



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Edgerton and the Department of Defence [2020] DHAAT 17 (22 October 2020)**

**File Number** 2020/007

**Re** **Mr Graeme Neville William Edgerton**  
Applicant

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

**Tribunal** Major General Simone Wilkie AO (Retd) (Presiding Member)  
Mr David Ashley AM

**Hearing Date** 15 September 2020

#### **DECISION**

On 22 October 2020 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence of 26 February 2020 to not recommend Mr Graeme Edgerton for the award of the Australian Defence Medal.

#### **CATCHWORDS**

*DEFENCE AWARD – Australian Defence Medal – retrospective consideration to be treated as medically unfit – non compensable impairment*

#### **LEGISLATION**

*Defence Act 1903 – Part V111C – Sections 110T, 110VB(2), 110VB(6).*

*Defence Regulation 2016 – Sections 26, 36.*

*Australian Defence Medal Regulations 2006.*

*Australian Defence Medal Regulations 2006, CDF Instrument of Delegation, dated 23 September 2018.*

*Australian Defence Medal Regulations 2006, Determination by CDF, Minimum Annual Periods of Qualifying Service for the Australian Defence Medal, dated 6 February 2013.*

*Australian Defence Medal Regulations 2006, CDF Determination Discharge as Medically Unfit due to Non-Compensable Injury or Disease dated 8 November 2009.*

*Australian Defence Medal Regulations, Amendment Regulations, dated 5 August 2020.*

## REASONS FOR DECISION

### Introduction

1. The Applicant, Mr Graeme Edgerton, seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) dated 26 February 2020 that he is not eligible for the award of the Australian Defence Medal (ADM).

2. That decision stated:

*There is no evidence to show that you completed your initial enlistment period of three years, or served for periods that totalled not less than four years.*

*Additionally, there is no evidence to show that the reason for your discharge was as a result of being medically unfit due to a compensable impairment or due to a prevailing discriminatory Defence policy.*

3. Pursuant to s.110VB of the *Defence Act 1903*, Mr Edgerton sought review of that decision in his application to the Tribunal, dated 6 March 2020. The Tribunal determined that it had jurisdiction to consider the application for review.

### The Australian Defence Medal

4. 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.*

5. The *Australian Defence Medal Regulations 2006* (the Regulations) are set out in the Schedule attached to the Letters Patent. Those Regulations were amended on 20 March 2006, notably to reduce the period of qualifying service to four years. Regulation 4 of the amended Regulations, extant at the time of the making of the reviewable decision, 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 sub regulation (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>

6. On 13 July 2020, the Regulations were further amended to allow the 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 a compensable impairment), or where the member ceased service and mistreatment by a member of the Defence Force or an employee of the Department of Defence was a significant contributing factor.<sup>2</sup>

### **ARES service and qualification for the ADM**

7. Further eligibility criteria for the ADM, contained in a Determination by the Chief of the Defence Force dated 6 February 2013 and made pursuant to Regulation 4(2) states:

<b>Service Category</b>	<b>Minimum Qualifying Period</b>	<b>Effective Dates</b>	<b>Comments</b>
<b>Australian Army</b>			
Army Reserve	26 days, including such periods of continuous training and home training as directed by the proper military authority	Until 30 June 1993	
	14 days	From 1 July 1993 to 20 April 2000	
Special conditions units	26 days continuous service	Until 30 June 1993	From 1 July 1993 as for Army Reserve
All members	20 days	From 20 April 2000	

8. Similar periods were set out in earlier determinations by the Chief of the Defence Force.

### **Mr Edgerton's service**

9. Mr Edgerton enlisted with the Australian Army Reserves CMF (ARES) on 2 February 1982 for a period of three years and was discharged on 22 June 1983. Mr Edgerton served in the Australian Army for one year, four months and 21 days.

10. Mr Edgerton has been issued no awards for his service.

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

<sup>2</sup> *Australian Defence Medal Regulations 2006*, Amendment Regulations, Commonwealth Notices Gazette, 5 August 2020.

