



Australian Government

Defence Honours and Awards Appeals Tribunal

Geoffrey Woolfe and the Department of Defence [2014] DHAAT 18 (6 May 2014)

File Number(s) 2013/024

Re **Geoffrey Allan Woolfe**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal **Ms Christine Heazlewood (Presiding Member)**
Mr Kevin Woods CSC, OAM

Hearing Date 22 April 2014

DECISION

On 6 May 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Geoffrey Allan Woolfe is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Defence Medal – enlistment period – reason for discharge.

LEGISLATION

*Defence Act 1903 – ss 110T, 110V(1), 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
Australian Defence Medal Regulations 2006*

REASONS FOR DECISION

Introduction

1. The applicant, Mr Geoffrey Allan Woolfe (Mr Woolfe), seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Australian Defence Medal (ADM). Mr Woolfe had lodged an application for the award of the ADM on 23 February 2013 which was rejected by the Directorate on 3 June 2013. Mr Woolfe sought review of this decision in his application to the Tribunal dated 16 August 2013.

The Tribunal's Jurisdiction

2. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence award in response to an application. The Directorate made a decision to refuse to recommend Mr Woolfe for the ADM following his application. Reg 93C of the *Defence Force Regulations 1952* defines a *defence award* as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the ADM. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the Review

3. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 4 September 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Woolfe's application for review and requesting that he provide a report. On 18 October 2013, the Directorate on behalf of the Secretary provided the Tribunal with a report. A copy of the report of the Directorate was forwarded to Mr Woolfe for comment. Mr Woolfe provided a written response to the Tribunal on 19 November 2013.

The Australian Defence Medal

4. The ADM was instituted by Her Majesty, Queen Elizabeth the Second by Letters Patent on 20 March 2006, *for the purpose of according recognition to Australian Defence Force personnel who have served for a minimum of six years since the end of World War II*. The *Australian Defence Medal Regulations 2006* are set out in the Schedule attached to the Letters Patent. Those Regulations were amended between 2005 when they were originally instituted and 20 March 2006 when they came into force. As a result of that amendment the minimum period of service became four years. Regulation 4 of the amended Regulations states:

- (1) *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*

(d) *for a period or periods that total 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.*

(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.*

5. Following an Inquiry by the Defence Honours and Awards Tribunal in 2009 the Chief of the Defence Force (CDF) made a determination on 8 November 2009 pursuant to reg 4(2). The Determination stated that:

where a member or former member was discharged as medically unfit to serve due to a non-compensable injury or disease, and the period of service of that member or former member is less than that prescribed under regulations 4(1)(a) to (c), that lesser period may, subject to the individual circumstances, be considered as being efficient service for the award of a medal to members or former members of the Defence Force who qualify for the award of the medal under section 4 of the regulations.

Mr Woolfe's service record

6. Defence records of Mr Woolfe's service show that he enlisted in the Citizen Military Forces (CMF) on 8 September 1965 for a two year enlistment period. According to Mr Woolfe's service record he was 17 years of age when he enlisted.

7. On his enlistment in the CMF, Mr Woolfe was allocated to the Australian Infantry Corps and served with 17 Royal New South Wales Regiment. According to the records the order discharging Mr Woolfe was dated 13 June 1967. The order states the reason for discharge as being 'AMR 176(1)(q) AWL'. That is, Mr Woolfe had been absent without leave for a period exceeding three months.

8. Mr Woolfe's Defence records do not state that he was medically discharged from the CMF.

Mr Woolfe's Submission

9. In an undated Statutory Declaration that accompanied his application for review on 16 August 2013, Mr Woolfe said:

In 1967 I was hospitalized with an unknown, life-threatening bowel condition. This caused severe pain, constant diarrhoea, huge weight loss, haemorrhaging and general debility.

After many weeks in hospital and numerous visits to RPA specialist, Dr John Goulston, this condition remained unknown to the medical experts until many

years later when it was known to be ulcerative colitis. In the initial stages of the disease there was virtually no medical treatment available. At this time I was enlisted in the CMF which I enjoyed immensely and was looking forward to continuing my career in the Army. However, the abovementioned illness meant that I spent most of 1967 trying to regain my health and was left in no condition to be able to fulfill my CMF obligations or any further Army career. Unfortunately, due to extreme worry about my health situation, my parents failed to advise the CMF and so my records state that I was AWOL. This was totally incorrect as I was suffering as described above and should have been medically discharged. I only discovered this mistake when I applied for membership to the Bathurst sub-branch in 2005. ...

10. In the letter received by the Tribunal on 19 November 2013 in answer to the Directorate's submission, Mr Woolfe said:

I would like to have the AWL cleared from my Army records because I feel very strongly that this is inaccurate as it was only due to my ill health that I was unable to complete my training and therefore my records should show that I was 'medically discharged' as AWL is a slight on my character and integrity. Dr John Stephenson in Bathurst who was caring for me at the time, confirmed to me that he would contact my military unit and inform them of the circumstances and severity of my illness and also inform them that I could not return to training because I had to stay away from all types of strenuous exercise – refer to copy of Stat declaration on 3/4/2009 by myself. I trusted and believed that Dr John Stephenson had done what he said he would and therefore my belief was that everything was done according to protocol and I was unaware that AWL was on my records until I joined the Bathurst sub-branch in 2005 when I was shocked to see AWL on my record and since then I have endeavoured to have my record cleared. It was not my fault that Dr John Stephenson failed to follow through with what he told me he would do so the situation was out of my control'. ...

