



Australian Government

Defence Honours and Awards Appeals Tribunal

Richard Mounsey and the Department of Defence [2014] DHAAT 12 (15 April 2014)

File Number(s) 2013/025

Re **Richard Alfred Mounsey**
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 15 April 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Richard Alfred Mounsey is not eligible for the award of the 1939-45 Star; the War Medal 1939-45; the Australia Service Medal 1939-45; or the Australian Service Medal 1945-75.

CATCHWORDS

DEFENCE AWARD – 1939-45 Star; the War Medal 1939-45; the Australia Service Medal 1939-45; the Australian Service Medal 1945-75.

LEGISLATION

Defence Act 1903 – ss 110T, 110V, 110VA, 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
Air Ministry Order A755/1943
United Kingdom Command Paper 6833 of June 1946
Dedman Paper 1948 – Criteria for 1939-45 Star and the War Medal 1939-45
Royal Warrant for the Australia Service Medal 1939-45
Veterans' Entitlement Act 1986

REASONS FOR DECISION

Introduction

1. The applicant, Mr Richard Alfred Mounsey (Mr Mounsey) is a former merchant seaman and later, a member of the Australian Army. He 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 awards of the 1939-45 Star; the War Medal 1939-45; the Australia Service Medal 1939-45; and the Australian Service Medal 1945-75. Mr Mounsey's application for the award had been made on the basis of his service in the merchant ship *Westralia* and Australian Army between October 1945 and May 1948.

2. Mr Mounsey lodged an application with the Directorate for the awards he sought on 23 July 2013. The Directorate replied to him on 6 August 2013 and refused his application. It is this decision for which Mr Mounsey seeks review. On 20 August 2013, Mr Mounsey lodged his application for review with the Defence Honours and Awards Appeals Tribunal (the Tribunal) to appeal the Directorate's refusal to award him the 1939-45 Star; the War Medal 1939-45; the Australia Service Medal 1939-45; and the Australian Service Medal 1945-75.

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

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 Mounsey's application for review and requesting that he provide a report. On 24 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 Mounsey's service did not meet the eligibility criteria for any of the awards he sought. On 3 October 2013, a copy of the report of the Directorate was forwarded to Mr Mounsey for comment. A written response was received on 14 November 2013.

5. The Tribunal met on 19 February 2014 to scope the review. A hearing was conducted on 25 March 2014 during which the Tribunal considered the material provided by Mr Mounsey and the Directorate. It also heard oral evidence from the members of the Directorate in person and from Mr Brett Mounsey who acted on behalf of his father (who had hearing difficulties) and who agreed to be available by telephone that day.

Eligibility criteria for the award of the 1939-45 Star

6. The 1939-45 Star and a number of other Stars¹ and the Defence Medal are campaign medals of the British Commonwealth, established to recognise service in a

¹ Stars include: the Africa Star, the Atlantic Star, the Air Crew Europe Star, the Italy Star, the France and Germany Star, the Pacific Star and the Burma Star.

number of theatres during the Second World War.

7. The 1939-45 Star was established, as the 1939-43 Star, on 3 August 1943 together with the Africa Star. Its establishment is recorded in Air Ministry Order No A.755/1943.² That Order relevantly provided as follows (pertinent sections):

1. It has been decided to introduce two stars, an emblem for mentions in dispatches, wound stripes and chevrons for war service, under the conditions outlined in the succeeding paragraphs. No action should be taken pending the issue of further orders containing full particulars and, meanwhile, inquiries regarding the conditions should not be addressed to the Air Ministry.

THE AFRICA AND 1939-43 STARS AND CLASPS THERETO

2. In commemoration of the expulsion of the enemy from North Africa and to recognise services rendered in operations during the first four years of the war, the King has approved the institution awards for the armed forces and the Merchant Navy, to be known as the Africa Star and the 1939-43 Star. No individual will qualify for both...

3. & 4. Africa Star items...

5. The 1939-43 Star – The 1939-43 Star will be granted for service in operations during the period 3rd September, 1939, to 31st December, 1943. The ribbon is dark blue, red and light blue ... The conditions of the award are indicated in sub-paras. (i) to (v) below.

- (i) Navy – The qualification is six months' service afloat in areas of active operations during the period from 3rd September, 1939, to 31st December, 1943, inclusive...
- (ii) Army – The army qualification will be six months in an operational command during the period 3rd September, 1939, to 31st December, 1943...

8. In May 1945, the Committee on the Grant of Honours, Decorations and Medal in Time of War provided an official statement approved by His Majesty the King to vary the conditions of, *inter alia*, the 1939-45 Star.³ This 1945 Command Paper extended the eligibility date of the 1939-45 Star to 8 May 1945, being the end of the war in Europe. As the Pacific War was still going on at the time the Paper was released, the final qualification date was left open.