## Summary of the Hearing

11. A hearing was conducted on 15 September 2020 at which Mr Edgerton appeared by telephone. The Directorate was represented by Ms Jo Callaghan and Ms Alison Peisker.

12. In his opening statement, Mr Edgerton explained that he suffered a back injury in his civilian employment and not while he was on duty. The injury resulted in him being admitted to hospital and afterwards being placed on sick benefits. This injury had affected his ability to parade.

13. Mr Edgerton stated that his warrant officer yelled at him and that “*WO told me I could have a dishonourable discharge or a medical one – and that it would be medical if I signed a form stating that I wanted to leave*”.

14. Mr Edgerton spent some time speaking of his experience in the Army and made a positive statement that the Army had ‘*changed (his) life around*’. Mr Edgerton strongly made the points that he was dedicated to the Army and ‘*stood by (his) oath*’ and that he would like his Army Reserve service recognised through a service medal.

15. Mr Edgerton made clear to the Tribunal that he believed that he ‘*got a medical discharge*’.

16. The Tribunal took Mr Edgerton to the Regulations and in turn asked him if he believed that he met any of the criteria or the exceptions as set out in those Regulations. He agreed that he did not meet the criteria or the exceptions and in relation to Regulation 4(1)(d)(iii) *the discharge of the member as medically unfit due a compensable impairment*, Mr Edgerton confirmed that his injury was a non-compensable one.

17. The Tribunal asked Mr Edgerton a number of questions in order to check the accuracy of his service records as provided by the Directorate. The Tribunal observed that Mr Edgerton’s service record aligns broadly with his memory, although no application for discharge could be located.

18. The Tribunal took Mr Edgerton to the Defence Report which states ‘*alternatively, Mr Edgerton may consider submitting an ‘Application for retrospective consideration to be treated as medically unfit’ pursuant to Section 26 of the Defence Regulation 2016*’.<sup>3</sup> The Tribunal asked Mr Edgerton whether, if the Tribunal did not find for him, he would exercise that option. He replied that he would, but wanted the Tribunal to consider his application first.

## The Defence Submission

19. While it acknowledged Mr Edgerton’s service, the Directorate submitted that it was strictly bound by the Regulations and as such it was unable to recommend him for the award of the ADM. In response to Mr Edgerton’s opening statement the Directorate advised Mr Edgerton that he could, as a means of recognition, apply for the ‘Veterans’ Lapel Pin’.

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<sup>3</sup> Letter, DHA&A/OUT/2020/026/BN14429621, dated April 2020.

20. The Tribunal asked the Directorate if Mr Edgerton would have had to have been required to complete and sign an application for discharge ‘at own request’ before such a discharge could be actioned. The Directorate replied he would have had to have done so. When asked for the evidence in its report that that had actually occurred, the Directorate conceded that the only evidence to such effect was on a Personal Occurrence Report, which stated that Mr Edgerton had discharged at his own request, effective from 22 June 1983, and that he had been kit cleared, with his last parade being 29 March 1983.<sup>4</sup>

21. The Tribunal asked the Directorate whether Mr Edgerton’s unit would have had the authority to discharge him in-absentia, or involuntary, given that his last parade was on 27 March 1983 but he was actually discharged several months later on 22 June 1983. The Directorate replied that it would not.

22. The Tribunal asked the Directorate if the circumstances of Mr Edgerton’s discharge, in his view an injury while not on duty, would meet the criteria to be deemed ‘medically unfit’ due to a non-compensable injury? The Directorate took the question on notice. On 24 September 2020, the Directorate responded by stating that it would reconsider his application for the ADM, should he successfully apply ‘to be retrospectively treated as medically unfit’.<sup>5</sup> Mr Edgerton provided responses on 29 September, and 12 and 13 October 2020. His response of 12 October 2020 indicated that he would engage with an advocate to progress an application to have his method of discharge changed.<sup>6</sup>

### **Issues for the Tribunal:**

#### **Did Mr Edgerton complete an initial enlistment period for the purpose of eligibility for the ADM?**

23. Mr Edgerton’s service records include an Attestation Form signed by Mr Edgerton on 2 February 1982 setting out his enlistment for a period of three years.<sup>7</sup> His records also include a Personal Occurrence Report entry which records a discharge date of 22 June 1983 for a total period of service of one year, four months and 21 days.<sup>8</sup> These dates were not disputed by Mr Edgerton. As Mr Edgerton served for less than three years the Tribunal determined that he did not complete an initial period of service for the purpose of eligibility for the ADM.

