



Australian Government

Defence Honours and Awards Appeals Tribunal

Robinson and the Department of Defence [2019] DHAAT 07 (7 August 2019)

File Number 2018/021

Re **Mr Wallace Robinson**
Applicant

And **The Department of Defence**
Respondent

Tribunal Mr Graham Mowbray (Presiding Member)
Ms Jane Schwager, AO

Appearances Mr Wallace Robinson
Mrs Caresse Robinson
Assisted by Dr Michelle Atchison, Psychiatrist

Ms Jo Callaghan, Assistant Director Service Assessments,
Directorate of Honours and Awards, Department of Defence
(by telephone)
Mr Brett Mitchell, Assistant Director Stakeholder Engagement,
Directorate of Honours and Awards, Department of Defence
(by telephone)
Colonel Rodney Peterson, Senior Medical Officer Strategic
Clinical Assurance Cell, Joint Health Command, Department of
Defence (by telephone)

Hearing Date 20 March 2019

DECISION

On 7 August 2019 the Tribunal affirmed the decision of Mr Mark Jordan, Assistant Director, Service Assessments and Awards, in the Department of Defence, of 23 January 2018, that Mr Wallace Robinson is not eligible for the award of the Republic of Vietnam Campaign Medal.

CATCHWORDS

FOREIGN AWARD – Republic of Vietnam Campaign Medal – exceptions for service less than the required period – psychological illness – Post Traumatic Stress Disorder – recognised after discharge – discretion

LEGISLATION

Defence Act 1903 – ss 110VB(2), 110VB(6)

Joint General Staff of the Republic of Vietnam Armed Forces Directive, Pertaining to awarding of Campaign Medal HT. 655-430 – dated 1 September 1965

Military Board Instruction 102-4 Medals – The Vietnamese Campaign Medal – dated 23 December 1968

REASONS FOR DECISION

Introduction

1. Mr Wallace Robinson seeks review of the 23 January 2018 decision of Mr Mark Jordan, Assistant Director, Service Assessments and Awards, in the Department of Defence that he is not entitled to the Republic of Vietnam Campaign Medal (RVCM) for his Australian Defence Force service in Vietnam.¹

2. Mr Robinson enlisted in the Australian Regular Army Supplement as a National Serviceman on 14 July 1966 and was discharged on the expiration of his service on 13 July 1968. He then served in the Regular Army Reserve from 14 July 1968 until 13 July 1971. His overseas service in Vietnam with the 3rd Battalion of the Royal Australian Regiment extended from 28 December 1967 until 4 June 1968, a total of 160 days. It is this period of service with which this review is concerned.

3. Mr Robinson has been awarded the following for his service with the Australian Defence Force

- Unit Citation for Gallantry
- Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM'
- Vietnam Medal
- Australian Defence Medal
- Anniversary of National Service 1951-1972 Medal
- Infantry Combat Badge
- Returned from Active Service Badge.

Eligibility Criteria for the Republic of Vietnam Campaign Medal

4. In 1964 the Government of the Republic of Vietnam established a campaign medal known in Australia as the Republic of Vietnam Campaign Medal (RVCM). This was offered to the Australian Government in May 1966 for award to Australian service personnel who had served in Vietnam. The offer was accepted. The RVCM remains a foreign medal and is additional to the Australian campaign medals which have been issued to recognise service in Vietnam.

5. The RVCM is also significantly different from the Australian campaign medal, the Vietnam Medal, in that it required six months service rather than the much shorter period required for eligibility for the Vietnam Medal. This qualifying criterion was set by the Government of the Republic of Vietnam, which ceased to exist in 1975.

¹ This review also encompasses a further assessment of Mr Robinson's eligibility for the RVCM undertaken by Ms Jo Callaghan of Defence on 2 May 2018.

6. The original directive by the Chief of the Joint General Staff of the Republic of Vietnam Armed Forces which related to the RVCM for foreign military forces was dated 1 September 1965.² The instrument by which the criteria were promulgated for Army use was Military Board Instruction 102-4 dated 23 December 1968.³ This set out qualifying conditions as

To qualify for the award a member must be allotted for 'Special Service' in Vietnam as defined by MBI 216-1, and one of the following:

- a. Must serve in Vietnam for a minimum period, either continuous or aggregated, of 181 days from 31 Jul 62 inclusive to a future date,*
- b. Have served in Vietnam for a period of less than 181 days from 31 Jul 62 inclusive to a future date if:*
 - (1) Killed on active service.*
 - (2) Wounded in action (i.e. classified as a Battle Casualty in a NOTICAS signal vide MBI 38-1).*
 - (3) Captured and later released or escaped.*

Agreed Facts

7. At the start of the hearing we sought and obtained the agreement of both Mr Robinson and the representatives of the Department of Defence to a number of agreed facts. These were

- Mr Robinson's service in the Australian Defence Force, both in the Regular Army and the Regular Army Reserve, was as set out in paragraph 2 above
- Mr Robinson's service in Vietnam was from 28 December 1967 until 4 June 1968, a total of 160 days
- Mr Robinson suffers from Post Traumatic Stress Disorder (PTSD)
- Mr Robinson's PTSD was principally caused by his service in Vietnam between December 1967 and June 1968.

