



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **Bruce Phillips (on behalf of Orwell Phillips) and the Department of Defence [2014] DHAAT 25 (1 July 2014)**

**File Number(s)** 2014/006

**Re** **Bruce David Phillips (on behalf of the late Captain Orwell  
Edward Phillips)**  
Applicant

**And** **Department of Defence**  
Respondent

**Tribunal** Professor D. Horner AM (Presiding Member)  
Dr J. Harte

**Hearing Date** No hearing was conducted for this review

#### **DECISION**

On 1 July 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Captain Orwell Edward Phillips is not eligible for the award of the 1939-45 Star.

#### **CATCHWORDS**

*DEFENCE AWARD* – 1939-45 Star.

#### **LEGISLATION**

*Defence Act 1903* – ss 110V(1), 110T, 110VA and 110VB(2)

*Defence Force Regulations 1952* reg 93C

*Air Ministry Order No A.755/1943*

*A Summary of the Conditions of the Award of the Campaign Stars, The Defence Medal and the War Medal*

*United Kingdom Command Paper 6833 of June 1946*

## REASONS FOR DECISION

### Introduction

1. The applicant, Mr Bruce David Phillips (on behalf of the late Captain Orwell Edward Phillips, his father) 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 1939-45 Star.
2. Captain Orwell Phillips lodged an application with the Australian Army Soldier Career Management Agency (SCMA) for the award of the 1939-45 Star on 29 May 1995. SCMA advised him on 29 August 1995 that he was not eligible. At that time, responsibility for Army honours and awards rested with SCMA.
3. On 25 November 2010 Mr Bruce Phillips wrote to the Directorate (which had taken over responsibility for Army honours and awards) concerning the entitlement of his late father, Captain Orwell Phillips, for the 1939-45 Star. The Directorate replied on 7 December 2010 that Captain Phillips was not eligible for the 1939-45 Star. On 21 January 2014, Mr Bruce Phillips lodged his application with the Tribunal for a review of the Directorate's refusal to award Captain Phillips the 1939-45 Star.
4. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Phillips' 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.
5. In accordance with its *Procedural Rules 2011*, on 12 February 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Phillips' application for review and requesting that he provide a submission. On 6 March 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a submission, which confirmed its position that Captain Phillips' service did not meet the eligibility criteria for the award of the 1939-45 Star. On 21 March 2014, a copy of the report of the Directorate was forwarded to Mr Phillips for comment. A written response was received on 27 March 2014.
6. The Tribunal met on 30 June 2014 to consider the material provided to it and decided not to seek further information.

### Eligibility criteria for the award of the 1939-45 Star

7. The 1939-45 Star and a number of other Stars<sup>1</sup> and the Defence Medal are campaign medals of the British Commonwealth, established to recognise service in a number of theatres during the Second World War. The 1939-45 Star was established,

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<sup>1</sup> Stars include: the Africa Star, the Atlantic Star, the Air Crew Europe Star, the Italy Star, the France and Germany Star, the Pacific Star and the Burma Star.

on 3 August 1943, together with the Africa Star. Its establishment is recorded in Air Ministry Order A.755/1943.<sup>2</sup>

8. The conditions for the award of the 1939-45 Star are set out in a number of documents.<sup>3</sup> For the purposes of determining eligibility in the Australian armed forces after the Second World War the conditions were set down in December 1948, when 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.<sup>4</sup> Known generally as the *Dedman Paper*, it is also a summary of the provisions of the Air Ministry Order A.755/1943 and the 1945 and 1946 United Kingdom Command Papers.

9. The *United Kingdom Command Paper 6833* of June 1946 provides the general condition to award the 1939-45 Star to the Army as follows:

The army qualification will be six months in an operational command during the period the 3<sup>rd</sup> September, 1939, to the 2<sup>nd</sup> September 1945.

11. The initial criteria did not include service in the Northern Territory. The criteria for the 1939-45 Star was amended in *Commonwealth of Australia Gazette No 374* of 17 December 2001 to allow for the award of the 1939-45 Star to aircrew and non-aircrew, for two and six months respectively, for service in the area of the Northern Territory north of latitude 14 degrees 30 minutes south during the period that commenced on 19 February 1942 (the date of the first air raid on Darwin) and ended on 12 November 1943 (the date of the last air raid on Darwin.)

