



Australian Government

Defence Honours and Awards Appeals Tribunal

Malcolm Matheson and the Department of Defence [2014] DHAAT 24 (27 June 2014)

File Number(s) 2013/033

Re **Malcolm Cecil Matheson**
Applicant

And **Department of Defence**
Respondent

Tribunal Professor D. Horner AM (Presiding Member)
Air Commodore M. Lax OAM, CSM (Retd)

Hearing Date 25 June 2014

DECISION

On 27 June 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Malcolm Matheson is not eligible for the award of the Australian Active Service Medal 1945-75.

CATCHWORDS

DEFENCE AWARD – Australian Active Service Medal 1945-75

LEGISLATION

Defence Act 1903 – ss 110T, 110V, 110VA, 110VB(2)

Defence Force Regulations 1952 - reg 93C and Schd 3

Australian Active Service Medal 1945-75 Regulations 1998

REASONS FOR DECISION

Introduction

1. The applicant, Mr Malcolm Cecil Matheson (Mr Matheson), a former member of the Royal Australian Air Force (RAAF), 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 Active Service Medal 1945-75 (AASM 1945-75). Mr Matheson's application for the award had been made on the basis of his service in the RAAF between 1945 and 1969.

2. Mr Matheson lodged an application with the Directorate for the AASM 1945-75 on 18 March 2013. On 25 July 2013, the Directorate refused his application. On 14 September 2013, Mr Matheson lodged an application for review with the Defence Honours and Awards Appeals Tribunal (the Tribunal) to review the decision of the Directorate to refuse to recommend him for the AASM 1945-75.

Tribunal's Jurisdiction

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Matheson'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.

Steps taken in the conduct of the review

4. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 16 October 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Matheson's application for review and requesting that he provide a report. On 11 November 2013, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Matheson's service did not meet the eligibility criteria for the award he sought. On 5 December 2013, a copy of the report of the Directorate was forwarded to Mr Matheson for comment. Mr Matheson replied on 12 December 2013 and afterwards, provided a further 19 items of supporting correspondence before the hearing.

5. The Tribunal met on 25 June 2014 to consider the material provided by Mr Matheson and the Directorate. The Tribunal scheduled a hearing with Mr Matheson that day. At that hearing, the Tribunal heard oral evidence from Mr Matheson who appeared in person.

Eligibility Criteria for the Award of the AASM 1945-75

6. The AASM 1945-75 was instituted by Letters Patent on 11 December 1997 for the purpose of 'according recognition to members of the Australian Defence Force,

and certain other persons, who rendered service in warlike operations'.¹ The Regulations set out general requirements for the AASM 1945-75 and state:

The Governor-General, on the recommendation of a Minister, may declare a warlike operation in which members of the Defence Force were engaged at any time during the period that commenced on 3 September 1945 and ended on 13 February 1975, to be a prescribed operation for these Regulations.

7. Since institution, six clasps have been declared by the Governor-General as prescribed operations that were warlike. To date, the following clasps have been issued:

- a. Korea
- b. Malaya
- c. Malaysia
- d. Thailand
- e. Thai-Malay Border
- f. Vietnam

The Tribunal noted that service in Morotai, Labuan or Japan were not included as 'warlike' or prescribed operations.

Previous Consideration

The Committee of Inquiry into Defence Awards

8. In 1994, the *Committee of Inquiry into Defence and Defence Related Awards* (CIDA) considered submissions and took evidence on behalf of members of the British Commonwealth Occupation Force (BCOF) seeking special recognition through a separate medal or award for their service. Some submissions recommended the AASM 1945-75 with Clasp 'JAPAN' be instituted; however, the majority simply sought some form of recognition.²

9. CIDA rejected the idea of an AASM 1945-75 with Clasp 'JAPAN'. Chapter 3 of the report concludes with the recommendation that an Australian Service Medal 1945-75 (ASM 1945-75) with Clasp 'JAPAN' be awarded to members who served in BCOF from 3 September 1945 to 30 June 1947 with a qualifying period of 90 days. This recommendation was subsequently accepted by Government, and a Declaration and Determination was made in this regard on 1 December 1997.³

10. The Tribunal noted that Mr Matheson has been awarded the ASM 1945-75 with Clasp 'JAPAN'.

¹ *Commonwealth of Australia Gazette*, S18, 19 January 1998.

² *Report of the Committee of Inquiry into Defence and Defence Related Awards* (CIDA), AGPS, Canberra, 1994, p 32.

³ *Commonwealth of Australia Gazette*, S498, 1 December 1997.

