



Australian Government

Defence Honours and Awards Appeals Tribunal

William Forrest and the Department of Defence [2014] DHAAT 10 (9 April 2014)

File Number(s) 2013/029

Re **William Malcolm Forrest**
Applicant

And **Department of Defence**
Respondent

Tribunal Professor D. Horner AM (Presiding Member)
Air Commodore M. Lax OAM, CSM (Retd)

Hearing Date 25 March 2014

DECISION

On 9 April 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr William Malcolm Forrest is not eligible for the award of the Pingat Jasa Malaysia.

CATCHWORDS

DEFENCE AWARD – Pingat Jasa Malaysia

LEGISLATION

*Defence Act 1903 – ss 110T, 110V, 110VA, 110VB(2),
Defence Force Regulations 1952 - reg 93C and Schd 3
Statutes of Pingat Jasa Malaysia*

REASONS FOR DECISION

Introduction

1. The applicant, Mr William Malcolm Forrest (Mr Forrest), a former member of the Australian Army, 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 Pingat Jasa Malaysia (PJM) award. Mr Forrest's application for the award had been made on the basis of his service in the Army between 1951 and 1975.
2. Mr Forrest lodged an application with the Directorate for the PJM on 21 February 2013. On 4 June 2013, the Directorate refused his application. On 19 August 2013, Mr Forrest lodged an application for review with the Tribunal to appeal the Directorate's refusal to award him the PJM.

Tribunal Jurisdiction

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Forrest's application for review (see ss 110T, 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 26 September 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Forrest's application for review and requesting that he provide a report. On 31 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 Forrest's service did not meet the eligibility criteria for the award he sought. On 11 November 2013 and again on 9 January 2014 the Tribunal forwarded a copy of the report of the Directorate to Mr Forrest for comment. On 14 January Mr Forrest advised that he had no comments on the Directorate's report.
5. The Tribunal met on 25 March 2014. During its meeting the Tribunal considered the material provided by Mr Forrest and the Directorate. It also heard oral evidence from Mr Forrest who agreed to be available by telephone that day.

Eligibility Criteria for the Award of the PJM

6. In 2004, the Government of Malaysia offered to confer a special medal of service to eligible current and former Australian servicemen and women in appreciation of their service in Malaysia with the Commonwealth Far East Strategic Reserve from Independence to the end of Confrontation over the period 31 August 1957 to 12 August 1966. The eligibility period was set as service between 31 August 1957 and 31 December 1966. Eligibility criteria are specified in the *Statutes of Pingat Jasa Malaysia* dated 3 March 2004. As the PJM is a foreign award, the Department of Defence acts as an agent for the Malaysian Government.

7. The *Statutes* provide the qualification criteria thus (spelling per the original):

This Medal can be awarded to any entity from the Peacekeeping Group (Armed Forces, Semi Armed Forces, Police and Security Civilian Staff) from the communion countries either man or woman whoever been service in Malay Peninsular or Malaysia for the period from 31 August 1957 to 12 August 1966, either on service with or attached to any of the Armed Forces or security organisation group which directly involve demonstrated endowed with service, sense of duty, chivalry and gallantry for 3 month or more; or who had served indirectly not less than 6 month or more in any security organisation during the time period; or throughout in the service despite yet to fulfil the period predetermined, killed, wounded, or disable due to performing tasks against the enemy and in upholding this country sovereignty in the stated period, can be considered to be awarded the Pingat Jasa Malaysia.

8. The Australian Government has set guidelines based on the *Statutes* and these have been agreed by the Malaysian Government. These are published on the Defence Honours and Awards website¹ and state:

- The PJM will be awarded to Australian Defence personnel, who served in the prescribed areas from 31 August 1957 to 12 August 1966, or to 9 August 1965 for service in Singapore (the point at which it separated from the Federation of Malaysia);
- Service until 31 December 1966 will also qualify for those personnel who were posted to Malaysia for service prior to 12 August 1966, but failed to qualify for the medal before that date; and
- Awards will also be made to those whose service was cut short as a result of death or injury as a result of service in these areas.

Other criteria are not relevant to Mr Forrest's claim.

9. Of specific note, the medal may be awarded to those who have been 'killed, wounded, or disabled due to performing tasks against the enemy', but only if the member was also serving in Malaysia between 31 August 1957 and 31 December 1966. There is no mention of hospitalisation or repatriation due to illness.

Mr Forrest's Service Record

10. Mr Forrest² enlisted in the Australian Army on 12 April 1951 and served initially with the Royal Australian Survey Corps before transferring to Infantry until he returned to the Survey Corps just prior to the expiration of his enlistment period on 11 April 1957. On 11 March 1958, Mr Forrest re-enlisted for a further six years and eventually served until discharged at own request on 22 August 1975. During his

¹ www.defence.gov.au/medals under the Foreign Awards tab.