The Issues

8. The issues for the Tribunal are

- what are the qualifying criteria for the RVCM
- does Mr Robinson satisfy the 181 day requirement for the RVCM
- does the 'wounded in action' exception to the requirement of 181 days service in Vietnam apply to persons whose injury or illness is not the cause of their early return from Vietnam

² Joint General Staff of the Republic of Vietnam Armed Forces *Directive, Pertaining to awarding of Campaign Medal HT. 655-430* – dated 1 September 1965.

³ Military Board Instruction 102-4 *Medals – the Vietnamese Campaign Medal* – dated 23 December 1968.

- does Mr Robinson satisfy the exception to the 181 day requirement
- does Mr Robinson’s service in Vietnam meet the qualifying criteria for the RVCM
- has the Tribunal any discretion to award the RVCM to Mr Robinson if he does not meet the 181 days of qualifying service or the exceptions set out in the Military Board Instruction.

The Qualifying Criteria for the RVCM

9. The general qualifying criterion for the RVCM for an Australian serviceman as prescribed in paragraph (a) of the Military Board Instruction⁴ set out in paragraph 6 above is a minimum of 181 days of service in Vietnam. However as it is common ground that Mr Robinson was only in Vietnam for a total of 160 days, he would still be eligible for the RVCM if he satisfied one of the three exceptions in paragraph (b) of the Instruction.

10. Mr Robinson was neither killed in action nor captured, so the issue is whether he was ‘wounded in action’ as contemplated by the Instruction.

‘Wounded in Action’ as Cause for Early Return from Vietnam

11. It is clear from the wording and the context of both the Military Board Instruction and the September 1965 Directive issued by the Chief of the Joint General Staff of the Republic of Vietnam Armed Forces that for the ‘wounded in action’ exception to the 181 day requirement to apply, the injury or illness must have occurred and been manifested while in Vietnam. Furthermore it must also have been the cause for the soldier’s evacuation before serving 181 days in Vietnam.

12. There is no doubt that Mr Robinson’s severe PTSD was principally caused by his military employment in Vietnam, especially ‘his involvement in distressing and life threatening combat situations’.⁵ Dr Atchison said ‘Mr Robinson’s condition of Post-Traumatic Stress Disorder was present since his involvement in a number of extraordinary traumatic situations during his service as an infantryman with the Australian Army in Vietnam, including the Battle of Fire Support Base Coral.’⁶

13. Mr Robinson gave evidence at the hearing that he did not raise his PTSD symptoms at the time of his Vietnam service because he ‘owed it to his men to stick with them’. After he returned from Vietnam he ‘managed his symptoms for many years through hard work until they became unbearable’. Dr Atchison noted in her report that ‘his PTSD was present since his service, but he “managed” it by distraction and hard work’.⁷

⁴ Ibid.

⁵ Report of Dr Michelle Atchison, Psychiatrist, to Military Compensation and Rehabilitation Service – dated 4 August 1999.

⁶ Report of Dr Michelle Atchison, Psychiatrist, to the Defence Honours and Awards Appeals Tribunal – dated 22 October 2018.

⁷ Ibid.

14. The Defence Submission to the Tribunal noted Mr Robinson's Army medical records confirmed that he was discharged 'FE' '(fully effective – medical/psychological). His Army medical records do not contain evidence that Mr Robinson experienced medical or psychological issues arising from his Vietnam service.'⁸ It is thus unclear when Mr Robinson's PTSD symptoms first became evident. Nevertheless they were not recognised as PTSD until some years after his return from Vietnam and his discharge from the Army.

15. Defence asserted that Mr Robinson's 'departure from Vietnam appears to have been purely a standard return to Australia to enable his discharge on completion of his National Service obligation'.⁹ This is supported by the AFV Administrative Instruction No. 13/67¹⁰ and the later Military Board Instruction 154-4 of 1968.¹¹ Both of these documents require that a National Serviceman be returned to Australia to arrive in the command from which he was to be discharged not less than four weeks before the due date of discharge.

16. On the evidence therefore we are satisfied that Mr Robinson's return to Australia leaving Vietnam on 4 June 1968 was not due to any illness or injury, but rather due to the normal preparations for discharge from National Service.

No Broad Discretion to Award the RVC

17. It is clear that Mr Robinson's service in Vietnam does not meet either the minimum 181 days service in Vietnam nor the exceptions in the qualifying criteria for the RVC. Is there any scope for him to nonetheless be awarded the medal on discretionary grounds?

