



Australian Government

Defence Honours and Awards Appeals Tribunal

Ronald Lee and the Department of Defence [2015] DHAAT 03 (03 February 2015)

File Number(s) 2014/008

Re **Mr Ronald Alfred Paul Lee**
Applicant

And **Department of Defence**
Respondent

Tribunal Professor David Horner AM (Presiding Member)
Hon Peter Lindsay

Hearing Date 12 December 2014

DECISION

On 03 February the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Ronald Alfred Paul Lee is not eligible for the award of the Republic of Vietnam Campaign Medal.

CATCHWORDS

FOREIGN AWARD – Republic of Vietnam Campaign Medal

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110T

Military Board Instruction (MBI) 102-4 Medals – Vietnamese Campaign Medal, 23 September 1968

REASONS FOR DECISION

Introduction

1. The applicant, Ronald Alfred Paul Lee (Mr Lee) 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) that he is not eligible for the Republic of Vietnam Campaign Medal (RVCM). Mr Lee lodged an application for the award of the RVCM on 20 August 2013, which was rejected by the Directorate on 10 January 2014.

2. Mr Lee sought a review of this decision in his application to the Tribunal on 26 January 2014.

Tribunal Jurisdiction

3. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a foreign award in response to an application. 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.

Conduct of the review

4. In accordance with its *Procedural Rules* 2011, on 20 February 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Lee's application for review and requesting that he provide a report. On 1 April 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report the Directorate confirmed its position that Mr Lee's service did not meet the eligibility criteria for the award he sought. On 10 April 2014 the Tribunal forwarded a copy of the report of the Directorate to Mr Lee for comment. On 5 June 2014 Mr Lee provided a written response.

5. The Tribunal met on 14 November 2014 when it considered the material provided by Mr Lee and the Directorate. The Tribunal met again on 12 December 2014 when it heard oral evidence from Mr Lee who agreed to be available by telephone that day.

The Republic of Vietnam Campaign Medal

6. In May 1964 the Government of the Republic of Vietnam established its campaign medal, known in Australia as the Republic of Vietnam Campaign Medal (RVCM). In Australia the RVCM is considered to be a foreign medal. In September 1965 the Joint General Staff of the Republic of Vietnam issued a directive setting out the eligibility for the medal. The essence of the directive is as follows:

- **Article 1:** All military personnel of the Republic of Vietnam Armed Forces (RVNAF) who have 12 months service in the field during wartime, may claim the Campaign Medal award.
- **Article 2:** RVNAF personnel who do not meet the requirements of Article 1 qualify for the award if they were:
 - wounded-in-action;
 - captured in action by the enemy, or missing while performing their duties, but were later released or escaped; or
 - killed in action or died while performing a mission entrusted to them.
- **Article 3:** Allied soldiers assigned to the Republic of Vietnam after 6 months in wartime with the mission of assisting the Vietnamese Government and the RVNAF to fight against armed enemies were eligible for the Campaign Medal. Medals for allied soldiers were also to be awarded in accordance with the conditions set down in Article 2.

7. On 22 March 1966 the Government of the Republic of Vietnam amended Article 3 of the conditions of the RVCM to read as follows:

Article 3: Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign Medal. Foreign authorities will determine eligibility for their personnel for this award. Foreign military personnel are also entitled to this award under the special conditions provided for in Article 2.¹

8. In advising the Australian Government of this amendment on 13 July 1966 the Australian Embassy in Saigon explained that it had been:

specifically requested by the United States authorities to cover those United States servicemen in the Seventh Fleet, Thailand and Guam, who are participating in the present conflict. United States interpretation of this amendment is that it covers all members of Seventh Fleet serving in waters off the coast of Vietnam, as well as the air crews of aircraft operating out of Thailand and Guam. They did not interpret it to cover ground support staff in Thailand and Guam.²

8. On 16 September 1966 the Secretary of the Department of Defence forwarded a memorandum to the Secretaries of the Departments of the Navy, Army and Air setting out the criteria for the award.³ These criteria were based on and largely reflected those specified by the Government of the Republic of Vietnam with the March 1966 amendment. Referring to the amended Article 3, the Secretary stated that Australia's 'interpretation is the same as that of the United States. At present no Australian serving with Australian units outside the Vietnamese theatre would be

¹ Cable 882, Australian Embassy, Saigon, to Canberra, 13 July 1966.

² Ibid.

³ Memo, Secretary, Department of Defence to Secretaries, Departments of Navy, Army and Air, 16 September 1966.

eligible for the award'. He continued that the conditions for the grant of the award to Australian servicemen, 'which are in line with those laid down by the United States authorities', were as follows:

- (a) Special service - as defined by the *Repatriation (Special Overseas Service) Act 1962* - for a minimum of 6 months duration, either continuous or aggregated, in Vietnam with retrospective effect to 31st July 1962.
- (b) 'Special service' in Vietnam of less than six months' duration since 31st July 1962 if
 - (1) killed on active service or wounded in action and evacuated,
 - (2) captured and later released or escaped.

