



Australian Government

Defence Honours and Awards Appeals Tribunal

Prewett and the Department of Defence [2020] DHAAT 01 (23 January 2020)

File Number 2018/041

Re **Mrs Judith Prewett (nee Stewart)**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Jane Schwager AO (Presiding Member)
Air Vice-Marshal John Quaipe AM (Retd)
Ms Jo Lumb

Hearing Date 28 November 2019

DECISION

On 23 January 2020 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mrs Judith Prewett is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal – neither initial enlistment period nor minimum period of service met – discharge at own request - whether early discharge due to a prevailing discriminatory Defence policy.

LEGISLATION

Defence Act 1903 – Part VIIIC – Sections 110T, 110V, 110VB(2).

Defence Regulation 2016, Section 36.

Commonwealth of Australia Gazette No. S48, *Letters Patent and Regulations for the Australian Defence Medal*, dated 30 March 2006.

REASONS FOR DECISION

Background

1. On 23 November 2016, the Applicant, Mrs Judith Ann Prewett (nee Stewart) applied to the Directorate of Honours and Awards of the Department of Defence (the Directorate) for the Australian Defence Medal (ADM). On 27 September 2018, she was advised in a letter from Mr Mark Jordan of the Directorate that she was not eligible for this award. On 19 September 2018, Mrs Prewett applied to the Tribunal for a review of that decision.¹ Mrs Prewett included with her application a copy of Mr Jordan's letter and a further letter of 2 August 2017 from Ms N. Shingles of the Directorate.

2. On 10 October 2018, the Chair of the Tribunal wrote to the Secretary of the Department of Defence seeking a report concerning the decision to deny Mrs Prewett the ADM. On 15 November 2018, the Directorate, on behalf of the Secretary, provided a report. The Defence report² was forwarded to the Applicant on 21 November 2018 with a request from the Tribunal for comment. Mrs Prewett provided her comments on 18 December 2018.³

3. On 5 July 2019, Mr Jay Kopplemann, Acting Executive Officer of the Tribunal wrote to Ms Petrina Cole, Director of Honours and Awards, Department of Defence, seeking further information and examples of where the ADM has been awarded under the exception set out in Regulation 4(1)(d)(iii) of the *Australian Defence Medal Regulations 2006* (the ADM Regulations) and the nature of the 'prevailing discriminatory Defence policy' that was involved in each case.⁴

4. On 26 July 2019, Ms Cole provided information regarding examples of where the ADM has been awarded under the Regulation 4(1)(d)(iii) exception provision.⁵ The Tribunal forwarded that information to Mrs Prewett who provided her comments on Ms Cole's letter on 27 August 2019.⁶

5. The Tribunal then undertook a merits review of the Applicant's case, applying the eligibility criteria extant at the date of the decision under review (paragraph 7 below refers).⁷

Eligibility Criteria for the Australian Defence Medal

6. The ADM was instituted 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.*

¹ Application for review of decision, Mrs Judith Prewett, dated 19 September 2018.

² Defence Report enclosed in the letter from the Acting Director of Honours and Awards of 15 November 2018 DH&A/OUT/ 2018/ 0089.

³ Letter from Mrs Prewett in response to Defence Report, 18 December 2018.

⁴ Letter, DHAAT/OUT/2019/161, Mr Kopplemann to Ms Cole, 5 July 2019. (f184)

⁵ Letter, DH&A/OUT/2019/0037, Ms Cole to Mr Kopplemann.

⁶ Letter, Mrs Prewett in response to Ms Cole's letter, 27 August 2019.

⁷ *Defence Act 1903*: s 110VB(6).

7. The ADM Regulations are set out in the Schedule attached to the Letters Patent. Those Regulations were amended on 20 March 2006.⁸ As a result of the amendment, the minimum period of service for award eligibility (with limited exceptions) became four years. The relevant sections of the amended ADM Regulations state:

- 4 (1) *The Medal may be awarded to a ... 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*
 - (b) *...*
 - (c) *...*
 - (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) *...;*
 - (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 or her delegate may determine that a period of the member's qualifying service is efficient service.*

Mrs Prewett's Service

8. Ms Judith Ann Stewart, as she was then named, enlisted in the Women's Royal Australian Navy Service (WRANS) on 6 November 1972 for a four-year engagement period. On 3 February 1976, she was approved to re-engage in the WRANS for one year, from 6 November 1976.⁹