18. The evidence before us of Mr Robinson's PTSD is accepted by Defence and is undisputed. In Mr Robinson's words

I have been mentally wounded since returning from Vietnam. It has ruined my life and my family's lives. For the past 20 years I have been admitted to hospital at least twice a year. I have been seeing a psychiatrist on a weekly basis also for the last 20 years. I continually live the combats from my time in Vietnam, ...

...I have proven psychological injuries that are related to my time in Vietnam.¹²

⁸ Department of Defence *Submission to the Defence Honours and Awards Appeals Tribunal* – dated 16 May 2018, paragraph 24.

Australian Defence Forces *Final Medical Board – Wallace Robinson* – dated 17 June 1968, paragraphs 18 and 26.

⁹ Department of Defence Directorate of Honours and Awards *Tribunal Assessment Working Paper* – dated 2 May 2018.

¹⁰ Australian Military Forces *AFV Administrative Instruction No 13/67* – dated 17 March 1967, paragraph 9.

¹¹ Military Board Instruction 154-4 *National Service Discharge Procedures* – dated 31 October 1968, paragraph 16.

¹² Mr W Robinson *Submission to Defence Honours and Awards Appeals Tribunal* – dated 6 March 2018.

19. Mr Robinson asserted in his submissions that his appeal was ‘based on the merits of equity rather than on the existing eligibility criteria for the RVC M Award, which themselves create inequitable conditions for some applicants’.¹³ He stated that the conditions for the award of the RVC M in cases of psychological injury – the injury must be noted on the member’s record at the time, and the member must be evacuated as a result of this injury – ‘contradict the contemporary knowledge about the complexity of psychological injury. Further, these conditions do not take into account deficient system for appropriate diagnosis and treatment of mental health issues in operational areas at the time of my service in Vietnam’.

20. Mr Robinson pointed out that ‘a comprehensive framework for assessment of war-related mental issues did not exist at the time of the Vietnam War. As a result, many veterans were assessed and diagnosed with psychological injuries much later’. Thus ‘the period between the cause of the injury and the time of diagnosis is proven to be much longer in comparison to the diagnosis of physical injuries’. As a consequence the conditions imposed for eligibility for the RVC M for those suffering psychological injury – the injury must be noted on the member’s record at the time, and the member must be evacuated as a result of this injury – ignore ‘the complexity of psychological injuries’ and ‘their serious consequences’, resulting in ‘inequality among applicants’.¹⁴

21. In his oral submissions Mr Robinson reiterated how immensely proud he was to have served in the Army in Vietnam. But as he stated in his written submissions

*I do not like the feeling of having my other medals and not the South Vietnamese Medal as I feel that the other Veterans will be thinking I obviously did not spend much time in Vietnam. I am not asking for this medal for myself ... I wish to be able to hand them down to my Grandson.*¹⁵

22. We accept without question the seriousness of Mr Robinson’s PTSD and that it is a consequence of his service in Vietnam in 1967-1968. His submissions on the time it takes for PTSD to manifest are also clearly correct. As a result there was no possibility that the PTSD could have been recorded on his medical records at the time, nor could he have been evacuated from Vietnam because of it. This may suggest some deficiencies in the criteria set fifty years ago when instituting the RVC M which would be avoided today. However we are not in a position to change those rules.

23. Having regard to these specific circumstances of Mr Robinson’s service and later illness, we have explored whether there may be scope to award the RVC M on broader discretionary grounds. We have for example asked Defence to examine whether service members with less than 181 days who returned to Australia because of the Australian decision to withdraw forces from Vietnam were granted the RVC M. A search of the records confirmed that these personnel were not awarded the RVC M.¹⁶

24. Unfortunately, despite the highly respected contribution of Mr Robinson in Vietnam and the significant adverse consequences to his health in the intervening years, it is not within the power of the Tribunal to award him the RVC M if he does not

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Mr Brett Mitchell email to DHA Policy RE: Wallace Robinson Additional documents – dated 26 April 2019.

meet the criteria set out in the relevant instrument, in this case the Military Board Instruction 102-4 of 1968.

Findings – Mr Robinson is not Entitled to the RVC

25. For the reasons stated above we find that Mr Robinson having served in South Vietnam for 160 days from 28 December 1967 to 4 June 1968, and not satisfying any of the exceptions to the 181 day requirement, is not entitled to the award of the RVC.

26. Furthermore, having failed to meet those criteria, there are no broader discretionary grounds for award of the medal.

27. Nevertheless we acknowledge Mr Robinson's significant commitment and contribution through his service as a National Serviceman in Vietnam.

TRIBUNAL DECISION

28. The Tribunal affirms the decision of Mr Mark Jordan, Assistant Director, Service Assessments and Awards, in the Department of Defence, of 23 January 2018 that Mr Robinson is not eligible for the award of the Republic of Vietnam Campaign Medal.

29. We are grateful for the courtesy and cooperation of Mr and Mrs Robinson at the hearing, and of the three Defence representatives. We are also very appreciative of the assistance provided by Dr Atchison.