



Australian Government

Defence Honours and Awards Appeals Tribunal

Biggs and the Department of Defence [2020] DHAAT 21 (12 December 2020)

File Number 2020/028

Re **Mr Herbert Desmond Biggs**
Applicant

And **The Department of Defence**
Respondent

Tribunal Ms Jane Schwager AO (Presiding Member)
Rear Admiral James Goldrick AO, CSC, RAN (Retd)

Hearing Date 8 December 2020

DECISION

On 12 December 2020 the Tribunal affirmed the decision of the Directorate of Honours and Awards of the Department of Defence to not recommend Mr Herbert Desmond Biggs for the award of the Africa Star.

CATCHWORDS

DEFENCE AWARDS – *Africa Star* – *Defence Medal* – *1939-1945 Star* – *Service in Egypt 1944*

LEGISLATION

Defence Act 1903 – ss110T, 110V(1), 110VB(2).

Defence Regulation 2016, Section 36.

Command Paper Cmd. 6833 (with an appendix containing a summary of the conditions of the award of the campaign stars, the Defence Medal, the War Medal and the Indian Service Medal) dated June 1946.

Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal, Issued by authority of the Hon. John J. Dedman, M.P., Minister of State for Defence, December 1948.

Commonwealth of Australia Amendment of Conditions for Award of the Africa Star dated 25 November 1997.

Commonwealth of Australia Amendment of Conditions for Award of the 1939-45 Star dated 28 August 2001.

REASONS FOR DECISION

Introduction

1. The applicant, Mr Herbert Desmond Biggs, seeks review of a decision by the Directorate of Honours and Awards of the Department of Defence to not recommend him for the Africa Star.
2. On 13 July 2020, Mr Biggs applied to the Directorate of Honours and Awards of the Department of Defence (the Directorate) for the award of the Africa Star. On 16 July 2020, this application was refused by the Directorate.¹
3. On 14 August 2020, Mr Biggs wrote to the Tribunal to ask that it review his eligibility for the Africa Star.²
4. The 16 July 2020 letter from the Directorate conveys a decision refusing to recommend Mr Biggs for the award he seeks. This is the decision for which he has sought review in the Tribunal.

Tribunal Jurisdiction

5. Pursuant to s110VB(2) of the *Defence Act 1903* 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 or the Minister to refuse to recommend a person for an honour or award in response to an application. The *Defence Regulation 2016* defines a defence award as being those awards listed in Section 36. Included in the defence awards listed in Section 36 is the Africa Star.
6. Mr Biggs' request of 13 July 2020 constituted an application and the Directorate's letter of 16 July 2020 amounted to a refusal to recommend Mr Biggs for an award as required by s110V(1) of the Act. Thus, the Tribunal has jurisdiction to review the decision on the Africa Star. In conducting this review, the role of the Tribunal is to determine what is the correct or preferable decision on Mr Biggs' application for the Africa Star, having regard to the applicable law and the relevant facts.

Conduct of the Review

7. In accordance with its Procedural Rules, on 3 September 2020 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Biggs' application and requesting a report on the material questions of fact and the reasons for the decision made on Mr Biggs' eligibility for the Africa Star.
8. On 24 September 2020, the Director Honours and Awards provided a report and Defence's submissions on Mr Biggs' eligibility for the Africa Star.³ On

¹ Directorate of Honours and Awards Letter BN18891777 dated 16 July 2020.

² Mr Herbert Desmond Biggs Application for Review to the Tribunal, 14 August 2020.

³ Letter DH&A/OUT/2020/0057 Director Honours and Awards to the Tribunal, 24 September 2020.

25 September 2020 the Tribunal forwarded the Defence report to Mr Biggs for his comments.⁴ Mr Biggs stated by telephone on 2 October 2020 that he had no comments to make.⁵

9. The Tribunal held a hearing by telephone with Mr Biggs on 8 December 2020. Defence was represented by Ms Jo Callaghan, Assistant Director – Campaign and Service Awards, and Ms Alison Peisker, Assistant Director – Policy and Tribunal.