² On 20 April 1951, Mr Forrest changed his name to William Malcolm Mickey and then changed it back to William Malcolm Forrest on 13 January 1955. For the purposes of this report, the Tribunal accepts that Mr William Malcolm Forrest and Mr William Malcolm Mickey are the same person. For ease of reference, the report only refers to Mr Forrest.

second enlistment period, Mr Forrest served in the Survey Corps and after promotion to Sergeant, as a Mess Steward.

11. Between March 1953 and March 1956, Mr Forrest served overseas in Japan, Korea, Malaya³ and Singapore. Mr Forrest served in Malaya between 20 October 1955 and 24 March 1956. While in Penang Malaya, Mr Forrest was posted back to Australia on compassionate grounds and returned to Sydney on 25 March 1956. He was not posted overseas during his second enlistment period.

12. For his service, Mr Forrest has the following awards:

- Australian Active Service Medal 1945-75 with Clasps 'KOREA' and 'MALAYA'
- Korea Medal
- United Nations Service Medal - Korea
- General Service Medal 1918-62 with Clasp 'MALAYA'
- Australian Service Medal 1945-75 with Clasp 'KOREA'
- Australian General Service Medal for Korea
- Defence Force Service Medal
- National Medal, and
- Australian Defence Medal

Mr Forrest's Case

13. Mr Forrest believes he is eligible for the PJM because:

'I was in Malaysia and was hospitalised with TROPICAL EAR and when released from hospital in Malaysia I was sent back to Australia because of my medical condition. The ARMY would not let me back on the front line/active service'.

14. Mr Forrest claims under the *Statutes* that because he was repatriated due to illness he should be considered for this award. He provided a copy of his in-patient record showing he was in the British Military Hospital Kamunting (Taiping, Malaya) between 17 January 1956 and 28 January 1956, a period of 12 days, and this is confirmed in his service record.

15. At the hearing, he reiterated his claim that except for his illness, he would have served on and become eligible.

The Directorate's Case

16. In its written submission to the Tribunal, the Directorate responded to Mr Forrest's claim for the PJM award. The Directorate advised that Mr Forrest does not qualify for the PJM:

³ Mr Forrest served in Malaya (full title: the Federation of Malaya). Malaya gained independence from Britain on 31 August 1957, and after uniting with North Borneo, Sarawak and Singapore was renamed Malaysia on 16 September 1963.

As Mr Forrest did not serve on the Malay Peninsula or in Malaysia for a period of not less than 90 days from 31 August 1957 to 12 August 1966 he is not eligible for the PJM. Member arrived Penang (Malaya) on 20 October 1955 and departed Singapore on 24 March 1956, arriving back in Sydney on 25 March 1956.

Tribunal Consideration

17. The Tribunal carefully considered all the material before it and considered the eligibility criteria for the PJM.

18. There is no dispute about Mr Forrest's service record and his admission to the British Military Hospital Kamunting. There is also no dispute that Mr Forrest returned to Australia on 25 March 1956, one year, four months and 18 days prior to the eligibility commencement date for the PJM.

19. The Tribunal noted that Mr Forrest's claim for eligibility is based on his statement that he was repatriated because of his illness, and if not for that, he would have served on in Malaya and met eligibility criteria.

20. Mr Forrest served with the 2nd Battalion, Royal Australian Regiment. The Tribunal found that the battalion served in Malaya from 20 October 1955 to 15 October 1957, at which time they returned to Australia. Had Mr Forrest remained with the battalion and not been repatriated, he still would not meet the eligibility criteria for the PJM. The battalion returned to Australia six weeks after the PJM commencement date and therefore was not in Malaya for the required 90 days.

21. At the hearing, the Tribunal explained the difference in dates to Mr Forrest and stated that the *Statutes* require a member to have served for 'not less than 90 days' after 31 August 1957 and before 12 August 1966 with no exceptions for hospitalisation or repatriation due to illness. The Tribunal also explained that no member of the battalion received the medal as they had returned to Australia before meeting the 90 day qualifying period.⁴

22. The Tribunal found that Mr Forrest did not serve in Malaya for the required 90 days or more during the eligibility period, and that his illness and hospitalisation were not relevant to his case.

23. For the reasons stated above, the Tribunal found that Mr Forrest is not eligible for the Pingat Jasa Malaysia.

DECISION

24. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr William Malcolm Forrest is not eligible for the award of the Pingat Jasa Malaysia.

⁴ Unless a member of the battalion served in Malaya with another unit at a later time.