### **Captain Phillips' Service**

12. Captain Phillips was born on 4 August 1913, enlisted in the Militia on 6 March 1939 and served as a sergeant in the 1<sup>st</sup> Anti-Aircraft Battery in Sydney. On 30 October 1940 he was commissioned as a lieutenant in the Citizen Military Forces, serving initially at the School of Artillery until he was posted to the Coast Defence Force, Darwin, arriving there on 13 December 1940.

13. He served at Darwin from 13 December 1940 to 31 May 1942, when, now a temporary captain, he returned to Sydney as an instructor at the School of Artillery, Anti-Aircraft Wing, at Randwick. On 15 September 1942 Captain Phillips transferred to the Australian Imperial Force and served until 19 October 1945 when he was discharged and placed on the Reserve Officers List.

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<sup>2</sup> Air Ministry Order (A.M.O.) A.755/1943, 3 August 1943. *Introduction of Africa and 1939-43 Stars, etc.*

<sup>3</sup> A.M.O. A.755/1943, 3 August 1943, *Introduction of Africa and 1939-43 Stars, etc.*; Committee on the Grant of Honours Decorations and Medals in Time of War – Campaign Stars and the Defence Medal, HMSO, London, May 1945. Available at [www.northeastmedals.co.uk/britishguide/hmso/campaign\\_stars\\_defence.htm](http://www.northeastmedals.co.uk/britishguide/hmso/campaign_stars_defence.htm); and *United Kingdom Command Paper No 6833*, June 1946.

<sup>4</sup> A copy of 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>

14. He was awarded the following:

Defence Medal  
War Medal 1939-45  
Australia Service Medal 1939-45

### **The Defence Submission**

15. The Directorate examined Captain Phillips's service records and confirmed that he served in Darwin from 13 December 1940 and returned to Sydney on 31 May 1942, when he was seconded to the School of Artillery.

16. For Captain Phillips to be eligible for the 1939-45 Star he needed to have served at Darwin for six months (180 days) between 19 February 1942 and 12 November 1943. Captain Phillips's service in the Darwin area ended on 31 May 1942. He therefore completed 101 days service after the beginning of the relevant period on 19 February 1942. He did not complete the qualifying period of 180 days and was not eligible of the 1939-45 Star.

### **Captain Phillips' Case**

17. In his request for review of the Directorate's decision Mr Phillips stated that he did not dispute that his father did not meet the criterion for the award of 180 days service in the Northern Territory between 19 February 1942 and 12 November 1943. He did, however, disagree with the Directorate's conclusion that his father served for 101 days during the relevant period. He claimed that an examination of his father's service record indicates that he commenced his posting at Randwick on 23 July 1942 and hence served for 154 days during the relevant period – a shortfall of 26 days. Further he argued that his father had served at Darwin from 30 October 1940, served under fire during the air raids on Darwin, and was posted away from Darwin 'at the army's request'.

18. Responding to Defence's submission to the Tribunal, Mr Phillips again did not dispute that his father did not serve during the relevant period for 180 days. He continued:

The basis of my appeal is that my father's service in Darwin was cut short to suit the requirements of the Army, but for which he would have remained in Darwin for long enough to have met all the criteria for award of the 1939-45 Star. I recognise that Defence may not have the flexibility to waive the criteria on this basis but I am hoping that the Appeals Tribunal may do so.

### **Tribunal Consideration**

19. The Tribunal carefully considered all the material before it and also the eligibility criteria for the award sought by Mr Phillips.

20. The Tribunal noted that it is irrelevant whether Captain Phillips served for 101 days (as claimed by Defence) or 154 days (as claimed by Mr Phillips). The

Directorate concluded, and Mr Phillips agreed that Captain Phillips did not serve for the required period of 180 days during the relevant period.

21. The Tribunal considered that most transfers of personnel in the Army during the Second World War were to meet the Army's requirements. Captain Phillips's transfer to Sydney was not unusual in this regard. The criteria for awards are set out in relevant regulations and official documents which the Directorate is bound to apply. 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. The Tribunal considered that the Directorate correctly applied the regulations and found no reason why an exception should be made in the case of Captain Phillips.

## **DECISION**

22. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Captain Orwell Edward Phillips is not eligible for the award of the 1939-45 Star.