Mr Biggs' Service Record

10. Mr Biggs was born on 6 June 1923 and enlisted in the Royal Australian Air Force on 13 August 1942, being discharged on 26 February 1946 having attained the rank of Leading Aircraftman.⁶

11. Following initial and trade training as a Flight Mechanic, Mr Biggs embarked at Sydney for service in the Middle East on 23 December 1943.⁷ He arrived in Egypt and was posted to 451 Squadron on 17 January 1944. He would remain with 451 Squadron as a member of its ground crew until 4 July 1945, some months after the end of the war in Europe. The Squadron contributed to the air defence of Egypt and the Suez Canal until it was transferred to Corsica in April 1944, from where its aircraft flew sorties in support of land operations in Italy and later the invasions of Elba and southern France. During this time, the airfield from which 451 Squadron was operating was subject to at least one heavy air raid, on the night of 12 May 1944 with eight personnel killed (six of them ground crew), many more wounded and many aircraft destroyed or severely damaged. The strenuous efforts of the ground crew meant that all but two of 451's Spitfires were serviceable by the next afternoon.⁸ 451 Squadron deployed to southern France in late August 1944, operating there until October 1944 when it was transferred briefly to Italy. The Squadron almost immediately redeployed to the United Kingdom from where it operated for the remainder of the European conflict. It later served as part of the occupation forces in Germany, although Mr Biggs had been posted away by this time. Mr Biggs undertook further trade training in the United Kingdom in 1945 to qualify as a Fitter IIE before embarking late in the year for passage home. He disembarked in Melbourne on 3 January 1946 and was demobilised on 26 February 1946.

12. For his service in the RAAF, Mr Biggs has received the following awards:

- 1939-1945 Star
- Italy Star
- France and Germany Star
- Defence Medal
- War Medal 1939-1945
- Australia Service Medal 1939-1945

⁴ Letter DHAAT/OUT/2020/301 Tribunal to Mr Herbert Biggs, 25 September 2020.

⁵ Email Mr Jay Kopplemann to Ms Marilyn Cunningham, 2 October 2020.

⁶ NAA: A3901, 117301: Biggs, Herbert Desmond, Personal File.

⁷ NAA: A3901, 117301: Biggs, Herbert Desmond, Personal File.

⁸ John Herington, *Air Power over Europe 1944-1945*, (Canberra: Australian War Memorial, 1963), p.256.

Eligibility Criteria for the Africa Star

13. Along with conditions for other Second World War awards, conditions for the award of the Africa Star are set out in United Kingdom Command Paper 6833 of June 1946. In accordance with paragraph 83 of United Kingdom Command Paper 8533, dated 11 June 1948, administration of the Imperial Second World War campaign stars, clasps, emblems and medals for personnel from the Dominions was delegated to Dominion governments. Of particular relevance to the current application are the following eligibility criteria in the Australian summary of conditions:

25. *The Africa Star is granted for operational service of any length in North Africa from the date of the entry of Italy into the war on the 10th June 1940, up to the date of the cessation of operations against the enemy in North Africa on the 12th May 1943 inclusive....*

27. **Army** *The qualification is entry, as part of an establishment, into an operational command in North Africa. The individual should have been taken on the strength of a unit or formation. The whole of the area between the [Suez] Canal and the Straits of Gibraltar is included. Service in operations in Abyssinia, Somaliland and Eritrea, and also in Malta, is a qualification. Service in West Africa is excluded. Airborne troops of the Army who have taken part in airborne operations, in a qualifying Army area for land operations, will qualify.*

28. **Air Force** *The qualification is landing in the area of an Army operational command as defined above, including Malta. Casual journeys and inspections, other than those specially approved, are excluded. In addition, service in the air over any of the Army operational commands in North Africa as defined above, or over enemy-occupied territory in North Africa, is a qualification.⁹*

Mr Biggs' Evidence and Submissions

14. Mr Biggs provided evidence and submissions to the Tribunal with his applications, most notably in attachments to his application to the Tribunal of 14 August 2020. He also presented oral evidence at the hearing on 8 December 2020.