9. Following her basic training, Ms Stewart was trained in radio and special communications.¹⁰

10. On 28 June 1974, while posted to the shore establishment HMAS *Coonawarra*, Ms Stewart submitted an application to remain in the WRANS following her impending marriage to Mr Maxwell Prewett, who also served in the RAN as a radio and communications specialist.¹¹ Her request was approved on 22 July 1974¹² and on 15 August 1974, Mr and Mrs Prewett were married.¹³

11. On 4 September 1975, while posted to the shore establishment HMAS *Harman*, Mrs Prewett notified her Divisional Officer of her pregnancy. On 27 October 1975,

⁸Commonwealth of Australia Gazette No. S48, *Australian Defence Medal Regulations*, 30 March 2006.

⁹ Minute, 1/113502, Department of Defence Navy Office, 3 February 1976.

¹⁰ Naval Personnel Electronic Management System Record, W113502, SWRROS Judith Ann Prewett..

¹¹ WRANS Application to Remain in Service After Marriage, 28 June 1974.

¹² Signal, DEFNAV Canberra to HMAS *Coonawarra*, 22 July 1974.

¹³ WRANS Application to Remain in Service After Marriage, 28 June 1974.

Mrs Prewett commenced maternity leave followed by an approved period of leave without pay which commenced on 3 March 1976.¹⁴

12. On 13 May 1976, Mrs Prewett applied to leave the WRANS by means of a 'Free' discharge, which was approved on 8 June 1976.¹⁵

13. Mrs Prewett served for a period of three years, three months and 25 days.¹⁶

14. Mrs Prewett has not been issued any awards for her naval service.¹⁷

15. Mr Prewett was notified of a posting to the river class destroyer escort HMAS *Swan* in Sydney on 31 October 1976. He commenced this posting on the 13 December 1976, seven months after Mrs Prewett requested her WRANS discharge.¹⁸

16. On 18 June 1985, Mrs Prewett wrote to Navy Office regarding her eligibility to enlist as an inactive reservist. On 2 July 1985, the Director of Naval Reserves and Cadets advised Mrs Prewett she was unable to join the Royal Australian Fleet Reserve as she had been discharged for more than five years. Mrs Prewett was further advised that while she was able to apply for direct entry in the Royal Australian Navy Reserves (the active component of the Reserve) instead, her employment would not be possible as there were no Reserve Port Divisions in her location.¹⁹

Applicant's evidence

17. In her application to the Tribunal, Mrs Prewett contended that Clause 4(1)(d)(iii) of the ADM Regulations is applicable to her case. She elaborated that Navy policy at the time of her discharge "*failed to take into account family responsibilities that had to be met when both the mother and father served in the ADF, ultimately forcing me to make a decision to discharge, and preventing me from meeting the qualifying service period of four years for award of the Australian Defence Medal*".²⁰

18. Mrs Prewett further stated that her request for 'free' discharge in 1976 was the only option available to her because her husband was posted to a ship based in Sydney and that the decision to accompany him was made in the best interests of her young family. Mrs Prewett was the primary carer for her child and no childcare was available to her in either Sydney (Mr Prewett's gaining location) or Canberra (Mr Prewett's losing location). Mrs Prewett sought a transfer to Sydney in order to accompany her husband and remain an active member of the WRANS, but no billets were available. She stated that the absence of an employment option and her obligation due to family circumstances to accompany her husband forced her discharge request. Mrs Prewett's intention had been to serve her term of enlistment and beyond. She asserts that her

¹⁴ Signal, HMAS *Harman* to DEFNAV Canberra, 28 October 1975.

¹⁵ Signal, DEFNAV Canberra to HMAS *Harman*, 8 June 1976.

¹⁶ Defence Report, DH&A OUT/2018/0089, 15 November 2018.

¹⁷ Ibid. (f 23)

¹⁸ Naval Personnel Electronic Management System Record, Mr Maxwell Prewett, as advised in Defence Report dated 15 November 2018.

¹⁹ Letter, DNRC 618/85, Director of Naval Reserves and Cadets to Mrs Prewett, dated 2 July 1965.

