. In fact it is the Tribunal's view that after five reviews and the establishment of three new medallic awards<sup>11</sup>, adequate consideration has already been made. Members of the RAAF who served at Ubon had received appropriate recognition with the award of the AASM 1945-75 with Clasp 'THAILAND' and the VLSM while those who served in Vietnam had received appropriate recognition with the award of the AASM 1945-75 with Clasp 'VIETNAM' and the VM. Those who served in both, such as Mr Garcia, had received the AASM 1945-75 with Clasp 'VIETNAM' and Clasp 'THAILAND' and the VM.

42. Consequently, the Tribunal does not agree with Mr Garcia's proposal that the Regulations be amended to satisfy his claim for award of the VLSM as a campaign medal for those who served at both Ubon and Vietnam. The AASM 1945-75 is in effect a campaign medal and when instituted was intended to be so. The fact that some operations between 1945 and 1975 have an additional campaign medal to go with their respective AASM 1945-75 is not relevant to this argument as each operation is by its nature different. The Tribunal therefore did not consider it necessary to recommend any changes to the Regulations to either the VM or VLSM.

## **DECISION**

43. The decision of the Tribunal is that the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Roderick Garcia is not eligible for the award of the Vietnam Logistic and Support Medal is affirmed.

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<sup>11</sup> ASM 1945-75 with Clasp 'THAILAND'; AASM 1945-75 with Clasp 'THAILAND' and the VLSM.