9. At the end of the war, a new Command Paper was released in June 1946. Known as Command Paper 6833⁴, the Paper covered conditions for all Second World

² Air Ministry Order A.M.O. A.755/1943, 3 August 1943. *Introduction of Africa and 1939-43 Stars, etc.*

³ Committee on the Grant of Honours Decorations and Medals in Time of War – Campaign Stars and the Defence Medal, HMSO, London, May 1945. Available at: www.northeastmedals.co.uk/britishguide/hmsocampaign_stars_defence.htm.

⁴ Committee on the Grant of Honours Decorations and Medals Cmd. 6833, HMSO, London, June 1946.

War campaign awards. Attached to the 1946 Command Paper was an Appendix that summarised the conditions of the award of the 1939-45 Star as they applied following the 1946 approved amendments. This summary, however, must be read subject to the terms of the 1943 Air Ministry Order and the 1945 and 1946 Command Papers. The pertinent criteria are:

1. (i) The 1939-45 Star is granted for service in operations during the period from 3rd September, 1939 to the 2nd September, 1945.
(ii) Navy – (a) qualification is six months service afloat in areas of active operations during the period from 3rd September 1939 to the 2nd September 1945, inclusive...

10. In December 1948, The Hon. John J. Dedman, the Australian Minister of State for Defence, issued a *Summary of the Conditions of the Award of the Campaign Stars, The Defence Medal and the War Medal*.⁵ Known generally as the Dedman Paper, it is also a summary of the provisions of the Air Ministry Order No A.755/1943 and the 1945 and 1946 Command Papers. The Dedman Paper did not alter the criteria for the 1939-45 Star.

Eligibility criteria for the award of the War Medal 1939-45

11. The War Medal 1939-45 was approved by His Majesty The King in 1946 and published in Command Paper 6833. Paragraph 2(i) states the War Medal is for:

...full-time personnel of the Armed Forces wherever service during the war has been rendered. A 28-day qualification period will be adopted. Operational and non-operational service will qualify. In the Merchant Navy it will be a requirement that the 28 days should be served at sea.

12. Furthermore, paragraph 2(iii) states: 'Service between 3rd September, 1939, and the 2nd September, 1945, inclusive will qualify whenever rendered'.

13. The 1948 Dedman Paper also covered the War Medal amongst others, but in this instance, did not amend the eligibility criteria.

Eligibility criteria for the award of the Australia Service Medal 1939-1945

14. Following the conclusion of the Second World War in 1945, the Australian Defence Committee recommended that Australia institute a medal of its own in connection with the Pacific War, and that such a medal be awarded, not only to members of the Australian Forces, but also to selected civilian organisations. An 18 month qualifying period for full time personnel was recommended for those who served between 3 September 1939 and 15 August 1945.

15. On 17 January 1946 Cabinet approved that a 'medal be instituted for all members of the Defence Forces of the Commonwealth of Australia who participated

⁵ A copy of the 'Dedman Paper' can be found on the following web site: www.defence.gov.au/medals.

in the 1939-1945 war; these to include members of the Mercantile Marine, Civil Air pilots, members of the Comforts Funds and Red Cross Funds, and to include both men and women'.⁶ Subsequently His Majesty King George VI instituted the Australia Service Medal 1939-45 by Royal Warrant on 30 August 1949. The Royal Warrant was published in the *Commonwealth of Australia Gazette* in November that year.⁷ There is provision in the Warrant for the Governor-General to make Regulations to carry out the purposes of the Warrant, but no Regulations have ever been made. Pertinent to this Review, the Warrant in part states:

3. The persons eligible for the Medal shall be those of Our faithful subjects and others, male and female, who between the 3rd September 1939 and the 2nd September 1945, rendered the required service in the Australian Armed Forces, in the Australian Mercantile Marine or as civil members of the Royal Australian Air Force Reserve who served as aircrew in civil aircraft in operational areas.
4. Representatives of philanthropic bodies, official press correspondents, official photographers and other civil personnel attached to the Armed Forces in an official capacity for full-time duty in uniform shall also be eligible.
5. Eligibility shall not be affected by the grant of any other general award for service in the war of 1939-45...
6. Only those who have received, or would be entitled to receive, an honourable discharge shall be eligible.
7. ... In the case of members of the Australian Mercantile Marine, it shall be a requirement that the eighteen months shall have been served at sea...

