



Australian Government

Defence Honours and Awards Appeals Tribunal

Howard and the Department of Defence [2015] DHAAT 24 (27 May 2015)

File Number(s) 2014/019

Re **Mr John Stewart Howard**
Applicant

And **Department of Defence**
Respondent

Tribunal Air Commodore M. Lax (Retd) (Presiding Member)
Ms Naida Isenberg

Hearing Date 4 March 2015

DECISION

On 27 May 2015 the Tribunal decided to:

- a) **set aside** the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John Stewart Howard is not eligible for the award of the Australian Service Medal 1945-75 with Clasp 'PNG'; and
- b) **substitute** its decision that Mr John Stewart Howard is eligible for the award of the Australian Service Medal 1945-75 with Clasp 'PNG', and that the medal be issued.

CATCHWORDS

DEFENCE AWARD – Australian Service Medal 1945-1975 with Clasp 'PNG'

LEGISLATION

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

Defence Force Regulations 1952 - reg 93C and Schd 3

Australian Service Medal 1945-1975 Letters Patent and Regulations 1995

Australian Service Medal 1945-1975 Regulations 1998

REASONS FOR DECISION

Introduction

1. The applicant, Mr John Stewart Howard (Mr Howard), 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 Australian Service Medal 1945-1975 with Clasp 'PNG' (ASM 1945-75 with Clasp 'PNG') award. Mr Howard first lodged an application for the award on 5 December 1996 that was rejected at local command level. On 28 August 2006, he applied to the Directorate, but he was advised that he was ineligible for the ASM 1945-75 with Clasp 'PNG' by letter on 31 August 2007. Mr Howard then sought a review of this decision in his application to the Tribunal on 17 February 2014.

Tribunal Jurisdiction

2. 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 defence award in response to an application. The Directorate made a decision to refuse to recommend Mr Howard for the ASM 1945-75 with Clasp 'PNG' following his application. Reg 93C of the *Defence Force Regulations 1952* defines a *defence award* as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the ASM 1945-75. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the review

3. In accordance with its *Procedural Rules 2011*, on 12 March 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Howard's application for review and requesting that he provide a report. On 2 May 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Howard's service did not meet the eligibility criteria for the award he sought. On 21 May 2014 the Tribunal forwarded a copy of the report of the Directorate to Mr Howard for comment. On 14 June 2014, Mr Howard provided his comments to the Tribunal. Mr Howard also chose to comment on the report at the hearing.

4. The Tribunal met on 4 March 2015 to scope the review and to hear the case. During its meeting the Tribunal considered the material provided by Mr Howard and the Directorate. At that hearing, the Tribunal heard oral evidence from Mr Howard who appeared in person.

The Australian Service Medal 1945-1975

5. The ASM 1945-75 is an Australian award instituted by Letters Patent on 22 February 1995 'for the purpose of according recognition to members of the Defence Force, and certain other persons, who rendered service in non-warlike military operations'. The Schedule sets out the *Regulations Governing the Award of the*

Australian Service Medal 1945-1975 (the Regulations).¹ Regulation 3 states that the Governor-General, on the recommendation of a Minister may declare a non-warlike operation in which members of the Defence Force were engaged, between 3 September 1945 and 16 September 1975, to be a declared operation. Regulation 4 of the ASM 1945-75 Regulations sets out the conditions for the award of the medal as follows:

Conditions for award of the Medal

4. (1) The Medal may be awarded to:

- (a) a member, or former member, of the Defence Force; or
- (b) a person in a class of persons determined by the Minister for the purposes of these Regulations;

who served in connection with a declared operation.

4. (2) The conditions for the award of the Medal are determined by the Governor-General on the recommendation of a Minister.

4. (3) The Medal may only be awarded to a person who fulfils the conditions for the award of the Medal.

4.(4) An initial award of the Medal to a person is made in the form of the Medal with a clasp denoting the declared operation for which the Medal is being awarded.

4. (5) A subsequent award of the Medal to the person may only be made in the form of an additional clasp to the Medal.

