



Australian Government

Defence Honours and Awards Appeals Tribunal

Canard and the Department of Defence [2021] DHAAT 01 (13 January 2021)

File Number 2019/027

Re **Mr Steven Canard**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms J. Lumb

Hearing There were no appearances. The Review was conducted on the papers following agreement by both parties.

DECISION

On 13 January 2021 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Steven Canard is not eligible for the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal – free discharge – inadequate career counselling on recruitment - limited exceptions to mandatory period of service – no discretion.

LEGISLATION

*Defence Act 1903 – ss 110T, 110V(1), 110VB(2).
Defence Regulation 2016 – s 36.
Commonwealth of Australia Gazette No. S48, 30 March 2006, Australian Defence Medal Regulations 2006.*

REASONS FOR DECISION

Background

1. On 27 April 2007 Mr Steven Canard made application for the Australian Defence Medal (ADM) to the Directorate of Honours and Awards in the Department of Defence (the Directorate). On 20 September 2007, the Directorate advised Mr Canard that he did not qualify for the award as he did not complete four years of service or his initial term of engagement.

2. Mr Canard made application to the Tribunal on 25 November 2019 seeking review of the Directorate's decision to refuse him the ADM.

Tribunal jurisdiction

3. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) 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 to refuse to recommend a person for a defence award in response to an application. Section 36 of the *Defence Regulation 2016* specifies what constitutes 'defence awards' for the purposes of s110T of the Defence Act. Included in the defence awards and relevant to this matter is the ADM. Therefore, the Tribunal has jurisdiction to review the decision by the Directorate to refuse Mr Canard that medal.

Steps taken in the conduct of the review

4. In accordance with its Procedural Rules, on 29 November 2019, the Tribunal wrote to the Secretary of the Department of Defence requesting a report on the decision to deny Mr Canard the ADM.

5. On 16 December 2019, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Canard had not rendered sufficient qualifying service towards the ADM.

Mr Canard's service

6. According to the Defence Report Mr Canard enlisted in the Royal Australian Navy (RAN) on 11 November 1975 for nine years. He was posted to HMAS *Cerberus* from 12 November 1975 to 7 July 1976 until he was posted to HMAS *Torrens*. Mr Canard served for 1 year and 78 days and was provided with a 'free discharge' with effect 27 January 1977.

Eligibility criteria for the Australian Defence Medal

7. The ADM was instituted by Her Majesty The Queen 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.*

The Regulations

8. The *Australian Defence Medal Regulations 2006* (the Regulations) are set out in the Schedule attached to the Letters Patent and were subsequently amended,¹ notably to reduce the minimum period of qualifying service to four years (with limited exceptions). Regulation 4 of the amended Regulations provides:

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.*

Applicant's case

9. Mr Canard's case is succinctly set out in his application for review to the Tribunal,² and summarised as follows:

- He enlisted in the RAN at age 17 for an initial period of eight years to be trained as a Weapons Mechanic, the training for which he *'thoroughly enjoyed'*.
- Following his posting to HMAS *Torrens*, he discovered that his duties were *'surprisingly and predominantly ... Seaman Duties'*. Very rarely did his duties involve weapons. 90% of his time was spent keeping night watch or ship maintenance during the day.
- He expressed his disappointment regarding the nature of his duties on board HMAS *Torrens* to his Gunnery Officer Sub Lieutenant P.J. Debnam RAN. He

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

² Application for review, Mr Steven Canard, 25 November 2019.

felt at the time that he was expected to spend the next seven years performing ‘Seaman Duties’, despite his understanding that he had been recruited and trained to perform ‘Weapons Mechanic’ duties.

- Had the RAN allowed him to perform the duties for which he had been trained, he would have completed his initial enlistment period. RAN records corroborate that this was his intention at the time. At no time during his recruitment or training was he properly advised of the nature of the work he would be expected to undertake when posted at sea.
10. In his response to the Defence Report, Mr Canard further submits that:

*“Nowadays as an employer, you could never get away with misleading a potential staff member that your job requirements, at the interview stage, would be one thing and once employed, you are then asked to do something completely different ... I have no doubt I would have completed at least the 4 years minimum service if not 20 years had I been able to do the job that I was trained for”.*³

11. Mr Canard requests that the Tribunal ‘recommend ‘eligibility criteria’ changes to reflect that all service personnel who serve their country full time would be eligible to receive the [ADM] irrespective of time’.

Respondent’s case

12. In response to Mr Canard’s application to the Tribunal, Defence advised that his eligibility for the ADM had been reassessed. This reassessment confirmed that Mr Canard had not rendered sufficient qualifying service towards the ADM, having served only one year, two months and 17 days.

13. Addressing Mr Canard’s displeasure regarding the nature of his duties aboard HMAS *Torrens*, Defence states:

*“It is an inherent aspect of service in the ADF based on local or immediate command chain requirements that duties other than those aligned to an individual’s primary role will need to be completed, for example equipment maintenance, area beautification and guard duty. At a higher level, Service needs may also dictate that duties other than those aligned to an individual’s primary role or trade are to be undertaken.”*⁴

14. Defence acknowledges that ‘there is no dispute that Mr Canard did not receive adequate counselling in the Recruitment Centre regarding service life in relation to his ongoing employment’, noting that his frustrations in this regard are documented throughout the discharge process.

³ Email, Mr Steven Canard, 11 February 2020.

⁴ DH&A/OUT/2019/0058/BN11635405 dated 16 December 2019.

Tribunal Consideration

15. It is not disputed that Mr Canard does not have the requisite qualifying service for the ADM. Subregulation 4(1) of the Regulations sets out only three (very limited) exceptions to the requirement that a person serve their initial enlistment period or a period of four years. Unfortunately for Mr Canard, the Tribunal cannot be reasonably satisfied that any of those exceptions apply to his circumstances.

16. The Tribunal acknowledges that the duties Mr Canard was required to undertake during his service in HMAS *Torrens* did not meet the expectations he had reasonably formed during the recruitment and training processes he underwent. The Tribunal notes that Defence concedes that Mr Canard did not receive adequate counselling in this regard.

17. The Tribunal accepts Mr Canard's contention that this combination of factors prompted his request for early discharge, and that his intention would otherwise have been to continue to serve. The Tribunal notes that his RAN service records, including the Psychologist Report dated 18 November 1976, provide contemporaneous corroboration of Mr Canard's thinking at the time. The Tribunal further notes that during his service, Mr Canard was viewed very highly by his superior officers and that the loss of his service was viewed with regret.⁵

18. However, for the reasons given above in paragraph 15, the Tribunal finds that Mr Canard does not meet the eligibility criteria for the ADM and is therefore not entitled to that award. The Tribunal has no discretion to waive the requirement for Mr Canard to have served his initial enlistment period or a period of four years, despite the arguably compelling reasons behind his request for early discharge.

DECISION

19. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Steven Canard is not eligible for the award of the Australian Defence Medal.

⁵ Statement by Sub Lieutenant P.J. Debnam RAN 10 January 1977.