²⁰ Application for Review of Decision – Mrs J A Prewett.

forced decision to discharge was unfair. She believes she suffered from her circumstances in a similar manner to other former female members of the ADF who were obliged to leave the Service because of marriage or pregnancy.²¹

19. Mrs Prewett stated that following the passage of the *Sex Discrimination Act 1984*, the *Sex Discrimination Amendment Act 1995* created special measures to redress past inequities so that women who had been discriminated against in the past could have special measures implemented to enable them to be treated equally. She argued that the decision not to award her the ADM due to the qualifying period requirement not being met, should be reviewed with regard to discrimination.²²

20. Mrs Prewett also stated that, as a result of measures to attract more females and reduce inequality, the ADF has reduced initial enlistment periods to two years for some female groups. Those females who serve under that provision have an entitlement to the ADM on completion of this reduced initial enlistment period. She queries whether it is equitable for someone who has completed a far greater period of service, and was prevented from '*completing her initial enlistment period due to a prevailing Defence policy*' to be excluded from receiving the ADM.²³

21. Mrs Prewett is active in female veterans' associations and is a delegate with the Council of Ex Servicewomen, Queensland. She has stated that the lack of medallic recognition of her service leads to personal embarrassment, especially when other female veterans with less ADF service than herself proudly wear their medals.²⁴

Respondent submission

22. In summary, Defence contended that the eligibility criteria set out in the ADM Regulations are not met in Ms Prewett's case. Defence submitted that no evidence could be located to confirm that Mrs Prewett completed four years' efficient qualifying service after 3 September 1945 and that no evidence could be located to indicate that she was discharged after less than four years efficient service, as a consequence of being medically unfit due to a compensable impairment or due to a discriminatory Defence policy.²⁵

23. Defence also affirmed its view that Mrs Prewett did not discharge under any of the exceptions set out in paragraph 4(1) of the ADM Regulations.

24. Defence further submitted that the non-availability of a billet in a posting locality, in Mrs Prewett's case to accompany her serving spouse to Sydney, cannot be considered to be discriminatory for the purposes of the ADM Regulations.²⁶

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Defence submission dated 15 November 2018.

Mrs Prewett's Response to the Defence Submission

25. From the official records it appears that Mrs Prewett applied for discharge well before her husband was posted to Sydney. In her response to the Defence submission Mrs Prewett specifically addresses this issue. Mrs Prewett stated that her husband was notified of his posting to HMAS *Swan* in Sydney on 31 October and commenced his posting on 13 December 1976, some seven months after Mrs Prewett requested discharge. Mrs Prewett does not dispute the timing of the formal notification of her husband's posting to HMAS *Swan*, but advises that planning for this posting actually commenced in early 1976 when her husband first requested to change his specialisation from Radio Operator (Special) to the newly created Radio Operator (Electronic Warfare). Mr Prewett requested this career change to improve his prospects for career progression and promotion. Mrs Prewett noted that the formal notification of her husband's posting took some months to appear, although she claims that her husband had been assured much earlier that his posting was approved.²⁷ Mrs Prewett had acted on this early assurance of a posting to Sydney to resolve her family childcare dilemma.

26. Mrs Prewett stated that in order to simplify her domestic arrangements, she opted to apply for discharge in May 1976 having been told by her Divisional Officer that there were no billets available in Sydney. She went on to state that this was the only option available to her and was the reason why she was unable to complete her initial enlistment period.²⁸

27. Following the request from the Tribunal, the Directorate advised by letter that Defence routinely awarded the ADM under Regulation 4 (1)(d)(iii) where discharge had been associated with discrimination on the grounds of marital or relationship status, pregnancy or potential pregnancy, or sexual orientation.²⁹

28. The letter also clarified for the Tribunal that although there is an existing CDF Determination in regard to discriminatory Defence policies, the prevailing discriminatory Defence policies are not properly specified. The letter advised that Defence is currently amending the ADM instruments to specify the discriminatory Defence policies.

29. Ms Cole's letter also referred to advice from Defence Legal regarding the *Sex Discrimination Act 1984*, i.e. that as Mrs Prewett's discharge occurred prior to the introduction of that Act the provisions contained therein cannot apply to the applicant's case.

30. Mrs Prewett provided a written response to this advice in which she emphasised to the Tribunal that following the advice of her Divisional Officer she had elected to apply for early discharge which she viewed as being her only option. She applied for discharge in May 1976 whilst on maternity/leave without pay.³⁰

31. Mrs Prewett acknowledged that she was fortunate to have been able to take advantage of the huge changes introduced in the 1970s and 80s which enabled members of the WRANS to stay after marriage and pregnancy and provided maternity leave. She

²⁷ Response to Review of Recognition for Award of ADM from Mrs Prewett 18 December 2018.