The Australian Service Medal 1945-1975 with Clasp ‘PNG’

6. The Clasp ‘PNG’ to the ASM 1945-75 was introduced by the Australian Government in response to a recommendation of the 1994 Committee of Inquiry into Defence and Defence Related Awards (CIDA). Its purpose was to recognise members of the Australian Defence Force (ADF) who had contributed to the gaining of independence by Papua New Guinea (PNG) in the period from 16 February 1951 to 16 September 1975 when independence was achieved. The original eligibility requirements called for a minimum of 180 days service.² The 180 day requirement was later reduced to 30 days and the commencement date for eligibility was amended to 3 September 1945, but the 16 September 1975 end date remained extant.³

7. A further declaration was made by the Governor-General on 25 May 1998 which revoked regulation 3 and 4(2) respectively and made new regulations which apply in

¹ *Commonwealth of Australia Gazette* No. S122 dated 3 April 1995.

² *Commonwealth of Australia Gazette* No. S337 dated 5 September 1995.

³ *Commonwealth of Australia Gazette* No. S274 dated 18 July 1996.

Mr Howard's case.⁴ The Tribunal noted that the Directorate relied on the latest declaration by the Governor-General⁵, but as this was made after Mr Howard's original application was rejected in 2007, it does not apply in this case.⁶

8. Relevant to this case, the Governor-General has declared under regulation 3 of the ASM 1945-75 Regulations that:

...the Australian Defence Force **activities** in Papua New Guinea, that is to say, the Territory of Papua and the Territory of New Guinea as administered in an administrative union under the name of the Territory of Papua and New Guinea or the name Papua New Guinea and inclusive of all islands forming part of either Territory to a distance of 161 kilometres to seaward from the coast during the period commencing 3 September 1945 and extending to the independence of Papua New Guinea on 16 September 1975, **to be a declared operation** for the purposes of the Regulations.⁷ (Bold text added for emphasis).

9. Further, under Subregulation 4(2) of the Regulations that the conditions for the award of the ASM 1945-75 with Clasp 'PNG' for the declared operation are:

(i) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted to or serving as a member of the Australian element of the declared operation for a period of 30 days or more, or for periods amounting in the aggregate to 30 days or more;

...

(iii) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member for a period of 30 days or more, or for periods amounting in the aggregate to 30 days or more, for official visits, inspections or other occurrences of a temporary nature while assigned for duty with the military contribution in the declared operation;

...

10. For a member to be eligible for the award of the ASM 1945-75 with Clasp 'PNG', the criteria for both the ASM 1945-75 and ASM 1945-75 with Clasp 'PNG' must be met.

Mr Howard's Service Record

11. Defence records of Mr Howard's service show that he enlisted in the Permanent Air Force on 7 March 1972 as an airman recruit. After graduation from basic training, he was posted to No. 5 Squadron at RAAF Fairbairn as an aircraft technician where he maintained Iroquois helicopters. He remained in the unit until posted out on 14 January 1974. While Mr Howard eventually rose to the rank of Warrant Officer and had a long and successful career, it is his time at No. 5 Squadron that applies in this case.

⁴ *Commonwealth of Australia Gazette* No. S350 dated 9 July 1998.

⁵ *Commonwealth of Australia Gazette* No. S74 dated 30 April 2009.

⁶ s.110VB(6) Defence Act 1903.

⁷ *Commonwealth of Australia Gazette* No. S350 dated 9 July 1998.

Mr Howard discharged on 7 March 2001, but joined the RAAF Reserve the next day. On 8 March 2006, he retired.

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

Medal of the Order of Australia;
Australian Service Medal 1945-1975 with Clasp 'SE ASIA';
Defence Force Service Medal with First and Second Clasp; and
Australian Defence Medal.

