



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

## Raymond Woodward and the Department of Defence [2014] DHAAT 15 (23 April 2014)

File Number(s) 2013/035

Re **Raymond Norman Woodward**  
Applicant

And **Department of Defence**  
Respondent

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

**Hearing Date** 15 April 2014

### DECISION

On 23 April 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Raymond Norman Woodward is not eligible for the award of the Australian Defence Medal.

### CATCHWORDS

*DEFENCE AWARD – Australian Defence Medal*

### LEGISLATION

*Defence Act 1903 – ss 110T, 110V, 110VA, 110VB(2)*  
*Defence Force Regulations 1952 - reg 93C and Schd 3*  
*Australian Defence Medal Regulations 2006*

## **REASONS FOR DECISION**

### **Introduction**

1. The applicant, Mr Raymond Norman Woodward (Mr Woodward), a former member of the Citizen Military Forces (CMF), 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 Australian Defence Medal (ADM). Mr Woodward's application for the award had been made on the basis of his service in the Army between 1961 and 1963.

2. Mr Woodward lodged an application with the Directorate for the award of the ADM on 22 February 2011. On 20 October 2011, the Directorate refused his application. On 20 April 2013, Mr Woodward reapplied to the Directorate for the award and was again advised on 3 July 2013 that he was not eligible. On 9 November 2013, Mr Woodward lodged an application for review with the Tribunal to appeal the Directorate's refusal to award him the ADM.

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Woodward'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 the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 11 December 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Woodward's application for review and requesting that he provide a report. On 13 January 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Woodward's service did not meet the eligibility criteria for the award he sought. On 21 February 2014, a copy of the report of the Directorate was forwarded to Mr Woodward for comment. Mr Woodward replied on 10 February 2014 and stated he wished to respond at interview.

5. The Tribunal met on 15 April 2014. During its meeting the Tribunal considered the material provided by Mr Woodward and the Directorate. It also heard oral evidence from Mr Woodward who agreed to be available by telephone that day.

### **The Citizen Military Forces**

6. The CMF was a term used up to 1980 to denote the reserve units of the Australian Army before they were officially renamed the Australian Army Reserve. For the purposes of this review, CMF and Army Reserve are considered synonymous.

### **Eligibility Criteria for the Award of the ADM**

7. On 26 June 2004, the Minister Assisting the Minister for Defence announced that the government would introduce a new service medal, the Australian Defence Medal. 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.

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

### **Changes to the Regulations**

9. 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.

10. 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.

11. 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').<sup>1</sup>

### **The 2006 Regulations**

12. 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

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<sup>1</sup> *Commonwealth of Australia Gazette* No. S 48, dated 30 March 2006 – Australian Defence Medal Regulations 2006.

(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;
- (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.

13. The eligibility criteria for the medal therefore specified a length of service (commitment) being the completion of the shorter of four years or initial enlistment period and for efficient service (productivity). Both elements were required to be demonstrated.

### **The 2008 Defence Honours and Awards Tribunal Inquiry**

14. Following further representations to the Government from the public, on 29 August 2008, the Parliamentary Secretary for Defence Support requested the Defence Honours and Awards Tribunal (the Old Tribunal) to inquire into the eligibility criteria for the award of the ADM<sup>2</sup>. However, the Tribunal did not recommend any changes to the length of service or the criteria for efficient service, but to other criteria not applicable to this case.

### **Definition of Efficient Service and Enlistment Year**

15. The Defence Honours and Awards Manual (DHAM) defines 'efficient service' at paragraph 28.4.b as:<sup>3</sup>

**Efficient service**-means any service in the Permanent or Reserve Forces of the ADF as determined by the Chief of the Defence Force (CDF) or a Service chief.

16. Exceptions are also covered in the DHAM. They include periods of leave or suspension without pay as well as any period where a member has received a formal warning because of inefficiency concerns, or a period of service for another Australian Government body. Also a member may not be efficient if they are absent without leave for longer than 24 hours or for periods of detention.

17. Certain categories of service have a requirement to complete periods of compulsory continuous training to be classified as efficient and such are usually noted on the member's service records.

