



Australian Government

Defence Honours and Awards Appeals Tribunal

Patterson and the Department of Defence [2021] DHAAT 02 (4 February 2021)

File Number(s) 2020/008

Re **Mr James Patterson**
Applicant

And **Department of Defence**
Respondent

Tribunal Air Vice-Marshal John Quaife AM (Retd) (Presiding Member)
Mr David Ashley AM

Hearing date 18 November 2020

DECISION

On 4 February 2021, the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr James Edward Patterson is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM' and the Vietnam Logistic and Support Medal.

CATCHWORDS

DEFENCE AWARD – Australian Active Service Medal 1945-1975 – Vietnam Logistic and Support Medal – Citizens Military Force - 30 Terminal Squadron – HMAS Sydney – AV1356 Clive Steele – incomplete service record – weight of evidence.

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2).
Defence Regulation 2016, Section 36.
Commonwealth of Australia Gazette S79, Vietnam Logistic and Support Medal Regulations dated 10 March 1993.
Commonwealth of Australia Gazette S251, Declaration and Determination for the Vietnam Logistic and Support Medal, dated 13 August 1993.
Commonwealth of Australia Gazette S27, Amendments to the Vietnam Logistic and Support Medal Regulations dated 18 January 2013.
Commonwealth of Australia Gazette S18, Australian Active Service Medal 1945-1975, Letters Patent and Regulations dated 19 January 1998.
Commonwealth of Australia Gazette S51, Declaration and Determination under the Australian Active Service Medal 1945-1975 Regulations dated 18 April 2013.

REASONS FOR DECISION

Introduction

1. Mr James Patterson has claimed eligibility for the Australian Active Service Medal 1945-1975 (AASM) with Clasp 'VIETNAM' and the Vietnam Logistic and Support Medal (VLSM) on the basis of service embarked in HMAS *Sydney* as a member of Army ship's crew between April and May 1966, and service embarked in AV1356 *Clive Steele* between December 1966 and January 1967. Mr Patterson was a member of the Citizens Military Forces (CMF), serving with 30 Terminal Squadron, Royal Australian Engineers.

2. Mr Patterson has made three separate applications to the Department of Defence for assessment of his eligibility for medal entitlements. On 5 May 2015, Ms L. Ivey of the Directorate of Honours and Awards of the Department of Defence (the Directorate) confirmed that Mr Patterson was eligible for the Australian Defence Medal but did not qualify for any additional awards.

3. The Directorate reiterated that advice in a letter to Mr Patterson dated 23 March 2017 and in response to a further application, Ms D. Burdett of the Directorate advised Mr Patterson in a letter dated 5 December 2017 that no evidence could be found to show that he had served within the prescribed qualifying area of operations while attached to a unit, ship or organization in support of Australian Forces in Vietnam. Ms Burdett affirmed the decision to not recommend Mr Patterson for the VLSM. The letter did not mention the AASM.

Tribunal jurisdiction and decision under review

4. Pursuant to s110VB(2) of the *Defence Act 1903* (the 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 and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an honour or award in response to an application. The *Defence Regulation 2016* defines defence awards as being those set out in Section 36 of the Regulation. Included in the defence awards listed in Section 36 are AASM and the VLSM.

5. The Tribunal was satisfied that Mr Patterson's three separate applications to Defence constitute applications as required by s110V(1)(c) of the Act. The Tribunal was satisfied that Ms Ivey's advice of 5 May 2015 constitutes a refusal to recommend the awards, thus satisfying the requirements of s110V(1)(a) and (b) of the Act and creating the *reviewable decision*.

6. The Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision in 2015, as required by s110VB(6) of the Act. In accordance with s110VB(1) of the Act, as the Applicant seeks a defence award, the Tribunal has the power to affirm or set aside the decision.

Conduct of the review

7. In accordance with its Procedural Rules, on 20 March 2020 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Patterson's application for review and requested a report from Defence on the decision to deny Mr Patterson the VLSM and AASM.¹

8. On 6 July 2020, the Directorate provided a submission on behalf of Defence.² The Defence submission was forwarded to Mr Patterson for comment which he subsequently provided.³ A public hearing was held in Sydney on 18 November 2020. Mr Patterson gave evidence and the respondent was represented at the hearing by Ms Jo Callaghan, Mr Wayne Parker and Mr Brett Mitchell of the Directorate, who participated by telephone conference.

Mr Patterson's service record

9. Mr Patterson enlisted in the CMF on 4 February 1962. He served for a period of eight years before being discharged 'at own request' on 6 February 1970. Mr Patterson re-enlisted on 15 April 1970 and was discharged on 15 July 1972 bringing his total service to 10 years and 94 days.

10. Relevantly, Mr Patterson told the Tribunal that on 18 April 1966 he volunteered to deploy as a member of Army ship's crew in HMAS *Sydney* to observe loading and unloading of the ship in Australia and Vietnam. Mr Patterson also claimed to have served in the Army's Landing Ship Medium (LSM) AV1356 *Clive Steele* between 9 December 1966 and 3 January 1967, then operating in support of Australian operations in Vietnam.

