



Australian Government

Defence Honours and Awards Appeals Tribunal

Maxwell Brossman and the Department of Defence [2014] DHAAT 19 (13 May 2014)

File Number(s) 2013/018

Re **Maxwell Joseph Brossman**
Applicant

And **Department of Defence**
Respondent

DECISION

Tribunal A. Bodzioch (Presiding Member)
Vice Admiral D. Chalmers AO RAN (Retd)

Hearing Date 8 May 2013

DECISION

On 13 May 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Maxwell Joseph Brossman 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 or a minimum criteria of four years service.

LEGISLATION

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

REASONS FOR DECISION

Introduction

1. The applicant, Mr Maxwell Joseph Brossman, 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 Australian Defence Medal (ADM) for his service with the Australian Army during the last period of the Second World War.
2. Mr Brossman lodged an application with the Directorate for the award of the ADM on 14 March 2012 and after examination of his service record the Directorate advised Mr Brossman, on 20 June, 2012, that he was not eligible for the award on the basis that he had not served the minimum criteria of four years. On 3 July 2013, Mr Brossman lodged his application for review with the Tribunal to appeal the Directorate's refusal to award him the ADM.

The Tribunal's Jurisdiction

3. The Tribunal has jurisdiction to hear and determine Mr Brossman's application for review (see ss 110T, 110V, 110VA and 110VB(2) of the *Defence Act 1903* and *Defence Force Regulations 1952 – Reg 93C and Schedule 3*. 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 5 July 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Brossman's application for review and requesting that he provide a report. On 29 July 2013, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Brossman's service did not meet the eligibility criteria for the award he sought. On 7 August 2013, a copy of the report of the Directorate was forwarded to Mr Brossman for comment but no response was received.
5. The Tribunal met on 11 March 2014 and considered the material provided by Mr Brossman and the Directorate. It also arranged for the hearing of oral evidence from Mr Brossman by way of a telephone conference call. Arrangements were made initially for 20 March and then 26 March but for various reasons Mr Brossman was unable to be available on either date. Finally, on 8 May 2014 arrangements were completed to enable Mr Brossman to provide any further submissions in regards to his review.

Eligibility criteria for the award of the Australian Defence Medal

6. On 26 June 2004, the then Minister Assisting the Minister for Defence the Hon Mal Brough MP, announced that the government would introduce a new service medal, the ADM. The feature of the ADM was to be as follows:

- it would be retrospective to service from the end of World War Two;
- it would be awarded for 6 years service;
- it was a medal for both regular and reserve personnel of the Australian Defence Force (ie volunteers)
- it would not be available to former National Service personnel unless they had completed the requisite 6 years volunteer service after the completion of their National Service

7. It was said that the impetus behind the ADM was to recognise a shorter period of service by volunteer members of the ADF [Australian Defence Force] than that which was required for other awards such as the Defence Long Service Medal (DLSM) and the Defence Force Service Medal (DFSM) (ie 15 years of service). The 6 years service had been selected because:

- this represented an actual commitment to serve (ie a period of 2 years service above the general 4 year initial enlistment period for most services) and;
- it reflected a length of time that would make it reasonably certain that most people would have completed the requisite training and experience in the Regular or Reserve Forces to be considered fully deployable should they be called upon.¹

8. The ADM was formally established on 8 September 2005, pursuant to Letters Patent, by Her Majesty, Queen Elizabeth the Second. In the Letters Patent, Her Majesty declared the ADM be governed by the *Australian Defence Medal Regulations 2005*.

9. The eligibility criteria for the ADM were set out in Regulation 4(1) of the 2005 Regulations. In essence they provided that any member, or former member, of the Defence Force who after 3 September 1945 had ‘given qualifying service that is efficient service, otherwise than as a result of being conscripted’ for a period of at least six years or periods that totalled six years, was eligible for the medal.

10. Further consideration was given to the eligibility criteria and on 20 March 2006, pursuant to another Letters Patent, Her Majesty revoked the 2005 Regulations and declared that the ADM was to be governed by the *Australian Defence Medal Regulations 2006*. In line with the Government’s decision to change the eligibility criteria Regulation 4 provided:

Award of the Medal

- (1) The Medal may be awarded to a member, or a 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

¹ *Report of the Inquiry into eligibility criteria for the Australian Defence Medal*, Defence Honours and Awards Tribunal, 2009, paras 13 and 14.