²⁸ Ibid.

²⁹ Letter from Ms Petrina Cole, Director of Honours and Awards to Mr Jay Kopplemann.

³⁰ Response from Mrs Prewett to letter from Ms Petrina Cole 27 August 2019.

also stated that had the ADM been in existence at the time of her decision to apply for discharge and, if they had known that her husband's transfer to Sydney would take so long to be actioned - i.e. nearly a full year, her timing and decision would definitely have been different.

32. In her response to the Directorate's letter, Mrs Prewett also cited a number of examples of ex-members of the WRANS with whom she had spoken, who had been discharged on the grounds of marriage and who had subsequently have been awarded an ADM. Although not identified by name, she presented these examples as evidence of an inconsistency in the application of Regulation 4.

The Hearing

33. Mrs Prewett, Mr Prewett, and Mrs Prewett's advocate Ms Pamela Gadd attended the hearing by conference telephone.

34. Mrs Prewett advised the Tribunal that both she and her husband were aware of Mr Prewett's planned transfer at the time that she discharged, but nothing was documented.

35. Mrs Prewett stated that she had commenced exploring her options as early as April 1976. Although the ADM did not exist at the time of her discharge, the Tribunal asked whether additional leave without pay may have given her the requisite period of service. In response to the Tribunal's question, Mrs Prewett said that she was advised that additional leave without pay was not a viable option because the nature of her husband's employment meant that regardless of how much leave she was granted he could not be posted to a location where she could be employed. She stated that her inability to later join as an inactive reservist was a further disappointment as she had not been made aware of the five-year limitation that precluded that option. Mrs Prewett acknowledged that whilst this was disappointing, she did not see it as a discriminatory policy.

36. Mrs Prewett's contention is that the 'discriminatory policy' that forced her to apply for discharge was the absence of employment options for her specialist trade outside the shore establishments HMAS *Coonawarra* in Darwin and HMAS *Harman* in Canberra. She acknowledged that this circumstance arose because of her specialist role in the Navy and the absence of any employment opportunities for her in locations other than Darwin or Canberra. Mrs Prewett acknowledged that her chain of command had sought to identify an available 'out-of-category' billet for her in Sydney. When pressed, Mrs Prewett said she felt Navy could have done more to secure her an out-of-category role in Sydney that would have enabled her continued service.

37. Mrs Gadd advocated that the absence of clarity, the delays and the informal nature of the decisions that led up to the posting of Mr Prewett significantly disadvantaged Mrs Prewett's ability to make decisions regarding her own situation. In particular, this precipitated Mrs Prewett's requests for leave without pay following her maternity leave. Mrs Gadd stated that Mrs Prewett had tried every avenue possible to remain in the WRANS. She stated that had Mrs Prewett been successful in her application to join the WRAN Reserve she would most likely have completed the necessary service for the award. Mrs Gadd felt that the Navy at the time could have

done more to support Mrs Prewett's preference to remain in the Service, particularly given that her specialist field was very much in development at the time.

38. Mrs Gadd also emphasised that there was indirect discrimination at that time, evidenced by an absence of 'family friendly' policies. When asked to elaborate by the Tribunal, she stated that the prevailing attitude assumed that female staff would give up their careers in support of their husbands. She acknowledged that whilst Mrs Prewett was directly supported, prevailing conditions did not support both careers where a serving member was married to another serving member. She stated that females had to absorb the impact and that Mrs Prewett was caught up in this environment of indirect discrimination.

39. When questioned by the Tribunal, Mr Prewett acknowledged that he volunteered to transfer to the Electronic Warfare category as this was regarded as a career enhancing opportunity. Both he and Mrs Prewett were aware that his transfer would inevitably result in his relocation to Sydney. Mr Prewett stated that when considering his options, the basic message he was given was to consider 'your promotion or your wife!' Mr Prewett felt that his transfer to the Electronic Warfare career stream was a choice that he had to make because Navy was seeking his core skills and experience in the area of Electronic Warfare and that Navy had trained and steered him in this direction. He nevertheless acknowledged that he had volunteered for the transfer and had not been compelled. He knew at the time that he would have to relocate to Sydney and would also go to sea.