16. The power to vary the conditions of the 1949 Royal Warrant was delegated to the Governor-General in 1995 by way of an exchange of letters between Prime Minister Paul Keating and Her Majesty the Queen. This delegated power was used in 1996 to reduce the qualifying period for the Australia Service Medal 1939-45 from eighteen months to 30 days for full time service; and from three years to 90 days for part-time service.⁸

Eligibility criteria for the award of the Australian Service Medal 1945-75

17. The Australian Service Medal 1945-1975 (ASM 1945-75) is an Australian award instituted by Letters Patent on 22 February 1995. The medal was introduced to recognise members of the Australian Defence Force (ADF) and certain other persons who render service in declared non-warlike military operations. The award of the ASM 1945-75 is governed by the *Regulations Governing the Award of the Australian Service Medal 1945-1975* (ASM 1945-75 Regulations).⁹ On 7 June 1995 the

⁶ Cabinet Agendum No 1002A: Proposal for an Australian Decoration, National Archives of Australia (NAA): A816, 66/301/251.

⁷ *Commonwealth of Australia Gazette* No. 91 dated 30 November 1949.

⁸ *Commonwealth of Australia Gazette* No. S 309 dated 21 August 1996.

⁹ *Commonwealth of Australia Gazette* No. S 122 dated 3 April 1995.

Governor-General made a further determination relating to the design of the medal, but did not alter the eligibility criteria for the award.¹⁰

18. Regulation 4 of the ASM 1945-75 Regulations sets out the conditions for the award of the medal. The pertinent conditions are:

Conditions for award of the Medal

4. (1) The Medal may be awarded to:

- (a) a member, or former member, of the Defence Force; or
- (b) a person in a class of persons determined by the Minister for the purposes of these regulations;

who served in connection with a declared operation.

4.(2) The conditions for the award of the Medal are determined by the Governor-General on the recommendation of a Minister.

4.(3) The Medal may only be awarded to a person who fulfils the conditions for the award of the Medal.

4.(4) An initial award of the Medal to a person is made in the form of the Medal with a clasp denoting the declared operation for which the Medal is being awarded.

19. The term '*a declared operation*' is defined in regulation 2 to mean '*an operation in respect of which a declaration has been made under regulation 3*'. Regulation 3 authorises the Governor-General, on the recommendation of a Minister, to 'declare a non-warlike operation, in which members of the Defence Force were engaged at any time during the period that commenced on 3 September 1945 and ended on 16 September 1975, to be a declared operation' for the purpose of the ASM 1945-75 Regulations.

20. The Governor-General has made a number of declarations under Regulation 3, declaring specific operations as being a non-warlike operation for the purpose of the ASM 1945-75 Regulations.

Mr Mounsey's Service Record

21. Mr Mounsey joined the Merchant Navy at the port of Fremantle as a Mess Boy on 2 October 1945. He served in the merchantman *Westralia*¹¹ and was discharged at Sydney on 10 December 1945.¹² He immediately re-enlisted on 11 December 1945,

¹⁰ *Commonwealth of Australia Gazette* No. S 220 dated 14 June 1995.

¹¹ The *Westralia* was as of February 1946, a 4567 tonne, 676 horsepower merchant ship with an official number of 137040. This should not be confused with the 4717 tonne, 1750 horsepower ship HMAS *Westralia*, which was also at that time in commission with the Royal Australian Navy. HMAS *Westralia* was decommissioned in September 1946, and later served in the British Commonwealth Occupation Force area of Japan as a merchant vessel.

¹² Australian Merchant Seaman Discharge Certificate No 395843

again as a Mess Boy and again on the merchantman *Westralia*. Mr Mounsey was again discharged from the *Westralia* at Swansea in Wales¹³ on 26 February 1946. He stated in his application that he was later repatriated to Australia via the troopship *Highland Princess*.

22. Mr Mounsey then enlisted in the Australian Imperial Force on 14 May 1946 and was transferred into the Interim Army on 1 July 1947. Mr Mounsey served with the Australian Army as a signaller in Australia and discharged in Western Australia on 'termination of engagement' on 12 May 1948.

23. For his service, Mr Mounsey was awarded the Australian Defence Medal.

The Arguments of Mr Mounsey

24. Mr Mounsey seeks a number of medals to recognise his service, namely the 1939-45 Star; the War Medal 1939-45; the Australia Service Medal 1939-45; and the ASM 1945-75. Mr Mounsey believes he is eligible for these awards as:

- 'The Merchant Navy World War 2 goes from 3 Sept 1939 to 29 October 1945. I served during hostilities for the period 1939 till 29 October 1945...
- Till 2nd September [1945] was for Army personnel only;
- World War 2 went from 1939 till the signing of the peace treaty in 1952; and
- [I] left the Port of Fremantle around 2nd October [and] once outside the three mile limit we were in the war zone in the Indian Ocean.'

