



Australian Government

Defence Honours and Awards Appeals Tribunal

Halvorson and the Department of Defence [2015] DHAAT 22 (29 April 2015)

File Number(s) 2014/026

Re **Scott Raymond Halvorson**
 APPLICANT

And **Department of Defence**
 RESPONDENT

Tribunal Mr K. Woods CSC, OAM (Presiding Member)
 Brigadier M. Bornholt AM (Retd)

Hearing Date 12 December 2014

DECISION

On 29 April 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Scott Raymond Halvorson is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Defence Medal to Mr Scott Raymond Halvorson

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1) 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
Commonwealth of Australia Gazette No S48 dated 30 March 2006 Australian Defence Medal Regulations 2006

REASONS FOR DECISION

Introduction

1. The applicant, Mr Scott Raymond Halvorson (Mr Halvorson), 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 Halvorson had lodged an application for the award of the ADM on 21 August 2006. His application was based on his service in the Citizen Military Forces (CMF) from 16 June 1977 to 28 February 1979. The Directorate advised Mr Halvorson that he was not eligible.
2. On 6 October 2012, Mr Halvorson applied a second time to the Directorate concerning his eligibility for the award of the ADM. The Directorate wrote to Mr Halvorson on 19 March 2013 and informed him that he was not eligible for the award of the ADM. In that letter the Directorate explained that Mr Halvorson was not eligible for the award as he did not complete his initial engagement period of three years service. Therefore he did not meet the eligibility criteria for the award of the medal as prescribed in Regulation 4 of the *Australian Defence Medal Regulations 2006* (the ADM Regulations).
3. Mr Halvorson wrote to the Minister for Defence on 8 July 2013, concerning his entitlement to the ADM. As the Government was in caretaker mode at this time, Mr Halvorson's request was again passed to the Directorate for their response. The Directorate examined Mr Halvorson's service record and advised him on 3 October 2013 that he was not eligible for the ADM.
4. Being dissatisfied with the decision of the Directorate, Mr Halvorson lodged his application for review with the Tribunal on 20 March 2014.

Tribunal Jurisdiction

5. There is no dispute that the Tribunal has jurisdiction to review the Directorate's decision in regard to Mr Halvorson's application 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 conduct of the review

6. On 16 April 2014, in accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011* (as amended), the Tribunal wrote to the Secretary of the Department of Defence (Defence) advising Defence of Mr Halvorson's application for review and invited it to make submissions and provide the Tribunal with any material on which it sought to rely. A written submission was received from the Directorate on 10 June 2014.
7. On 21 August 2014, Mr Halvorson was provided with a copy of the Directorate's written submission and he was invited to respond to this and submit any further material he may have in support of his claim for the award of the ADM. Mr Halvorson provided a

written response to the Directorate's submission on 27 August 2014. Mr Halvorson was also invited to give oral evidence (by telephone) to the Tribunal on a date that was suitable to him and the Tribunal panel members.

8. The Tribunal met on 12 December 2014. During its meeting the Tribunal considered the material provided by Mr Halvorson and the Directorate. It also heard oral evidence from Mr Halvorson who agreed to be available, by telephone, that day.

The Australian Defence Medal

9. The ADM was instituted by Her Majesty, Queen Elizabeth the Second by Letters Patent on 8 September 2005, 'for the purpose of according recognition to Australian Defence Force personnel who have served for a minimum of six years since the end of World War II'. The Regulations are set out in the Schedule attached to the Letters Patent. Those Regulations were amended on 20 March 2006¹ when they came into force. As a result of that amendment the minimum period of service became four years. Regulation 4 of the amended Regulations states:

(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) *For subregulation (1), the Chief of the Defence Force or his delegate may determine that a period of the member's qualifying service is efficient service ...*

10. Following an Inquiry by the Defence Honours and Awards Tribunal in 2009² the Chief of the Defence Force (CDF) made a Determination on 8 November 2009 pursuant to Regulation 4(2). The Determination stated that:

¹ Commonwealth of Australia Gazette No S48, 30 March 2006

² Defence Honours and Awards Tribunal *Inquiry into the eligibility criteria for the Australian Defence Medal*, 11 February 2009

where a member or former member was discharged as medically unfit to serve due to a non-compensable injury or disease, and the period of service of that member or former member is less than that prescribed under regulations 4(1)(a) to (c), that lesser period may, subject to the individual circumstances, be considered as being efficient service for the award of a medal to members or former members of the Defence Force who qualify for the award of the medal under section 4 of the regulations.