40. Defence were asked to discuss the examples cited by Mrs Prewett regarding colleagues who had been awarded the ADM with less than four years' service. Defence responded that without names and service records they could not review specific cases. Defence offered the view that a 'prevailing discriminatory policy' for the purposes of the ADM Regulations could often be identified in instances of mandatory discharge. For example, prior to the decision that enabled women to continue their Navy service after marriage, mandatory discharge had often occurred as a consequence of marriage.

41. Mrs Gadd reminded the Tribunal how emotive an ADM is to people such as Mrs Prewett who has done so much for WRAN veterans. She concluded that Mrs Prewett deserves acknowledgement and recognition, not just a thank you.

Tribunal Consideration

42. The ADM Regulations (paragraph 7 above refers) set out the requirements to be met in order to be eligible for that award. Pursuant to Regulations 4(1)(a), (b) and (c) the Applicant needed to have given qualifying service that is efficient service in the Australian Defence Force by completing her initial enlistment period, or alternatively, have served for at least four years. It is not disputed that Mrs Prewett did not complete her initial enlistment period and nor did she serve for a period that totalled four years.

43. The Tribunal accepts Mrs Prewett's account of the difficulties that she faced at the time of her discharge in terms of reconciling her family obligations with her Naval career as a result of her husband's relocation to Sydney. The Tribunal also acknowledges that the reality of service life can be especially difficult for serving members whose partner is a fellow serving member. The Tribunal accepts that it was a combination of these factors that prompted Mrs Prewett's request for early discharge.

44. However, Regulation 4(1)(d) of the ADM Regulations clearly sets out only three - very limited - exceptions to the requirement that a person must serve their initial enlistment period or a period of four years in order to qualify for the ADM. In this case, the issue the Tribunal must decide is whether Mrs Prewett's discharge was due to a '*prevailing discriminatory Defence policy*' for the purposes of Regulation 4(1)(d)(iii).

45. The Tribunal notes that Mr Prewett had volunteered by application to transfer to the emerging Electronic Warfare specialisation in Navy. Further, Mr and Mrs Prewett were both aware that this application would likely be successful and would necessitate Mr Prewett's relocation to Sydney. The Tribunal acknowledges Mrs Prewett's prompt action in seeking her own transfer to Sydney, noting that as a Radio Operator Special, Mrs Prewett was aware that there were no shore-based employment options within her specialisation, outside of Darwin or Canberra. In this context, the Tribunal acknowledges that as a direct result of the non-availability of a billet in Sydney, Mrs Prewett was faced with a difficult set of choices that she found to be inconsistent with her continued service. In this regard, Mrs Prewett's circumstances were regrettable.

46. The Tribunal accepts that in general, shore-based employment in the Sydney area was limited and that Navy would have found it difficult to facilitate Mrs Prewett's request. Although Mrs Prewett's chain of command attempted to locate an out-of-category billet for her, the Tribunal accepts that the Navy found this to be unachievable. The Tribunal considered that while Mrs Prewett felt that she had no alternative but to apply for discharge, the Navy had actually reacted positively towards Mr Prewett's application to transfer to an Electronic Warfare specialisation and had supported Mrs Prewett in granting leave and exploring the possibility of employment outside of her own specialisation.

47. The Tribunal was unable to place any weight on the examples cited by Mrs Prewett regarding ex-Navy colleagues who may have been awarded the ADM having served a lesser period of service.

48. The Tribunal also accepts that Mrs Prewett's discharge occurred prior to the *Sex Discrimination Act of 1984* and that the provisions of this legislation have no bearing on the matter.

49. Having considered all the material before it, for the reasons given above, the Tribunal was unable to find that Mrs Prewett's discharge was due to a '*prevailing discriminatory Defence policy*' for the purposes of Regulation 4(1)(d)(iii).

50. In summary, the Tribunal was not satisfied that Mrs Prewett met the Regulatory eligibility criteria for the ADM nor that her circumstances fell within any of the Regulatory exceptions for ADM eligibility.

51. The Tribunal takes this opportunity to thank Mrs Prewett for her service and further commends her for the constructive manner in which she has engaged in the review process, as well as her ongoing advocacy efforts in support of the broader veteran community.

DECISION

52. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mrs Judith Anne Prewett is not eligible for the award of the Australian Defence Medal.