



Australian Government

Defence Honours and Awards Appeals Tribunal

Steven Naumann and the Department of Defence [2014] DHAAT 21 (23 May 2014)

File Number (s) 2013/015

Re: **Steven Frederick Naumann**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Professor D. Horner AM (Chair)
Vice Admiral D. Chalmers AO, RAN (Rtd)

Hearing Date 8 April 2014

DECISION

On 23 May 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Steven Frederick Naumann is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

Defence Award – Australian Defence Medal – did not serve enlistment period.

LEGISLATION

Defence Act 1903 – ss 110T, 110V, 110VA, 110VB(2)
Defence Force Amendment Regulations 2011 – Reg 93C
Australian Defence Medal Regulations 2006 – Reg 4

REASONS FOR DECISION

Introduction

1. The applicant Mr Steven Fredrick Naumann (Mr Naumann) 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 Naumann was informed of that decision on 5 October 2012.

2. On 13 November 2013 Mr Naumann lodged an application with the Defence Honours and Awards Appeals Tribunal (the Tribunal) to review the Directorate's refusal to award him the ADM.

Tribunal's Jurisdiction

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Naumann's application for review (see ss 110T, 110V, 110VA and 110VB(2) of the *Defence Act 1903*. The role of the Tribunal is to determine whether the decision of the Directorate is the current and preferred decision having regard to the applicable law and relevant facts.

Steps Taken in the Conduct of the Review

4. In accordance with its *Procedural Rules 2011*, on 4 June 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Naumann's application for review and requesting that he provide a report. On 24 June 2013, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Naumann's service did not meet the eligibility criteria for the ADM. A copy of the report of the Directorate was forwarded to Mr Naumann for comment and he provided a written response on 13 November 2013.

5. The Tribunal met on 12 March 2014 to consider the material provided by Mr Naumann and the Directorate. On 8 April 2014 it conducted a hearing during which it heard oral evidence from Mr Naumann by telephone.

Eligibility of the award of the Australian Defence Medal

6. The ADM was instituted in September 2005 under Letters Patent. The eligibility criteria are set out in *Australian Defence Medal Regulations 2006*. 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; service; or
- d. for a period or periods that total less than 4 years, being service that the member was unable to continue for one of 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 (CDF) or his or her delegate.

7. In 2009 the CDF made a determination allowing members who had been discharged as medically unfit to serve due to a non-compensable injury or disease and whose periods of service was less than that prescribed by the regulations, that lesser period may, subject to individual circumstances, be considered to be efficient service for the award of the medal.

Mr Naumann's service

8. Mr Naumann served in the Citizen Military Forces (CMF) for three incomplete two-year enlistment periods during the 1970s as follows:

Enlistment period: 2 years
13 November 1974 to 6 March 1975 (with effect from 13 February 1975)
Reason for Discharge: at own request.

Enlistment period: 2 years
12 November 1975 to 13 February 1977
Reason for Discharge: at own request.

Enlistment period: 2 years
23 February 1977 to 22 January 1979
Reason for Discharge: at own request.

9. Mr Naumann's total period of service, based on the above dates, is three years, five months and 24 days. Mr Naumann enlisted three times, but in each case did not complete the enlistment period of two years

Mr Naumann's submission

10. Mr Naumann served in the 22nd Battalion, the Royal Victorian Regiment (RVR) from 13 November 1974 to 6 March 1975 when he was discharge. He claimed that he 'transferred to RVR Shepparton/Echuca for personal reasons and work'.

11. Mr Naumann said that on his return to Gippsland he enlisted in the 4/19th Prince of Wales Light Horse (PWLH) Regiment on 12 November 1975. He said that in February 1977 he decided to enlist in the Royal Australian Air Force (RAAF) and was discharged from the 4/19 PWLH on 13 February 1977. He visited Melbourne to join the RAAF but failed the medical assessment due to problems with his hearing and balance. He returned to 4/19 PWLH and, he claimed, the Commanding Officer told him that he would be withdrawing his request for discharge. Clearly this did not happen because Mr Naumann's

records show that he was discharged on 13 February and that he re-enlisted on 23 February 1977. Mr Naumann claimed that it should be accepted that he had continuous service through this period, and hence would have completed his enlistment period of two years.