9. In accordance with the Secretary's memorandum of 16 September 1966, the criteria for the award of the RVC to Australian service personnel were reiterated in Navy, Army and Air Force instructions between 1966 and 1970, which stated that to qualify a member must be allotted for 'Special Service' in Vietnam and must:

- a. have served in Vietnam for a minimum period, either continuously or aggregated, for six months (181 days) from 31 July 1962 inclusive to a future date or
- b. have served in Vietnam for a period of less than six months (181 days) from 31 July 1962 to a future date if the member was:
 - i. killed on active service
 - ii wounded in action and evacuated (ie classified as a Battle Casualty in NOTICAS signed vide Military Board Instruction 38-1), or
 - iii captured and later released or escaped.⁴

10. There was no mention in the Services' instructions of qualifying by serving in direct combat support outside the specified geographic area (as allowed under the amendment to Article 3). The Services' instructions were presumably based on, and were in accordance with the Secretary's memorandum in making no reference to the provisions of the amendment of Article 3.

Mr Lee's Service Record

11. Defence records show that Mr Lee enlisted in the RAAF on 16 January 1956 and was discharged on 19 January 1976 after twenty years of service. He served at Ubon, Thailand, from 24 February to 25 August 1966, a total of 184 days.

12. For his service, Mr Lee has the following awards:

Australian Active Service Medal 1945-75 with Clasps 'MALAYA' and 'THAILAND'
General Service Medal 1914-62 with Clasp 'MALAYA'
Australian Service Medal 1945-75 with Clasp 'SE ASIA'
Vietnam Logistic and Support Medal
Defence Force Service Medal with First Clasp
Long Service and Good Conduct Medal

⁴ Military Board Instruction, MBI 102-4, 23 December 1968; Australian Navy Order 500/67 Vietnamese Campaign Medal – Award for Service in South Vietnam 1970; Air Board Instruction A5/30, 21 December 1966, NAA: A6913, 2.

National Medal
Australian Defence Medal
Pingat Jasa Malaysia

Mr Lee's Submission

13. In his application for review, Mr Lee stated that he is appealing the Defence decision for the following reasons:

- a. 'that after reading the eligibility for the award of the RVM [sic] I considered that I may have the necessary criteria to meet the requirements of the award of the RVM'.
- b. the Wikipedia website states 'the Vietnam Medal may also be awarded to any service member, who while serving outside the geographical limits of the Republic of Vietnam, provided direct combat support to the Republic of Vietnam armed forces for a period exceeding six months'.
- c. 'I have been awarded the Vietnam Logistics and Support Medal and had my name and particulars entered into the records and register of members for Vietnam War Service'.

14. Mr Lee further states in his letter of 5 June 2014, his response to the Defence submission, that his service at Ubon was confirmed as 'outside the geographic limits of South Vietnam yet I received the VLSM'. He believes that personnel who served at RAAF Base Ubon 'did support the American Air Force in their struggle against the enemy of Vietnam and Thailand in warlike conditions'.

The Directorate's Submission

15. Defence in its submission stated that to be eligible for the RVCM a member needed to have served in Vietnam for a period of 181 days. Mr Lee served at RAAF Base Ubon which was deemed as outside the geographic limits of South Vietnam. As a result he was not eligible for the RVCM.

Tribunal Consideration

16. As noted in paragraphs 8, 9 and 10, the Department of Defence did not apply the conditions of the amendment of Article 3 of the criteria for the RVCM. Indeed in September 1966 (after Mr Lee's service at Ubon) the Secretary of the Department of Defence wrote that 'at present no Australian serving with Australian units outside the Vietnamese theatre would be eligible for the award'.

17. The question as to whether Mr Lee provided 'direct combat support' while serving at Ubon is immaterial because the amendment of Article 3 does not apply. But even if it were to apply, Mr Lee did not provide direct combat support to the war in Vietnam. In its *Report of the Inquiry into Eligibility for the Republic of Vietnam Campaign Medal*, the Tribunal conclude that 'direct combat support' required 'the provision of support directly to combat units on the battlefield to assist them to

achieve their mission in a timely mission'.⁵ Ground crew based at Ubon did not provide such 'direct combat support'.

18. Mr Lee appeared to argue that the award of the VLSM to personnel who served at Ubon was evidence that they had served within the geographic area of Vietnam. The Tribunal noted that the RVCМ was awarded to personnel who served at Ubon after this award was recommended by the old Tribunal.⁶ This was a specific case to recognise service at Ubon and did not signify or even imply that the personnel had actually served within the geographic limits of Vietnam.

19. The Tribunal noted the certificate provided to Mr Lee by the Department of Veterans' Affairs headed 'Vietnam War Service', but also noted that this clearly states that Mr Lee served at Ubon. The Tribunal did not consider that this certificate showed that Mr Lee served in Vietnam.

20. The Tribunal carefully considered all the material provided by Mr Lee and the Department of Defence and found that Mr Lee is not eligible for the RVCМ.

DECISION

21. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Ronald Alfred Paul Lee is not eligible for the award of the Republic of Vietnam Campaign Medal.

⁵ *Report of the Inquiry into Eligibility for the Republic of Vietnam Campaign Medal, March 2014*, para 59.

⁶ From its establishment in July 2008, the Defence Honours and Awards Tribunal (the old Tribunal) operated administratively. On 5 January 2011, on the commencement of the provisions in Schedule 1 of the *Defence Legislation Amendment Act 2010* (the Defence Amendment Act), the old Tribunal became the Defence Honours and Awards Appeals Tribunal (the new Tribunal, or the Tribunal). Part 1 of Schedule 1 of the Defence Amendment Act inserted a new Part VIIIIC into the *Defence Act 1903* (the Defence Act), which contained the provisions for the establishment of the new Tribunal, its members and its powers and functions.