11. On 31 October 2013 the Acting Chief of the Defence Force, Air Marshal Binskin, authorised an additional determination to the ADM Regulations. The Determination stated that:

‘where a member or former member was discharged and the period of service of the member is less than the prescribed under Regulations 4(1)(a) to (c), that lesser period may be considered as being efficient service for the award if it is found that, during a formal investigation or hearing, the discharge was a result of mistreatment, and that a Service Chief, or his or her representative, makes a recommendation that the Australian Defence Medal be awarded’.

12. The Tribunal notes that the eligibility criteria in clause 4(1) of the ADM Regulations contain a commitment component (i.e. completing the prescribed period of service, namely serving the shorter of four years or the initial enlistment period) and a productivity component (i.e. the service that was rendered was efficient service). Both components must be satisfied.

Defence records of Mr Halvorson’s service

13. Defence records of Mr Halvorson’s service state he enlisted in the CMF on 16 June 1977 for a three year enlistment period. According to Mr Halvorson’s service record he was 18 years of age.

14. On his enlistment in the CMF, Mr Halvorson was posted to 28 Independent Rifle Company, Royal Western Australian Regiment (RWAR). On 11 August 1977 Mr Halvorson was posted to 7 Field Battery. On 22 January 1979 Mr Halvorson was posted back to RWAR. Defence records note that the order discharging Mr Halvorson is dated 28 February 1979. The order states the reason for discharge as being ‘AMR 176 (1)(a) - own request – personal reasons’.

Summary of the Claims of Mr Halvorson

15. In his written submission, Mr Halvorson said:

‘I joined the Australian Army Reserve serving in the Infantry and the 7th Field Battery until I joined the WA Police. I was paraded before the Battery Commander and told I could not be in the Police and the Army. Working Shifts and weekends left no time for the Army. I was instructed that it was Defence Workplace Policy of the time and that I had to resign. I was bullied into resigning early from the Australian Army many years ago by the then Battery Commander. I made a previous application for the Aust Defence Medal which was declined due to a lack of evidence of my claim. I now have

evidence from another CMF member who was also instructed to resign from the Army CMF as he had joined the WA Police. I have included a statement from Mr Traeger corroborating my application. I have enclosed a statement from myself detailing how I was told/instructed by the Battery Commander because it was workplace Policy at the time’.

16. Further in his submission, Mr Halvorson said:

‘At the time of joining the WA Police in April 1978 I was also a member of the Australian Army Reserve and a serving member of the 7th Field Battery at Karrakatta. I enjoyed being in the 7th Field Battery however when it became knowledge at the Battery that I was joining the WA Police I was instructed that I could not be in the Army Reserve as well as the police. The Battery Commander told me that the Army would suffer as I would not have time to attend both services and I therefore had to resign from the Army. I questioned his position and was told it was Defence workplace policy at the time and that I had no choice. He instructed [me] to resign from the Australian Army Reserve which I did. I now have another statement from Mr Treager having also served in the 7th Field Battery and instructed to resign from the Battery as he had joined the WA Police. I am aware that the eligibility has a criteria, however I feel I fall within the that (sic) I did not complete the qualifying period because, ‘I left the service due to a Defence workplace policy of the time’. As a nineteen year old I did what I was instructed by the Battery Commander’.

17. In support of Mr Halvorson’s application, Mr John Treager provided a written statement dated 12 October 2012, in which he stated:

‘In 1973 I enlisted in the Australian Army Citizen Military Forces (CMF) and served in the 7th Field Battery at Karrakatta. My Regimental number being 536124. In 1975 I made an application to join the WA Police and this became common knowledge within the 7th Field Battery. As a result I was advised by the BC (Battery Commander) Major Bird that if I joined the WA Police I would have to resign from the Army CMF as I would not be able to put in the time required by Army. It was a long time ago now, from memory I think the Major’s surname was Bird?? It was the same for the other 7 Field Battery members being; now retired Assistant Commissioner Murray Lampard and another member by the name of Lawrence. We were all instructed to resign because we were joining the WA Police. In 1977 I was accepted into the WA Police and commenced my training at the WA Police Academy. I was then instructed to resign from the Australian Army, 7th Field battery by the Battery Commander, Major Bird as it was Defence workplace policy of the time. I resigned as instructed and rejoined again years later’.