11. A twelve-month period is missing from Mr Patterson's Record of Service.⁴ Regular entries in his service record cease at 27 March 1966 and re-commence at 29 March 1967. Unfortunately, the period missing from his record includes the period of his claimed service in Vietnam.

Eligibility criteria

12. The eligibility criteria for awarding the AASM 1945-1975 with Clasp 'VIETNAM' contained in the *Commonwealth of Australia Gazette S51, Declaration and Determination under the Australian Active Service Medal 1945-1975 Regulations* dated 18 April 2013 states:

...(b) **declare**, under regulation 3 of the Regulations, Defence Force activities in the prescribed area of operations in South Vietnam during the period that commenced on 31 July 1962 and ended on 27 January 1973 to be a prescribed operation; and

¹ Letter, DHAAT/OUT/2020/087, dated 20 March 2020.

² Letter, DH&A/OUT/2020/0034, dated 9 July 2020.

³ Letter, DHAAT/OUT/2020/226, dated 10 July 2020.

⁴ Record of Service, James Edward Patterson, 251277.

(c) **determine**, under subregulation 4(2) of the Regulations, that the conditions for award of the Australian Active Service Medal 1945-1975 with clasp 'VIETNAM' ("the Medal") in respect of that prescribed operation are that:

- (i) *the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while allotted and posted as a member of the Australian element to the prescribed operation; ...*
- ...(iv) *the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member for a period of 30 days, or for periods amounting in the aggregate to 30 days, for official visits, inspections or other occurrences of a temporary nature in connection with the military contribution in the prescribed operation; ...*
- ...(vii) *the Medal may be awarded to a person who, as a member of the Defence Force, qualified for the Vietnam Logistic and Support Medal for service in the prescribed area of operations in South Vietnam, in accordance with the conditions for that award set out in subregulation 4(1) of the Vietnam Logistic and Support Medal Regulations and Letters Patent dated 24 February 1993 as amended by Letters Patent dated 18 January 2013; ...*

...(d) **determine**, for the purposes of this determination, that the prescribed area of operations in South Vietnam means:

- (i) *all land and inland waters of the territory of Vietnam south of parallel 21 degrees 30 minutes north latitude;*
- (ii) *all that area of land and waters (other than land and waters forming part of the territory of Cambodia and China) bounded by a line commencing at the intersection of the boundary between Cambodia and Vietnam with the shore of Vietnam at high-water mark; thence proceeding in a straight line to a point 185.2 kilometres west (true) of that intersection; thence proceeding along an imaginary line parallel to, and at a distance of 185.2 kilometres from the shore of Vietnam at high-water mark to its intersection with the parallel 21 degrees 30 minutes north latitude; and*
- (iii) *the airspace above the area referred to in paragraphs (d)(i) and (d)(ii); and*
- (iv) *service in any area not referred to in paragraphs (d)(i) and (d)(ii), or the airspace above any area not referred to in paragraphs (d)(i) and (d)(ii) is not qualifying service for the Medal.*

13. The eligibility criteria for awarding the VLSM contained in Regulation 4 of the *Commonwealth of Australia Gazette S79, Vietnam Logistic and Support Medal Regulations* dated 10 March 1993 states:

4. (1) *The Medal may be awarded for service of one day or more in the area of operations of Vietnam during the relevant period ('relevant period' is from 24 May 1964 to 27 January 1973 inclusive)*
- a) *as a member of the crew of a ship or aircraft operating in support of the Australian Armed Forces; or*
 - b) *while attached to a unit or organisation operating in support of the Australian Armed Forces; or*
 - c) *while attached to, or serving with, a unit of the Australian Armed Forces or allied forces as an observer.*

14. Further eligibility criteria for awarding the VLSM, contained in paragraph (b) of the *Commonwealth of Australia Gazette S251, Declaration and Determination for the Vietnam Logistic and Support Medal* dated 13 August 1993 states:

- (b) *under regulation 3 of those regulations declare the area for operations for eligibility for Vietnam Logistic and Support Medal are:*
- (i) *all land and inland waters of the territory of Vietnam south of the parallel 21 degrees 30 minutes north latitude;*
 - (ii) *all that area of land and waters (other than land and waters forming part of the territory of Cambodia or China) bounded by a line commencing at the intersection of the boundary between Cambodia and Vietnam with the shore of Vietnam at high-water mark; thence proceeding in a straight line to a point 185.2 kilometres west (true) of that intersection; thence proceeding along an imaginary line parallel to, and at a distance of 185.2 kilometres from the shore of Vietnam at high-water mark to its intersection with the parallel 21 degrees 30 minutes north latitude; and*
 - (iii) *the airspace above the area preferred to in paragraphs (b) (i) and b (ii).*

Defence position

15. In response to Mr Patterson's request for the review of his entitlements, Defence examined all available records and found no evidence that indicates his service in either unit claimed by Mr Patterson or any evidence of continuous full time duty as claimed by Mr Patterson during the period under consideration. As Defence concluded that no evidence exists that supports Mr Patterson's claim, Defence recommended in its report to the Tribunal that the decision to not recommend Mr Patterson either for the VLSM or the AASM be affirmed.