25. In addition, he would like the Tribunal to consider that the cut-off point for war medals 'has left the Merchant Navy a forgotten cause and should be rectified'.

26. At the hearing, Mr Mounsey relied on his son, Mr Brett Mounsey, to talk to the Tribunal. Mr Mounsey reiterated his belief that he was eligible as he served before 29 October 1945.

The Arguments of the Directorate

27. The Directorate stated in their submission that Mr Mounsey is not eligible for any of the awards he seeks. In regards to the 1939-45 Star, the War Medal and the Australia Service Medal 1939-45, the Directorate has stated that Mr Mounsey joined the Merchant Navy after the end of hostilities as specified in the Command Papers and Dedman Paper 1948 and therefore does not meet the eligibility criteria.

¹³ British Merchant Seaman Discharge Certificate dated 28 February 1946.

28. The Directorate also stated that, with regards to the ASM 1945-75, Mr Mounsey did not serve in a declared operation or outside Australia after 3 September 1945 and therefore, does not qualify for the award.

Tribunal Consideration

29. The Tribunal carefully considered all the material before it and considered the eligibility criteria for the awards sought by Mr Mounsey.

30. There is no dispute about Mr Mounsey's service record, or that he served in the Merchant Navy and Australian Army during the periods stated.

Tribunal Consideration of the date of the end of the Second World War

31. Mr Mounsey claims that the Second World War did not finish on 3 September 1945, but rather on 29 October 1945. He bases his claims on the wording of the definitions section of the *Veterans' Entitlement Act 1986 (VEA 1986)*. Under the *VEA 1986 s.5B (1)* states that:

[The] "Period of Hostilities" for World War 2 is 'from commencement on 3 September 1939 to 29 October 1945 (both included)'.

32. However, the same Section of the *VEA 1986* also defines the Second World War to mean:

(a) the war that commenced on 3 September 1939; and

(b) any other war in which the Crown became engaged after 3 September 1939 and before 3 September 1945.

33. Mr Mounsey at times also relied on the definition of the end of the Second World War for the purposes of the *VEA 1986* which 'is taken to have ended on 28 April 1952'. This date, however, was the date when a peace treaty with Japan came into force.

34. The Tribunal in its consideration noted that medallic recognition is conditional on Letters Patent, Royal Warrants and Prerogative Instruments and the subsequent Regulations that flow from them and not from the *VEA 1986*. As such, it is not possible for the Tribunal to overlook medal regulations as they are the law. Consequently, the Tribunal found that the Letters Patent and Command Papers authorised by the King are the law and as they specify 2 September 1945 as the cut-off date for Second World War awards, then that is the date which applies in this case. Mr Brett Mounsey was made aware of this during the hearing and stated he understood and would communicate the discussion with his father.

Tribunal Consideration of Mr Mounsey's Claims

The 1939-45 Star and the War Medal 1939-45

35. In conducting this review, the Tribunal is bound by the eligibility criteria that govern awards. In considering the case for the 1939-45 Star and the War Medal 1939-45, these criteria are found in United Kingdom Command Paper 6833 of June

1946 and are expanded in the Dedman Paper of December 1948. The Tribunal found that for the reason specified above in paragraph 34, the war concluded on 2 September 1945, 29 days before Mr Mounsey joined the Merchant Navy. As such, he is ineligible for the 1939-45 Star or the War Medal 1939-45.

The Australia Service Medal 1939-45

36. The Australia Service Medal 1939-45 was instituted by Royal Warrant and has no accompanying Regulations. The Tribunal found that the dates that apply to the award are the same as for the 1939-45 Star and the War Medal 1939-45, namely 3 September 1939 to 2 September 1945. Consequently, Mr Mounsey is not eligible for Australia Service Medal 1939-45.

The ASM 1945-75

37. To be eligible for the ASM 1945-75, Mr Mounsey had to have served on a declared operation after 3 September 1945 and before 16 September 1975. The Tribunal accepts that Mr Mounsey served in the Merchant Navy from 2 October 1945 to 26 February 1946 and in the Australian Army from 14 May 1946 to 12 May 1948. In both cases, Mr Mounsey's service was not on a declared operation as declared by the Governor-General and as such he does not meet the eligibility criteria for the ASM 1945-75.

38. The Tribunal found for the reasons stated above that Mr Mounsey does not qualify for the 1939-45 Star; the War Medal 1939-45; the Australia Service Medal 1939-45; or the ASM 1945-75.

DECISION

39. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Mounsey is not eligible for the award of the 1939-45 Star; the War Medal 1939-45; the Australia Service Medal 1939-45; or the Australian Service Medal 1945-75.