18. In his oral evidence Mr Halvorson reiterated what he had said in his written submission. Mr Halvorson also said that he very much enjoyed his time in the unit and was extremely disappointed that he was forced to leave the CMF. In his written and oral submission Mr Halvorson said he may be able to obtain further evidence to support his appeal from retired Assistant Commissioner Lampard who also served in the same unit. The Tribunal advised Mr Halvorson that it would establish greater credibility if he was

able to obtain a statement from Assistant Commissioner Lampard that corroborated the assertion that he (Lampard) had also been ‘forced’ to resign or was aware of other actual cases where this had occurred. The Tribunal advised Mr Halvorson that it would be willing to wait until 28 February 2015 to allow him enough time to obtain further evidence in support of his assertions. After further extensions to this deadline, Mr Halvorson advised the Tribunal Secretariat on 24 April 2015 that he was not successful in contacting Mr Lampard.

19. The essence of Mr Halvorson’s written and oral submission is that he believes that the Battery Commander was not in favour of having police officers serving in his unit. When it became known that he was joining the Police Force the Battery Commander advised him that due to a Defence workplace policy he could not serve in the Police Force and the CMF at the same time. Mr Halvorson asserts in his submissions that there was no such policy in place and he was forced to resign or in his words ‘bullied’ into his resignation.

Summary of the Claims of Defence

20. In its written submissions, the Directorate reiterated that which it had said in its decision, namely that Mr Halvorson did not complete his initial enlistment period, (which in Mr Halvorson’s case was a period of three years). Defence stated that Mr Halvorson was not discharged as medically unfit and that he was not discharged due to a prevailing discriminatory Defence policy. As a result of Mr Halvorson’s appeal to the Tribunal, his eligibility for the ADM was re-assessed by the Directorate. Through this re-assessment Defence re-affirmed its position that Mr Halvorson is not eligible for the ADM because his service does not meet the eligibility criteria specified under Regulation 4(1) of the *Australian Defence Medal Regulations 2006*.

Tribunal Consideration

21. In conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the ADM. These criteria are found in Regulation 4(1) of the ADM Regulations. Accordingly, in order for Mr Halvorson to be eligible for the award of the ADM it must be established that his period of service met the prescribed minimum period of service (in the case of Mr Halvorson this is three-years), or that the reason for his discharge fell within one of the prescribed exceptions. In Mr Halvorson’s submission and during his oral evidence he stated that he was forced to resign by his Battery Commander because a Defence workplace policy at the time would not allow him to serve in the CMF and the Police Force at the same time. After undertaking research the Tribunal was unable to find any evidence that such a policy existed.

22. There is no dispute that Mr Halvorson’s period of service failed to meet the prescribed minimum period of service. He enlisted on 16 June 1977 and was discharged on 28 February 1979 – a total of 20 months service.

23. Mr Halvorson’s Defence records do not indicate that he was forced to discharge from the CMF. His record is clearly marked as having discharged at his own request, for personal reasons under AMR 176(1)(a) on 28 February 1979. Mr Halvorson’s discharge does not fall within one of the exceptions contained in paragraph 4(1)(d) of the ADM Regulations.

24. Accordingly, the Tribunal cannot take Mr Halvorson's submissions in this regard any further. The Tribunal noted that Mr Halvorson was unable to produce any further corroborating evidence in support of his assertions and in particular, he was unable to produce evidence from Assistant Commissioner Lampard.

25. Mr Halvorson's application for the award of the ADM must be determined on the basis of his period of service in the CMF. As this period of service was not for a period of three years, there can be no finding, other than a finding that his period of service does not meet the eligibility criteria for the award of the ADM. For these reasons, the Tribunal finds that the decision of the Directorate is the correct and preferred decision and should be affirmed. This finding does not in any way diminish the contribution Mr Halvorson made to his country for the period he did serve.

26. Should Mr Halvorson be able to produce further evidence as mentioned in paragraph 24 above, he is encouraged to re-apply to Defence to pursue an amendment to his service record regarding the nature of his discharge.

27. Mr Halvorson stated in his submission that he was 'bullied' by his Battery Commander into resigning from the CMF. He further stated 'I don't want anything done about the bullying' The Tribunal advised Mr Halvorson that, under the determination as mentioned in paragraph 11, he is able to have his 'bullying' claim formally investigated. If Mr Halvorson wishes to pursue this option he will need to make representation to the Chief of Army at:

Chief of Army
Department of Defence
PO Box 7901
Canberra ACT 2610

DECISION

28. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Scott Raymond Halvorson is not eligible for the award of the Australian Defence Medal.