11. In the Statutory Declaration dated 3 April 2009, Mr Woolfe said:

During my ADF service I contacted (sic) an illness which could not be diagnosed at the time which caused me considerable pain in 1967, later it proved to be ulcerative colitis. My medical practitioner at that time was Dr John Stephenson of Bathurst. He confirmed to me that he would contact my military unit and outline the circumstances of my illness advising me to stay away from strenuous exercise of which the army consisted of. Being disappointed at not being able to join the regular army I returned my issue to my home depot.

12. At the hearing Mr Woolfe told the Tribunal that he was extremely disappointed that his service records showed that he had been discharged because he was AWOL and not because he was medically unfit due to his serious illness. Mr Woolfe said that he would like his service record amended to reflect a medical discharge.

13. The essence of Mr Woolfe's written and oral submission is that he believes that he should have been discharged as medically unfit. Mr Woolfe said that he had had symptoms of the condition since he was about 15 or 16 years old. His condition was not treated until 1967 when he had a serious attack, which resulted in him being hospitalised. Mr Woolfe provided a letter from NSW Health indicating that he had been an inpatient at Bathurst Base Hospital from 19 February to 4 March 1967.

14. Mr Woolfe said that he did not tell the CMF when he enlisted that he suffered from ulcerative colitis because he had not been diagnosed with the disease in 1965. He had always managed his symptoms without medical assistance until the serious attack in 1967. Following his hospitalisation Mr Woolfe spent many months convalescing. When he began to feel better he just got on with his life. 'He didn't give the Army another thought'. In reply to a question from the Tribunal Mr Woolfe said that his father had returned his kit to the depot. He did not know whether his father had told anybody that his son was in hospital. Mr Woolfe could not recall with any precision his conversation with the doctor when he thought the doctor said that he would inform the Army that Mr Woolfe was ill. He said he was too sick to take much notice.

The Directorate's Submission

15. In its written submission, the Directorate reiterated that which it had said in its decision, namely Mr Woolfe did not complete four years service or his initial term of enlistment, which was a period of two years. Mr Woolfe was not discharged as medically unfit and he was not discharged due to a prevailing discriminatory Defence policy. Accordingly, Mr Woolfe is not eligible for the ADM because his service does not meet the eligibility criteria specified under reg 4(1) of the Regulations.

Conclusion

16. To be eligible to receive the ADM Mr Woolfe had to have given qualifying service that was efficient service by completing his initial enlistment period or a period of service of not less than four years or periods that totalled four years. It is not in issue that Mr Woolfe did not complete his initial period of service (two years) or a period of service of not less than four years.

17. Regulation 4(1)(d) provides that the member may complete a period of less than four years if the member died during service, was discharged as medically unfit due to a compensable impairment or was discharged due to a prevailing discriminatory policy as determined by the CDF. It is accepted that none of these three exceptions applied to Mr Woolfe.

18. Pursuant to reg 4(2) the CDF may determine that a period of the member's qualifying service is efficient service. The CDF made such a Determination on 8 November 2009. In that Determination the CDF determined that if a member was discharged as medically unfit because of a non-compensable injury or diseases a period of service that is less than the requirement may be considered efficient service for the award of the ADM. It is this Determination that Mr Woolfe has argued should apply to him.

19. Accordingly, the only remaining issue is whether Mr Woolfe was discharged because of a non-compensable injury or disease. Mr Woolfe's record of service stated that he was discharged because he was AWOL, not that he was discharged as medically unfit due to a non-compensable injury. Therefore the Determination of the CDF does not apply to Mr Woolfe and he is not eligible to receive the ADM. This conclusion does not in any way diminish the contribution Mr Woolfe made to his country for the period he did serve.

20. The Tribunal advised Mr Woolfe that it was not within its power to amend his service record to show that he had been unfit for service and thus medically discharged. The Tribunal does not doubt that Mr Woolfe has suffered from a debilitating condition most of his life. It seems clear that Mr Woolfe was seriously disabled by his illness when he was hospitalised in February and March 1967. However it also appears that the CMF was not informed of Mr Woolfe's illness. Mr Woolfe had a vague at best recollection of discussing with his General Practitioner or his Physician notifying the CMF of his illness. He did not know whether his father had said anything when he returned his kit to the depot. As Mr Woolfe himself said to the Tribunal, he was too sick at that stage to care. When he got better he just wanted to get on with his life. If Mr Woolfe wishes to pursue an amendment to his service record he will need to contact Defence. The contact details are set out in the letter accompanying this decision.

DECISION

21. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Geoffrey Allan Woolfe is not eligible for the award of the Australian Defence Medal.