⁹ *Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal.*

The Defence Submission

15. The Defence Submission sets out the history of its consideration of Mr Biggs' request for award of the Africa Star. It contends that as Mr Biggs did not meet the prescribed periods of eligible service under the criteria for the Africa Star, the Directorate's decision should be affirmed.¹⁰ Oral submissions by representatives of Defence on 8 December 2020 reiterated its written one.

Tribunal Consideration

16. The Tribunal carefully considered Mr Biggs' eligibility against the criteria in the Command Paper and the Australian Summary of Conditions, as well as subsequent decisions setting out the conditions for the award of the Africa Star.

17. It is not in dispute that Mr Biggs was a member of the Royal Australian Air Force from 13 August 1942 until 26 February 1946. This service includes the period for which he seeks the Africa Star.

18. It is not in dispute that Mr Biggs did not embark for overseas service until 23 December 1943, disembarking in Egypt on 17 January 1944. His service thereafter is also not in dispute, most notably that which he undertook in Egypt with 451 Squadron until embarkation for Corsica in late March 1944. However, although certain conditions for the award of the Africa Star have been modified in part since 1948,¹¹ the end date for eligibility has not. As laid out in the *Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal*, the period for which the Africa Star may be awarded ended on 'the 12th May 1943'.¹² This is more than seven months before Mr Biggs first arrived in theatre.

19. The Tribunal acknowledges the dangers and discomforts of the service that Mr Biggs undertook in Egypt before his squadron's transfer to Europe and which he has described in his submissions. It observes, however, that such circumstances, particularly the presence of a threat from the air, were those which the Defence Medal was intended to recognise, which medal Mr Biggs has been awarded. Egypt and Anglo-Egyptian Sudan are specifically included in the list of 'Non-operational areas subjected to enemy air attack or closely threatened' which qualify for service for the Defence Medal from 13 May 1943 until 8 May 1945.¹³

20. The Tribunal observes that Corsica, from which 451 Squadron operated from April until August 1944 was also designated a 'Non-operational area subjected to enemy air attack or closely threatened' during the period the unit was based at Poretta airfield. Just what this meant was demonstrated all too clearly by the air raid that 451 Squadron experienced on 12 May 1944 and in which it suffered casualties and significant damage but from which it rebounded within hours, largely due to the devoted efforts of the maintenance staff. They restored all but two of the squadron's fighter

¹⁰ Letter DH&A/OUT/2020/0057 Director Honours and Awards to the Tribunal, 24 September 2020.

¹¹ *Commonwealth of Australia Amendment of Conditions for Award of the Africa Star* dated 25 November 1997.

¹² Paragraphs 25 & 28 *Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal*.

¹³ Paragraph 110, *Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal*.

aircraft to serviceability in less than 24 hours. The Tribunal is of the view that the vital contribution of the ground crew, who included Mr Biggs, and the dangers and discomforts that they experienced in these periods are reflected in the award of the Defence Medal, one which should be worn with particular pride in the circumstances.

21. The Tribunal also notes that Mr Biggs was awarded the 1939-45 Star, the Italy Star and the France and Germany Star for his other operational service in the European theatre. The 1939-45 Star is itself another recognition of Mr Biggs' Egyptian, Corsican and UK service, being awarded, as a result of a 2001 amendment to its conditions for his:

*...operational service in a designated European theatre of operations at any time during the six months immediately prior to, and including, 8 May 1945....*¹⁴

Tribunal Findings

22. For the reasons given above, the Tribunal finds that Biggs is not eligible for the Africa Star, given that he saw no service in the relevant areas during the periods prescribed under the qualifying regulations.

TRIBUNAL DECISION

23. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence to not recommend Mr Herbert Desmond Biggs for the award of the Africa Star.

¹⁴ Commonwealth of Australia Amendment of Conditions for Award of the 1939-45 Star dated 28 August 2001.