Mr Howard's Submission

13. In his written submission, Mr Howard stated that he went to PNG on two occasions in 1973, the first between 12 and 24 September and the second from 22 October to 'around the end of November'. He explained that at the time, he was 'a very junior airman' and that the trips to PNG were exciting and unexpected for one so junior. He explained the nature of his duties on the Iroquois, and how a team of six ground crew of which he was a part, was organised in Goroka, and at the forward base of Morehead.

14. Mr Howard also provided a statutory declaration signed by Wing Commander Kenneth Edwin Webb who corroborated Mr Howard's story insofar as that Howard was on Exercise in PNG between 12 and 24 September 1973 and that Howard departed Australia for PNG with Webb on 21 October 1973. Webb stated that 'I am unsure of the precise date of his [Howard's] return to Australia, but estimate he did not return before the return of the first Iroquois on 28 November 73'.

15. At the hearing, Mr Howard was asked about the OPERATION PLASTIC FLAGON return trip. He stated that towards the end of November, he and the other ground crew had prepared an Iroquois for transport back to Australia inside a C-130 Hercules when 'an Army Sioux helicopter crashed in the high mountains'. This he said, necessitated them delaying their return and reassembling the Iroquois for search and rescue and crash investigation duties. As such, their expected departure was delayed 'about a week'.

16. When asked about what happened after his return, Mr Howard stated he took some leave, went home to see his family and then returned to the Squadron before the Christmas stand down.

The Directorate's Submission

17. In its written submission to the Tribunal, the Directorate stated that while it was accepted that Mr Howard had served in PNG, Defence could not ascertain when Mr Howard left PNG so could not confirm that he completed 30 days service as required by the Regulations. Defence agreed that Mr Howard had served on EXERCISE RAZORBACK between 12 and 24 September 1973, but that was for only 12 days. As Mr Howard had not provided evidence that he was in PNG for 30 days or more, he was not considered eligible for the award.

Review by the Directorate

18. After considering the Directorate's submission regarding Mr Howard's case, the Tribunal found the Directorate in its reassessment had used the 30 April 2009 regulations and not those dated 9 July 1998 as is required. The Tribunal took this into consideration and draws this matter to the Directorate's attention for future cases.

OPERATION PLASTIC FLAGON

19. Mr Howard claims he was assigned for duty on OPERATION PLASTIC FLAGON, an Army Field Survey Regiment task to map parts of the Papuan highlands. OPERATION PLASTIC FLAGON (called Exercise PLASTIC FLAGON incorrectly in some records) was officially called Project C1 OPERATION PLASTIC FLAGON. The aim was to survey the New Guinea highlands to produce 1:100,000 scale maps of Western PNG and also of Torres Strait. At the time PNG was a territory administered by Australia and few accurate survey maps existed. As part of its contribution to PNG development, the Australian Army's 4 Field Survey Regiment was sent to ground and aerial map the designated region. This required RAAF support in the form of C-130 transports into the country and Caribou and Iroquois aircraft for transport within the country.

20. According to the Defence submission, OPERATION PLASTIC FLAGON went from 16 July to 12 December 1973. The Tribunal has determined that the RAAF Iroquois involvement was between 22 September and 3 December 1973.⁸

Conclusion

21. The Tribunal carefully considered all the material before it and considered the eligibility criteria for the ASM 1945-75 with Clasp 'PNG'. The Tribunal also examined a number of records not included in the Defence submission to allow full consideration of Mr Howard's assertions. These included his record of service, the No 5, 36 and 37 Squadron Unit History sheets from September to December 1973, Aircraft Accident Records from 1973 and Staff Instruction 14/73 OPERATION PLASTIC FLAGON, HQ PNGDF dated 9 May 1973.

22. There is no dispute about Mr Howard's service record or that he served in No. 5 Squadron RAAF between 23 May 1973 and 14 January 1974 as an aircraft technician. There is also no dispute that he served in PNG on two occasions in 1973 as also shown on his 1973 performance report held in his service records.

