



## Australian Government

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### Defence Honours and Awards Appeals Tribunal

#### **Kane and the Department of Defence [2020] DHAAT 17 (17 September 2020)**

**File Number(s)** 2020/004

**Re** **Mr John Andrew Kane**  
Applicant

**And** **Department of Defence**  
Respondent

**Tribunal** Major General S. Wilkie AO (Retd) (Presiding Member)  
Mr D. Ashley AM

**Hearing Date** 4 June 2020

#### **DECISION**

On 17 September 2020, the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John Andrew Kane is not eligible for the award of the Australian Defence Medal.

#### **CATCHWORDS**

DEFENCE AWARD – Australian Defence Medal – enlistment period – reasons for cessation – limited exceptions to mandatory period of efficient service – no discretion.

#### **LEGISLATION**

*Defence Act 1903* – ss 110T, 110V(1), 110VB(2).

*Defence Regulation 2016* – s 36.

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

*Commonwealth Notices Gazette C2020G000629, Australian Defence Medal Amendments 2020*, dated 5 August 2020.

## REASONS FOR DECISION

### Background

1. The Applicant, Mr John Andrew Kane, seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) dated 6 January 2020 that he is not eligible for the award of the Australian Defence Medal (ADM).
2. Pursuant to s.110VB of the *Defence Act 1903* the Applicant sought review of that decision in his application to the Tribunal dated 26 January 2020. The Tribunal determined that it had jurisdiction to consider with the application for review.

### Eligibility criteria for the Australian Defence Medal

3. 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.* The *Australian Defence Medal Regulations 2006* (the Regulations) are set out in the Schedule attached to the Letters Patent and were amended on 20 March 2006, notably to reduce the period of qualifying service to four years. Regulation 4 of those amended Regulations provides:

(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 or her delegate may determine that a period of the member's qualifying service is efficient service.<sup>1</sup>*

4. On 13 July 2020, the Regulations were further amended to allow award of the medal to a member whose service was less than four years, where the discharge or termination of the member was on the grounds of being medically unfit (not limited to

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<sup>1</sup> *Commonwealth of Australia Gazette No. S48, Australian Defence Medal Regulations 2006, dated 30 March 2006.*

compensable impairment), or where the member ceased service and mistreatment by a member of the Defence Force or an employee in the Department of Defence was a significant contributing factor.<sup>2</sup>

### **Mr Kane's service**

5. There was no dispute that, on 24 February 1981, Mr Kane enlisted in the Australian Army Reserve (ARES) at the 51st Independent Rifle Company Royal Queensland Regiment in Cairns, Queensland, for an enlistment period of three years and a requirement to serve a minimum of 26 days per enlistment year. On 16 September 1981, Mr Kane discharged at his own request, having served for six months and 24 days.

### **Mr Kane's submissions**

6. In his application for review, Mr Kane explained that his decision to discharge from service was a result of grave personal family circumstances. He wrote that his decision to prematurely depart the ARES was predicated on the need to provide care and assistance to his wife who was suffering from bowel cancer. He wrote that he was forced to leave his employment and the ARES to take care of his wife, who sadly passed away.

7. On 4 April 2020, in response to the report provided by Defence in respect of the decision under review, Mr Kane further advised via telephone that with his wife dying he was unable to see how he could continue his ARES service. He moved with his children to his mother's home and after a period of hospitalisation, he moved away from Cairns.

8. Mr Kane concluded his comments by stating that he thought he was entitled to the ADM, and that it was not his fault that his wife had passed away. He had enjoyed his ARES service and would have continued to serve if he could have.

### **Hearing**

9. A hearing was held on 4 June 2020 at which Mr Kane appeared by conference telephone from Ingham, Queensland. The Directorate was represented by Ms Jo Callaghan, assisted by Ms Alicia Cox.

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<sup>2</sup> *Commonwealth Notices Gazette C2020G000629, Australian Defence Medal Amendments 2020*, dated 5 August 2020.

10. At the hearing, Mr Kane repeated his earlier comments and gave evidence that he discharged himself from the Army during his initial training and that he had experienced a breakdown as a result of his wife's circumstances.

11. The Tribunal took Mr Kane through each of the eligibility criteria and the exemptions to those criteria. Mr Kane agreed that he did not meet any of the criteria and that none of the exemptions applied to him.

12. Defence's representatives acknowledged Mr Kane's service but reiterated that Defence had no power to make the award of the ADM unless the member had met the eligibility criteria as set out in the Regulations.

### **Tribunal consideration**

13. The Regulations set out the requirements to be met in order to be eligible for the ADM. Pursuant to Reg 4(1)(a), (b) and (c) the Applicant needed to have given qualifying service that is effective service in the Australian Defence Force by completing his initial enlistment period, or alternatively, have served for at least four years. Mr Kane did not serve for his initial enlistment period and nor did he serve for a period that totaled four years.

14. The Tribunal accepts Mr Kane's difficult circumstances: his wife was gravely ill and as the father of two children he was the primary caregiver. It is understandable that he was unable to continue in the ARES. Mr Kane clearly enjoyed his time in the ARES, and was a good soldier. The Tribunal accepts that, had it not been for his personal circumstances it is likely he would have continued with the ARES.

15. At the time of the making of the reviewable decision, Regulation 4(1)(d) clearly set out only three defined 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. Unfortunately for Mr Kane, none of those exceptions apply to his circumstances. As the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision it has no discretion to waive the requirement to have served an initial enlistment period or a period of four years, despite the reasons given by Mr Kane for his decision to discharge prior to the completion of his initial enlistment period.

16. While the Tribunal is bound by the above eligibility criteria, the Tribunal considered the recent amendments to the Regulations, and concluded that the revised exceptions to the requirement to serve an enlistment or appointment period, or a period of four years, do not apply to Mr Kane's circumstances.

17. The Tribunal acknowledges the courtesy and cooperation of Defence.

18. The Tribunal acknowledges Mr Kane's commitment to Australia through his service in the Australian Army Reserve.

## **DECISION**

19. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr John Andrew Kane is not eligible for the award of the Australian Defence Medal.