#### **Does Mr Edgerton meet any of the other eligibility criteria, or exemptions, set out in the Regulations?**

24. During the hearing Mr Edgerton conceded that he does not meet any of the eligibility criteria or exceptions as set out in the Regulations.

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<sup>4</sup> Personnel Occurrence Report, 22 June 1983, Service Record, 629967, Edgerton, Graeme Neville William.

<sup>5</sup> Letter, DH&A/OUT/2020/0060, BN21520266, dated 24 September 2020.

<sup>6</sup> Emails, Mr Graeme Edgerton, 29 September, 12 October, 13 October 2020.

<sup>7</sup> Attestation Form, 2 February 1982, Ibid.

<sup>8</sup> Record of Service – Army, Ibid.

## **Does the Tribunal have the power to disregard the Regulations?**

25. The Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision.<sup>9</sup> Therefore, the Tribunal has no power to disregard the Regulations in regard to Mr Edgerton's appeal for the award of the ADM.

## **In Mr Edgerton's circumstances, and with the information available to the Tribunal, is it possible that he could be successful in an application for retrospective consideration to be treated as medically unfit pursuant to Section 26 of the *Defence Regulation 2016*?**

26. The Tribunal determined that it has no power to amend the nature of Mr Edgerton's discharge. The Tribunal however has some reservation regarding how Mr Edgerton's discharge was determined by his unit.

27. The Tribunal noted, in particular, that Mr Edgerton applied for leave from 17 August 1982 to 17 November 1982 for the reasons '*injured back in civilian employment*' and a note on his application for leave, "*Doctors certificate – 'not fit for work'*".<sup>10</sup> The Tribunal observed that this aligns with Mr Edgerton's statement regarding the reason he discharged as a result of an injury while not on duty. The Tribunal was concerned that the Defence Report did not contain a copy of Mr Edgerton's application to discharge 'at own request'.

28. The Tribunal also noted that during Mr Edgerton's service he was injured on duty on 6 December 1982.<sup>11</sup> Mr Edgerton described the injury to his ankle while clearing sheep from his depot while on duty. While the injury was assessed as *not a residual disability*,<sup>12</sup> and although the records appear incomplete, there is evidence within his service records that Mr Edgerton applied for compensation for this injury. The Tribunal determined that while Mr Edgerton stated this injury did not lead to his discharge, it speaks to the overall medical conditions he endured during his service.

29. While the Tribunal does not have the power to amend Mr Edgerton's method of discharge, it is not confident that the appropriate manner by which he was discharged should have been 'at own request'.

## **Finding**

30. Notwithstanding the above reservations, for the reasons stated in this report, and given his current method of discharge, the Tribunal finds that Mr Edgerton is not eligible for the award of the ADM.

31. The Tribunal acknowledges Mr Edgerton's contribution to our nation through his service with the Australian Army.

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<sup>9</sup> *Defence Act 1903* Part VIIIIC Section 110VB(6).

<sup>10</sup> Application for Leave – CMF, 14 October 1982, Service Record, 629967, Edgerton, Graeme Neville William.

<sup>11</sup> Defence Report minute 'injury on duty PTE Edgerton 6 Dec 82' dated 8 April 2020

<sup>12</sup> Defence Report 'medical summary 16 Jun 83' dated 8 April 2020

## **Decision**

32. The Tribunal affirms the decision of 26 February 2020 by the Directorate of Honours and Awards of the Department of Defence that Mr Graeme Edgerton is not eligible for the award of the Australian Defence Medal.