23. The Tribunal finds that Mr Howard went to PNG for EXERCISE RAZORBACK between 12 and 24 September 1973, a total of 12 days. Although this was a training exercise, under the Regulations for the ASM 1945-75 with Clasp 'PNG', it can be classified as an 'activity' and therefore a declared operation. As such, this time can count towards the required 30 days aggregate for the award.

⁸ No 5 Squadron Unit History Sheets - Form A.50 for September to December 1973. Available from the Office of Air Force History, Canberra.

24. The Tribunal also finds that OPERATION PLASTIC FLAGON was a declared operation that ran between 16 July 1973 and 12 December 1973.⁹ Furthermore, although the Project Report for OPERATION PLASTIC FLAGON cannot be located, Mr Howard was listed on the Nominal Roll at Annex P which was provided in the Defence submission. The Tribunal finds that Mr Howard was a part of OPERATION PLASTIC FLAGON.

25. Mr Howard claimed at the hearing that his return to Australia was delayed because of an Army helicopter crash. The Tribunal next examined records held at the Directorate of Defence Aviation and Air Force Safety and confirmed an Army Sioux helicopter crashed on 29 November 1973 into Mt Wilhelm at 14,790 ft elevation, 28 nautical miles northwest of Goroka, thus verifying Mr Howard's recollection of such an accident at about the time of his scheduled departure.

26. The Tribunal accepted Mr Howard's assertion that it was common practice to rotate air and ground crews during operational deployments such as OPERATION PLASTIC FLAGON to allow a spread of experience and training opportunity. With regards to the Iroquois detachment, the Tribunal finds that the first rotation was from 22 September to 22 October 1973, a total of 31 days (end date included). Mr Howard was not on this rotation. The second rotation with Mr Howard was planned to run from 21 October to 27 November 1973, a total of 38 days (end date included).¹⁰ However, owing to the Army helicopter crash, the return of the second rotation was delayed such that Mr Howard returned on 3 December 1973, a total of 44 days.

27. The Tribunal next considered when the C-130 aircraft brought the Iroquois aircraft back to Australia. Examination of the Unit History sheets of No. 37 Squadron showed no return flights to PNG in November or December. However, No. 36 Squadron brought one Iroquois with four (unnamed) passengers back to Canberra on 27 November in one Hercules, and two Iroquois with passengers back to Canberra in two Hercules on 3 December 1973. The Tribunal finds on the balance of probabilities that Mr Howard returned to Canberra with an Iroquois and his ground crew party on 3 December 1973.

28. The requirements to be met to be awarded the ASM 1945-75 with Clasp 'PNG' are set out in the 1998 Regulations which specify a qualifying period of 30 days for service activities in PNG between 3 September 1945 and 16 February 1975. For Mr Howard to be eligible for the ASM 1945-75 with Clasp 'PNG', he is required to have 'rendered service as such a member while posted to or serving as a member of the Australian element of the declared operation for a period of 30 days or more, or for periods amounting in aggregate to 30 days or more'. There are no other criteria.

29. The Tribunal finds that Mr Howard spent 12 days on EXERCISE RAZORBACK and a further 44 days on OPERATION PLASTIC FLAGON in PNG in 1973. Therefore, Mr Howard spent a total of 56 days in PNG in the correct time period in accordance with the Regulations for the ASM 1945-75 with Clasp 'PNG'.

⁹ Staff Instruction 14/73 OPERATION PLASTIC FLAGON, HQ PNGDF dated 9 May 1973.

¹⁰ Allowing for a few days handover-takeover of crews would have meant the first rotation would have been in PNG for about 34 days. Thus, both rotations would have had just over 30 days in country.

30. For the reasons stated above, the Tribunal finds that Mr Howard is eligible for the ASM 1945-75 with Clasp 'PNG'.

DECISION

31. The Tribunal has decided to:

- a) **set aside** the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John Stewart Howard is not eligible for the award of the Australian Service Medal 1945-75 with Clasp 'PNG'; and
- b) **substitute** its decision that Mr John Stewart Howard is eligible for the award of the Australian Service Medal 1945-75 with Clasp 'PNG', and the medal be issued.