Tribunal consideration

16. As the service claimed by Mr Patterson would meet the eligibility criteria for the VLSM and AASM, the question for the Tribunal was whether evidence exists that supports Mr Patterson's claim to have performed that service in either HMAS *Sydney* or AV1356 *Clive Steele*.

17. Regarding his claim to have served in HMAS *Sydney*, Mr Patterson told the Tribunal that he was advised by letter of his attachment to serve with 30 Terminal Squadron from his CMF parent unit (33 Terminal Squadron). Mr Patterson said that the purpose of the attachment was to observe loading and unloading procedures in anticipation that his unit would subsequently be called upon to perform this duty. Mr Patterson no longer holds a copy of this letter and no record could be found that confirmed the 30 Terminal Squadron party serving in HMAS *Sydney* for the voyage.

18. At the hearing, Mr Patterson was able to recall names of other persons who participated, and details of his experience aboard the ship, but could not provide any evidence (affidavits, photographs, mementos etc) that would support his claim. Mr Patterson stated that unfortunately, all of the other persons he had served with were now deceased, or not contactable. The only relevant documentary evidence found within Defence archives was a message dated 29 April 1966 which authorised members of 30 Terminal Squadron to travel in HMAS *Sydney* under Army command and administration. The message does not include any specific dates or names. The Tribunal was unable to accept this message as persuasive evidence of Mr Patterson's claim.

19. While the critical period of Mr Patterson's service record is missing from Defence documentation, his CMF Pay History Card records one exceptionally large pay amount of \$9,945.10 on 26 May 1966. Although Mr Patterson claimed at the hearing that this payment was associated with his service in HMAS *Sydney* and that he had received the amount and passed it to his parents, the Tribunal considers it unlikely that this was an amount actually paid. The CMF Pay History Card does not carry this amount forward to the 'amount paid' column, but rather records a total amount paid to Mr Patterson of \$85.17 only, made up of 11 days at a daily rate of \$5.49 plus payment for a part-day and some allowances. The Tribunal was unable to correlate the exceptionally large amount with Mr Patterson's claim to have completed 30 days continuous full-time service on 18 May 1966. As the entry of \$9,945.10 is the first decimal currency entry that appears on Mr Patterson's Pay History Card, the Tribunal considers it more likely to have been a decimal conversion of all previous transactions. Unfortunately, Mr Patterson's CMF Pay History Card does not support his claim to have served for 30 days in HMAS *Sydney* as it suggests that despite the gap in his service record, he only completed 11 days service between 7 December 1965 and 26 May 1966.

20. Regarding his claim to have served in AV1356 *Clive Steele*, in his application to the Tribunal, Mr Patterson described departing Sydney on 9 December 1966 and returning on 3 January 1967. At the hearing, Mr Patterson amended this recollection by stating that he and other CMF volunteers travelled by civilian air from Sydney direct to Jesselton (now Kota Kinabalu), Malaysia where they joined the unit. His recollection was that he had returned to Sydney in the *Clive Steele* but became

uncertain of this detail when questioned. Although he provided specific dates for his service in this unit (9 December 1966 to 3 January 1967), Mr Patterson was unable to provide any confirmation of these dates other than a recollection that he had arrived in Vietnam on or about 9 December 1966 and that his service was completed a few days into the new year of 1967.

21. Mr Patterson could not remember much detail of his travel to Jesselton but thought it was aboard a regular Malaysian airline service; that he travelled in civilian attire with other members of his unit; and that he and others enjoyed bar service. The Tribunal was unable to give determinative weight to Mr Patterson's recollections of his travel. Kota Kinabalu remains a remote destination that is not served by any direct commercial flights from Sydney. Malaysia - Singapore Airlines commenced operations in 1966 on a flight network that included Jesselton, but as a connection through Singapore.

22. The ships log for AV1356 *Clive Steele* records that it departed Jesselton for Vung Tau on 1 December 1966, arriving on 4 December 1966. The *Clive Steele* remained in Vietnamese waters until 7 January 1967 when it sailed to Singapore, arriving on 10 January 1967.⁵

23. Mr Patterson was unable to provide the Tribunal with any evidence (affidavits, photographs, mementos etc) that would support his claim of service in AV1356 *Clive Steele*.

24. The Tribunal regrets the absence of data from Mr Patterson's service record but was unable to locate, and was not presented with, any evidence that supported his claim that he deployed as a member of Army ship's crew in HMAS *Sydney* between 18 April 1966 and 18 May 1966, or that he served in the LSM AV1356 *Clive Steele* between 9 December 1966 and 3 January 1967.

DECISION

25. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr James Edward Patterson is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM' and the Vietnam Logistic and Support Medal.

⁵ AWM270 6-19 32 *Small Ships Squadron AV1356 Clive Steele Chief Officer's Log Book 2 October 1966 to March 1967*.