



Australian Government

Defence Honours and Awards Appeals Tribunal

John Gabelish and the Department of Defence [2014] DHAAT 20 (22 May 2014)

File Number 2013/016

Re **John William Gabelish**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr A. D. Rose AO (Chair and Presiding Member)
Mrs S. Higgins

Hearing 3 March 2014

Decision

On 22 May 2014, the Tribunal decided that the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John William Gabelish is not eligible for the award of the Australian Defence Medal is affirmed.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal – eligibility criteria for the award of the medal – whether applicant’s service of two years and seven months met the qualifying service requirements of completing his initial enlistment period

LEGISLATION

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

REASONS FOR DECISION

Introduction

1. The applicant, Mr John William Gabelish (Mr Gabelish), served as a soldier in the Australian Regular Army (ARA) from 13 February 1967 to 12 September 1969 (two years and seven months). During this time he served for one year and 10 days in Vietnam. In recognition of his service Mr Gabelish was awarded the Australian Active Service Medal 1945-75 with Clasp 'VIETNAM', the Vietnam Medal and the Republic of Vietnam Campaign Medal.

2. On 7 November 2012, Mr Gabelish made an application, to the Directorate of Honours and Awards of the Department of Defence (the Directorate), seeking the award of the Australian Defence Medal (ADM). On 21 June 2013 as the outcome of an internal review the Directorate confirmed that Mr Gabelish did not qualify for the award of the ADM as he had not served his initial enlistment period. This internal review decision confirmed the Directorate's earlier advice to Mr Gabelish.

3. Being dissatisfied with the original advice from the Directorate Mr Gabelish lodged this application for review with the Tribunal, on 28 May 2013.

4. There is no dispute that the Tribunal has jurisdiction to review the Directorate's decision that Mr Gabelish does not qualify for the award of the ADM: see subsection 110V(1) and 110T of the *Defence Act 1903* and regulation 93C and Schedule 3 of the *Defence Force Regulations 1952*.

Steps taken in the inquiry

5. On 7 June 2013, in accordance with the Tribunal's Procedural Rules, the Chair of the Tribunal, Mr Alan Rose AO wrote to the Department of Defence advising it of Mr Gabelish's review application and invited it to make submissions and provide the Tribunal with the material on which it relied in support of its decision. A written report was received from the Directorate, on 5 July 2013. In that report, the Directorate adhered to its decision that Mr Gabelish did not qualify for the award of the ADM as his period of service did not meet the qualifying period of service prescribed in the *Australian Defence Medal Regulations 2006*. In support of its decision, the Directorate attached a copy of Mr Gabelish's service record.

6. Mr Gabelish was provided with a copy of the Directorate's written submission (including the attached service records) and he was invited to comment on the submission. Mr Gabelish provided a short written response. He said he did not have anything to add to his original letter to the Tribunal and that he did not have any issues with the Department of Defence.

7. The Tribunal met on 2 December 2013 to consider the material provided by the parties and to speak to Mr Gabelish, by telephone, in case there was any further material he wished to put before the Tribunal. Arrangements were made with Mr Gabelish as to the time of that call. Unfortunately, due to some misunderstanding, Mr Gabelish was not available at the arranged time. However, the Tribunal did hear from Mr Gabelish when it next met, on 3 March 2014.

The Australian Defence Medal Regulations 2006

8. The ADM was established, in 2006, with the coming into force of the *Australian Defence Medal Regulations 2006* (the ADM Regulations)¹.
9. The relevant eligibility criteria for the medal are set out in sub-regulation 4(1) of the ADM Regulations, which provide as follows:

4 (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) ...

Defence records of Mr Gabelish's service

10. Defence records of Mr Gabelish's service state he enlisted, voluntarily, in the ARA Supplementary Reserve, on 13 February 1967. He enlisted for a period of three years.

11. Mr Gabelish served in Vietnam (Southern Zone) from 21 May 1968 to 30 May 1969.

12. On 29 August 1969, Lieutenant Colonel P. J. Norton, Commander of the Northern Territory (NT) Command, signed a Discharge Order No 14/69 for Mr Gabelish. That Order stated that 'approval' had been given for the discharge and the reason for discharge was 'AMR 176(1)(a) "Having requested his discharge"'. The order for discharge was stated to take effect on 12 September 1969 and his place of discharge was 'Camp in NT Command'.

¹ See Commonwealth Gazette S48 dated 30 March 2006 – Australian Defence Medal Regulations 2006.

13. The 'Interim Discharge Certificate', dated 12 September 1969 and signed by Mr Gabelish, also states that the reason for Mr Gabelish's discharge was 'AMR 176(1)(a) "Having requested his discharge"'.

Mr Gabelish's case

14. Mr Gabelish did not dispute his service record in regard to his date of enlistment and date of discharge. In his written submissions Mr Gabelish said:

'
...
*After leaving the Army I joined the Northern Territory Police Force, Where again I submit I served my country (19 Yrs in NT Police).
I did not leave the army for any reason connected to the service. At the time I was about to marry an aboriginal girl and she did not want to return to Qld where my unit was based but wished to stay in the N.T. (Darwin) as she had had racist comments in Qld whereupon the N.T. is a melting pot of all sorts.
So I did leave some 5 months prior to my end of service, as I did perform my duties up to this time and I had no feelings against the army.
I ask for an exemption to be made in my case and be awarded the ADM.'*

15. Mr Gabelish reiterated these views when he spoke to the Tribunal.

The Directorate's case

16. The Directorate relied on Mr Gabelish's service record. As these did not show that Mr Gabelish had served his three-year enlistment period, he failed to meet the prescribed eligibility criteria for the award, as set out in regulation 4(1) of the ADM Regulations. That is, he did not serve his three-year enlistment period.

The Tribunal's Findings

17. The Tribunal explained to Mr Gabelish, that in determining whether he is eligible for the award of the ADM, the Tribunal is bound by the eligibility provision in regulation 4(1) of the ADM Regulations.

18. Accordingly, as pointed out above, in order for Mr Gabelish to be eligible for the award of the ADM it must be established:

- (a) he served his initial enlistment period, or a period of 4 years (whichever is the shortest), or
- (b) he was unable to serve the period set out in (a) above because:
 - (i) he died during his service, or
 - (ii) he was discharged due to a compensable injury, or
 - (iii) he was discharged due to a prevailing discriminatory Defence policy.

19. Mr Gabelish has at no time asserted that he served his initial enlistment period, or that any of the exceptions in paragraph (b) applied. He has done no more than hope that his service with the NT Police could be counted towards the period required

to be served for the award of the ADM, or in the alternative, there was a discretion to award the medal for service rendered for a lesser period than that prescribed.

20. For the reasons we have already explained, the ADM Regulations make no provision for service rendered in a Police Force as being qualifying service for the award of the ADM. Other than the circumstances in paragraph (b) above, the Regulations do not make provision for a recommendation of the award of the ADM for service men and women who have rendered service for a period that is less than the initial enlistment period, or four years (whichever is the lesser period). Accordingly, on the basis of Mr Gabelish's service record, his period of service with the ARA does not meet the eligibility criteria for the award of the ADM. This does not however, diminish his contribution in serving his country.

21. On the basis of the above findings the Tribunal determines that the decision of the Directorate is the correct and preferred decision and should be affirmed.

DECISION

22. The decision of the Directorate of Honours and Awards of the Department of Defence that Mr John William Gabelish is not eligible for the award of the Australian Defence Medal is affirmed.