18. The enlistment year is defined in the DHAM at paragraph 28.f. as 'the 12-month period ending on the anniversary of the date of enlistment or appointment'.

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<sup>2</sup> The report is available at <http://defence-honours-tribunal.gov.au/inquiries/completed-inquiries/australian-defence-medal/>.

<sup>3</sup> The DHAM is available at [www.defence.gov.au/medals](http://www.defence.gov.au/medals) under the General Information tab.

## **CDF's Determination regarding Efficient Service**

19. The power to determine that a member of the ADF has given qualifying service that is efficient service is vested in the Chief of the Defence Force by Regulation 4(2) of the 2006 Regulations which reads:

(2) For subregulation (1), the Chief of the Defence Force or his or her delegate may determine that a period of the member's qualifying service is efficient service.

20. This power has been used by the CDF to determine a period of a member's qualifying service for both Permanent and Reserve Forces. On 6 February 2013, the CDF determined that:

The minimum annual periods of service to be completed by members to be those shown in the attached schedule:

Army Reserve	26 Days	Until 30 June 1993
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This determination has been published in the DHAM and is consistent with periods of service previously published in Defence Instructions.

## **Mr Woodward's Service Record**

21. Mr Woodward enlisted in the CMF on from 27 June 1961 to 4 October 1961 and again from 23 January 1962 to 21 March 1963. In both cases, his enlistment period was for two years and on both occasions, Mr Woodward elected discharge at own request. Mr Woodward served for a period of one year, five months and three days.

## **Arguments of Mr Woodward**

22. Mr Woodward seeks recognition for his service and while he freely admits he does not meet the four years' service or completion of initial enlistment period requirement, he 'hoped that the Board (*sic*) may make a compassionate decision to overlook the shortness of qualifying time and award the Australian Defence Medal to me'.<sup>4</sup>

23. At interview Mr Woodward restated that he understood he was not eligible for the ADM, but thought the Tribunal might make an exception in his case. He had nothing further to add.

## **Arguments of the Directorate**

24. In its written submission to the Tribunal, the Directorate responded to Mr Woodward's claim for the award. The Directorate advised that Mr Woodward does not qualify for the ADM because he elected discharge at own request on both occasions after enlistment and before completing four years efficient service.

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<sup>4</sup> Mr Woodward's letter to the DHAAT dated 10 February 2014.

Mr Woodward's service as determined by the Directorate from Mr Woodward's service records is shown in Table 1.

<b>Date From</b>	<b>Date to</b>	<b>No of Days Served</b>	<b>No of Days Required</b>	<b>Type of Service</b>
27 June 1961	4 October 1961	21days 4 hrs	26	Non-efficient
23 January 1962	22 January 1963	>26	26	Efficient
23 January 1963	21 March 1962	1 day 3 hrs	26	Non-efficient

**Table 1 – Mr Woodward's Army Reserve Service**

### **Tribunal Consideration**

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

26. There is no dispute about Mr Woodward's service record and his subsequent discharge at own request on both occasions before completing his initial enlistment period or four years efficient service.

27. The ADM Regulations require that Mr Woodward' service is for four years or an aggregate of four years and that each year be deemed efficient service. To be deemed efficient, Mr Woodward had to have completed 26 days or more in each reserve year and be deemed efficient by his commanding officer. The Tribunal found that Mr Woodward did not complete four years' service and only one year was deemed efficient.

28. The Presiding Member explained to Mr Woodward the service criteria for the ADM and that Mr Woodward did not qualify for the award. He further explained that the Tribunal had no discretionary powers in this instance regardless of how compelling the compassionate case. The Tribunal has to abide by the ADM Regulations as they were the law. Mr Woodward accepted this explanation.

29. As Mr Woodward did not complete an aggregate of four years or more efficient service, and as his discharge was at own request and not because of a discriminatory policy or due to a medical condition, Mr Woodward does not qualify for the ADM.

### **DECISION**

30. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Raymond Norman Woodward is not eligible for the award of the Australian Defence Medal.