12. Mr Naumann continued to serve in 4/19 PWLH until 22 January 1979, when he was discharged at his own request. His general practitioner had diagnosed him with a circulatory heart disease. Mr Naumann showed his Regimental Sergeant Major (RSM) a letter from the heart specialist. Mr Naumann then sought a discharge at his own request. In his oral evidence Mr Naumann said that he was not claiming that he was discharged due to a compensable impairment and hence his discharge in January 1979 was not part of his claim for the ADM.

Submission from the Department of Defence

13. Defence examined Mr Naumann's record of service and concluded that the total period of his service with the CMF was three years, five months and 24 days. He had not served for a total period of four years, a requirement for the award of the ADM. Further, in none of the three periods of his service did he complete the two-year enlistment period, another requirement for the award of the ADM. As a result, Defence determined that Mr Naumann was not eligible for the ADM.

Tribunal consideration

14. The Tribunal carefully considered all the material before it and considered the eligibility criteria for the award of the ADM sought by Mr Naumann.

15. The Tribunal noted that there was no dispute about the basic dates of Mr Naumann's military service. The Tribunal agreed with Mr Naumann and Defence that the total of his service was less than four years. He did not meet the requirement of four years' service and on that point he was not eligible for the ADM.

16. There were two other issues for consideration: first, whether the gap of service between 13 and 23 February 1977 should be overlooked; and second, whether Mr Naumann's discharge on 22 January 1979 should be considered as a case where the CDF or his delegate could have determined that he had completed efficient service due to a non-compensable injury or disease.

17. The Tribunal noted that in the 1970s, when Mr Naumann was serving, the ADM did not exist, and decisions about discharge were made with no view to their effect on eligibility for the ADM. In his oral evidence Mr Naumann acknowledged that there was no actual requirement for him to be discharged from the CMF in order to apply to join the permanent RAAF. If Mr Naumann had been accepted for entry into the RAAF his enlistment would not have occurred on the day of his medical assessment and there would have been ample time for him to be discharged from the CMF, or indeed for him to be formally transferred from the CMF to the RAAF. Mr Naumann acknowledged that he was discharged and subsequently re-enlisted. Despite Mr Naumann's claim that the Commanding Officer said that he had would not process his application for discharge he acknowledged that that had not happened. Mr Naumann pointed out that he had not undergone a medical examination before his re-

enlistment on 23 February, but the Tribunal did not consider that this indicated that there had been no break in his service. The Tribunal concluded that because of his discharge on 13 February 1977 Mr Naumann did not complete his two-year enlistment period beginning on 12 November 1975, which would have been required for the award of the ADM.

18. Mr Naumann did not base his claim for the ADM on his discharge 'on medical grounds' on 22 January 1979, but the Tribunal believed that it needed to consider this possibility. While Mr Naumann claimed that he was discharged on medical grounds the documents show, and he accepted, that it was at his own request. The Tribunal considered that instead of accepting Mr Naumann's request for discharge at his own request, the RSM could have suggested that he show the specialist's letter to the unit's Regimental Medical Officer, who could then have recommended discharge on medical grounds. However, even if this had occurred Mr Naumann would not have been discharged because of a compensable impairment. No evidence was presented to suggest that Mr Naumann's heart condition was caused by his CMF service. There was no requirement for the CDF or his delegate to consider Mr Naumann's special circumstances because he had been discharged at his own request. The Tribunal concluded that because Mr Naumann was discharged at his own request he did not complete his two-year enlistment period beginning on 23 February 1977, and hence was not eligible for the ADM.

19. In his oral evidence Mr Naumann said that he became aware of the existence of the ADM through his membership of the Returned and Services League and was uncomfortable that while he had served almost four years in the CMF he did not have the ADM. He believed that anyone who served for 12 months should have been awarded the ADM. The Tribunal considered that its task was to consider Mr Naumann's claims against the established criteria for the ADM and it did not have the authority to consider changing the criteria.

DECISION

20. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Steven Frederick Naumann is not eligible for the award of the Australian Defence Medal.