- 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.²

Mr Brossman's Service Record

11. Mr Brossman enlisted with the Australian Army on 8 August 1945 and undertook his initial training in Cowra and then the Jungle Warfare Training Centre at Canungra. He embarked from Brisbane per HMAS *Duntroon* on 11 April 1946 to serve in Rabaul (New Britain) to control and supervise the Japanese Military Troop Prisoners of War (POW) who were still present on the islands. On 20 June 1946 Mr Brossman embarked from Rabaul per HMAS *Manoora* to return to Sydney. On 1 October 1946 he joined 2MD GDD (2nd Military District General Duties Depot) for guard duty at Hay NSW, the Italian POW Camp. On 14 November 1946 he was transferred for guard duty at Cowra POW Camp. On 13 January 1947, he was transferred out to the No 9 POW Voyage Guard Duty to escort Italian POW's to Italy via the United Kingdom. On 8 February 1947 he embarked per *SS Asturius* from Southampton and returned to Sydney on 14 March 1947.

12. Mr Brossman was then discharged from the Army on 25 March 1947 due to demobilisation.

13. Mr Brossman was awarded the Australian Service Medal (ASM) 1945-75 with Clasp 'PNG' for his service.

Mr Brossman's Case

14. Mr Brossman, in his very brief written application for review stated that he 'signed on with A.I.F. for the duration of hostilities and twelve months after'. He then drew attention to his service and then added 'I believe I qualify for ADM for service completed'. In essence, he seeks recognition for service between 1945 and 1947.

15. During the telephone conference call on 8 May Mr Brossman was not able to add any further information in respect to his claims for the ADM other than to indicate that he, together with other servicemen who served with him, were required to provide service with little or no knowledge of how long they were required to continue that service after the end of hostilities. He submitted that this extra service entitled him to be awarded the ADM.

16. Mr Brossman acknowledged that he had received a copy of the response from the Directorate but had nothing to add.

² *Commonwealth of Australia Gazette* No. S 48, 30 March 2006.

17. The Tribunal indicated to Mr Brossman that the ADM was created to recognise service post World War II and that the qualifying period for that medal was four years. Mr Brossman responded by saying that he had been encouraged by his local Returned and Services League of Australia (RSL) to seek medallic recognition in the form of the ADM. The Tribunal added that his service post the end of hostilities was considered World War II service and that he had been recognised for that service with the ASM 1945-75 with Clasp 'PNG'. The Tribunal congratulated him for his service but indicated that it was convention to not award two medals for the same period of service.

The Directorate's Case

18. In its written submission to the Tribunal, the Directorate responded to Mr Brossman's claims. The Directorate confirmed Mr Brossman's service record but indicated that there is no evidence that Mr Brossman enlisted in the Australian Defence Force after 3 September 1945 following his discharge from the AIF. The Directorate advised that Mr Brossman does not qualify for the ADM for the following reasons:

(a) Mr Brossman did not meet the eligibility criteria as he did not enlist in the ADF after 3 September 1945; and

(b) Mr Brossman did not meet the eligibility criteria as he did not serve in the ADF for the aggregate four years qualifying service after 3 September 1945

Tribunal Consideration

19. The evidence provided shows that Mr Brossman gave about 19 months service from 8 August 1945 to 25 March 1947. There is no evidence that Mr Brossman signed on with the ADF, for further service, after his discharge on 25 March 1947.

20. Accordingly, he has not met the eligibility criteria of four years.

21. In any event even if he had signed on for further service, this particular situation was considered by the old Tribunal in its *Inquiry into eligibility criteria for the award of the Australian Defence Medal*.

22. In its report, the old Tribunal said 'that it had considered 12 appeal cases from claimants who had served during World War II and who continued to serve after 3 September for periods of from several months to one year or more'. It further said, 'In the Tribunal's view, eligibility for the ADM should not be extended to include World War II personnel. The ADM is intended to recognise service after World War II. The Tribunal does not doubt that many servicemen and women served Australia honourably and bravely before that time. However, that service has been recognised by the granting of other medals and the ADM has been specifically created to honour a different period of service.'

23. Mr Brossman has received the ASM 1945-75 with Clasp 'PNG' and this is proper recognition for his service.

DECISION

24. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Maxwell Joseph Brossman is not eligible for the award of the Australian Defence Medal.