Background to the British Commonwealth Occupation Force

11. After Japan formally surrendered on 2 September 1945, Britain, Australia, New Zealand and India formed the BCOF whose role was to disarm the remaining Japanese forces, to demilitarise depots and military establishments and to assist in the reconstruction of a country devastated by bombing. Although some forces were present from the time of the surrender, the main Australian elements arrived in February 1946. These included infantry, medical teams, administrative and labour personnel, RAAF squadrons and two Royal Australian Navy warships. Other BCOF units included a British-Indian division, a New Zealand infantry brigade and a British Commonwealth air component. The United States also deployed an occupation force of considerably larger scale, but these forces were stationed in a separate area.

12. At its peak, BCOF comprised 40,000 servicemen and women, 11,500 of whom were Australian.⁴ From early 1947, the strength of BCOF began to steadily decline such that by 1948, the other Commonwealth nations withdrew their forces leaving just the Australian units. By mid-1949, only 2,630 Australians were serving with BCOF. In late 1951, BCOF was reorganised and its responsibilities handed to Headquarters British Commonwealth Forces Korea (BCFK), and this signalled the end of the occupation. BCOF officially concluded with the ratification of the peace treaty with Japan on 28 April 1952.

13. In order to fulfil its obligations, BCOF was authorised a specific operational area which was concentrated around the south-eastern most prefectures of Honshu and also the Island of Shikoku. The main city in the region was Hiroshima, still devastated by the atomic bombing. Coastal areas were also defined. Figure 1 shows the BCOF operational area.⁵ All other areas of Japan were under US occupation and control.

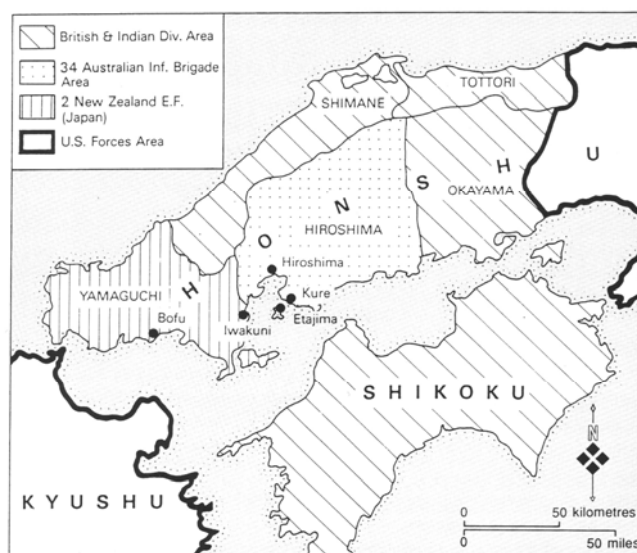


Figure 1 – BCOF Operational Area

⁴ Robert O'Neill, *Australia in the Korean War 1950-53, Vol I: Strategy and Diplomacy*, AWM & AGPS, Canberra, 191, p 32.

⁵ *CIDA*, p 33.

Mr Matheson's Service Record

14. Mr Matheson enlisted in the RAAF on 16 January 1945 and discharged 'at own request' on 15 January 1969. He further served in the RAAF Reserve until 16 January 1974. While most of Mr Matheson's RAAF service was in Australia, he spent the following periods overseas:

- a. Service at Morotai, Netherlands East Indies (now Indonesia) from 7 to 11 February 1946, a period of five days;
- b. Service at Labuan, British North Borneo (now East Malaysia) from 11 February 1946 to 23 March 1946, a period of one month and 13 days; and
- c. Service in Japan with BCOF from 24 March 1946 to 13 August 1947, a period of one year, four months and 21 days.

15. For his service, Mr Matheson was awarded the War Medal 1939-45; the Australia Service Medal 1939-45; the Australian Service Medal 1945-75 with Clasps 'S.W. PACIFIC' and 'JAPAN'; the Long Service and Good Conduct Medal and the Australian Defence Medal.

Mr Matheson's Case

16. Mr Matheson believes he is eligible for the AASM 1945-75 as he disputes the fact that his service with BCOF was 'non-warlike'. He claims while in Morotai and Labuan, the Japanese 'still there hadn't surrendered' and that he served in BCOF before the official end of World War II and as such, he was on 'active service'.

17. In his various submissions, Mr Matheson claims that the 'official end of World War II was not until 28 May (*sic*) 1952' and that 'shows we were in before any "cut-off"'. He claims he was in Japan 'before they had signed any paper – we were on active service in an operational area'. He bases this claim on the definitions section of *Veterans' Entitlement Act 1986* (VEA) at paragraph 5(B)3.

18. At the hearing, Mr Matheson reiterated his claim and stated that when with BCOF he and his fellow airmen served in 'full wartime kit including having rifles with bayonets fixed as they were expecting trouble from Japanese who had not surrendered'. This makes his service 'warlike' and therefore he should be eligible for the AASM 1945-75.

The Directorate's Case

19. The Directorate argued that Mr Matheson was posted to BCOF in Japan between 11 February 1946 and 27 July 1947. This service was declared a non-warlike military operation, and consequently, Mr Matheson was awarded the ASM 1945-75 with Clasp 'JAPAN' for his service. A review of his service record also showed that Mr Matheson did not serve in any other warlike operation. As such, Mr Matheson is not eligible for the AASM 1945-75.

Tribunal Consideration

20. The Tribunal carefully considered all the material before it and considered the criteria for the AASM 1945-75.

21. The Tribunal accepts Mr Matheson's service record and that he served in Morotai, Labuan and Japan on the dates he claimed.

22. Mr Matheson placed much emphasis upon his claim that World War II did not end until 1952 as defined in the VEA by the date the peace treaty with Japan came into force and that his service was therefore 'warlike'. He believed this would entitle him to the AASM 1945-75 because of advice he had received from a Returned and Service League of Australia (RSL) colleague. The Tribunal therefore first considered the date of the end of World War II.

The Date of the End of World War II

The Veterans' Entitlement Act 1986

23. Mr Matheson relies on the definitions of World War II service from the VEA in the mistaken belief that the VEA applies to medallic recognition. This is not the case as medallic recognition is not covered by that Act. Medallic recognition is covered by Letters Patent and Regulations and not by any veterans' entitlements legislation. Mr Matheson was advised of this during the hearing.

The Dedman Paper

24. In December 1948, The Hon. John J. Dedman, the Australian Minister of State for Defence, issued a *Summary of the Conditions of the Award of the Campaign Stars, The Defence Medal and the War Medal*.⁶ Known generally as the Dedman Paper, it recognised World War II awards are granted for service between 3 September 1939 and 2 September 1945. Some awards such as the Atlantic Star and Africa Star have earlier end dates, but none are awarded after 2 September 1945. The Dedman Paper specifically states:

(a) Insofar as the Australian Forces are concerned, the closing date for service overseas from or outside the country of residence in non-operational areas not subject to enemy air attack or closely threatened will be 2nd September 1945.⁷

25. As this is the authoritative document for World War II awards for Australian Servicemen, (which also accords with official dates as defined in the VEA), the Tribunal regards World War II as being between 3 September 1939 and 2 September 1945.

⁶ The *Dedman Paper* can be found on the following web site:
<http://www.defence.gov.au/medals/Content/+040%20Campaign%20Medals/+100%20World%20War%20II/WW2%20Dedman%20Paper%20transcript.pdf>

⁷ Dedman Paper, paragraph 109(a) - Closing Dates.

Mr Matheson's Claim for the AASM 1945-75

26. In his various submissions and at the hearing, Mr Matheson claimed that while he was stationed in Morotai and Labuan in 1946, he was under threat from the Japanese who had not surrendered. He claimed he was therefore on warlike operations. The Tribunal found that according to the records held at the Australian War Memorial and photographs of various Japanese surrender ceremonies displayed on their website, the Japanese surrendered at Morotai on 9 September 1945 and on Labuan on 10 September 1945.⁸

27. As Mr Matheson served after the Japanese had surrendered, and that he served after the end of World War II in the Pacific, and as the Governor-General had not declared service at Morotai and Labuan after 2 September 1945 as a 'warlike' operation, the Tribunal found that Mr Matheson is not eligible for the AASM 1945-75 for his service at Morotai or Labuan in 1946.

Mr Matheson's Claim for the AASM 1945-75 with Clasp 'JAPAN'

28. Mr Matheson claimed he was eligible for the AASM 1945-75 with Clasp 'JAPAN' as he believed he was on 'warlike' service while with BCOF and therefore, under Medal Regulation 3, 'members of the Defence Force [who] were engaged at any time during the period that commenced on 3 September 1945 and ended on 13 February 1975, would be eligible'.

29. However, the Tribunal noted that for Mr Matheson to be eligible for the AASM 1945-75 with Clasp 'JAPAN', the Governor-General, on the recommendation of a Minister, had to declare service in Japan with BCOF as a warlike operation. To date, the Governor-General has not done so, so there is no medal for Mr Matheson to claim. This was explained to Mr Matheson at the hearing and although he said he was very disappointed, he understood.

30. As the Governor-General has not declared service in Japan with BCOF as a 'warlike' operation, Mr Matheson is not eligible for the AASM 1945-75 with Clasp 'JAPAN'.

DECISION

31. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Malcolm Matheson is not eligible for the award of the Australian Active Service Medal 1945-75.

⁸ www.awm.gov.au. Search: Japanese surrender.