



Australian Government

Defence Honours and Awards Appeals Tribunal

Donnan and the Department of Defence [2021] DHAAT 03 (20 April 2021)

File Number	2020/023
Re	Mr Alan Robert Donnan Applicant
And	The Department of Defence Respondent
Tribunal	Ms Anne Trengove (Presiding Member) Mr David Ashley, AM
Appearances	Mr Alan Donnan by teleconference Mr Brett Mitchell, Research Officer, Directorate of Honours and Awards, Department of Defence Mr Wayne Parker, Manager, Service Assessments and Campaign Awards, Directorate of Honours and Awards, Department of Defence
Hearing Date	25 February 2021

DECISION

On 20 April 2021 the Tribunal affirmed the decision of 13 April 2018 of Mr Mark Jordan, Assessments Manager, Directorate of Honours and Awards in the Department of Defence, that Mr Alan Robert Donnan is not eligible for the award of the Republic of Vietnam Campaign Medal.

CATCHWORDS

FOREIGN AWARD – Republic of Vietnam Campaign Medal – naval service – less than 181 days qualifying service for the purposes of the RVCM – port to port transit time – repatriation benefits - no discretion

LEGISLATION

Defence Act 1903 – ss 110VB(2), 110VB(6)

Joint General Staff of the Republic of Vietnam Armed Forces Directive pertaining to awarding of Campaign Medal HT. 655-430 – dated 1 September 1965

Republic of Vietnam Armed Forces (RVNAF) Order No. 183 pertaining to the conferral of the Vietnamese Campaign Medal on Australian Military Forces – dated 31 August 1966.

REASONS FOR DECISION

Introduction

1. Mr Alan Donnan seeks review of the 13 April 2018 decision of Mr Mark Jordan, Assessments Manager, Directorate of Honours and Awards in the Department of Defence, that he is not entitled to the Republic of Vietnam Campaign Medal (RVCM) for his Australian Defence Force service in Vietnam.

Mr Donnan's service

2. Mr Donnan enlisted in the Royal Australian Navy on 2 January 1968 and was discharged on 27 March 1978 at the rank of Leading Seaman, having completed 10 years and three months service.

3. Mr Donnan's Certificate of Vietnam War Service, issued by the Department of Veterans' Affairs, using data extracted from the Vietnam Veterans' Nominal Roll, shows that he completed a total of 196 days Vietnam War service between 16 November 1969 and 30 November 1972.¹ His relevant postings during this period are set out below:

- HMAS *Duchess* – 12 May 1969 – 13 June 1970
- HMAS *Sydney* – 18 November 1970 – 5 January 1971
- HMAS *Sydney* – 25 January 1971 – 13 October 1973²

4. Mr Donnan has been awarded the following for his service with the Australian Defence Force:

- Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM'
- Vietnam Logistic and Support Medal (the VLSM)
- Australian Service Medal 1945-1975 with Clasps 'FESR' and 'PNG'
- Australian Defence Medal
- Returned from Active Service Badge.

Decision under review

5. In the decision under review, the Directorate stated '*dates from (sic) Department of Veterans Affairs are for repatriation benefits only and do not relate directly to qualifying service towards medals. Qualifying service for honours and awards is based on the actual time spent in the operational area.*' The Directorate determined that during the qualifying period for the RVCM, Mr Donnan had only 15 days qualifying service in the waters of Vietnam; namely one day in HMAS *Duchess* and a total of 14 days in HMAS *Sydney*. The Directorate stated that the aggregated total of 15 days qualifying service was insufficient for award of the RVCM which requires 181 days service in Vietnamese waters, unless one of the exceptions applies. It was not considered that any exceptions applied to Mr Donnan.

¹ Department of Veterans' Affairs Certificate of Service, Engineering Mechanic Alan Robert Donnan, R96467.

² PMKEYS Historical Record, LSMTTP Alan Robert Donnan, R96467.

6. In making its decision, Defence relied on records, derived from the ship's log and monthly Reports of Proceedings, that show that whilst Mr Donnan was posted to HMAS *Duchess*, she entered the qualifying waters of Vietnam on 28 November 1969 (for one day).

7. Further records show that whilst Mr Donnan was posted to HMAS *Sydney* she entered the qualifying waters of Vietnam on the following dates, for a total of 14 days:

- 25 February 1971 to 25 February 1971 (one day)
- 5 April 1971 to 5 April 1971 (one day)
- 22 May 1971 to 23 May 1971 (two days)
- 6 October 1971 to 7 October 1971 (two days)
- 6 November 1971 to 7 November 1971 (two days)
- 8 December 1971 to 9 December 1971 (two days)
- 28 February 1972 to 29 February 1972 (two days)
- 23 November 1972 to 24 November 1972 (two days)

Eligibility Criteria for the Republic of Vietnam Campaign Medal

8. In 1964 the Government of the Republic of Vietnam established the campaign medal known in Australia as the RVCM. This was offered to the Australian Government in May 1966 for award to Australian service personnel who had served in Vietnam. The offer was accepted by Australia and confirmed by the Vietnamese Government in August 1966. The RVCM remains a foreign medal and is additional to the Australian campaign medals which have been issued to recognise service in Vietnam, including the Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM' and the VLSM.

9. The RVCM is also significantly different from Australian campaign medals, such as the VLSM, in that it required six months service rather than the much shorter period required for eligibility for the VLSM and other Australian medals. This qualifying criterion was set by the Government of the Republic of Vietnam, which ceased to exist in 1975.

10. The original directive by the Chief of the Joint General Staff of the Republic of Vietnam Armed Forces which related to the RVCM for foreign military forces was dated 1 September 1965, and was amended in March 1966. On 16 September 1966, the Secretary of the Department of Defence wrote to the Secretaries of the Departments of the Navy, Army and Air Force setting out the criteria for the award of the RVCM, which were in accordance with the Vietnamese directive.³ The Memorandum set out that conditions for the grant of the award of the RVCM would require:

- (a) *'Special service' (as defined by the Repatriation (Special Overseas Service) Act) of a minimum of six months duration, either continuous or aggregated, in Vietnam⁴ with retrospective effect to 31 July 1962;*

³ Memorandum, Secretary, Department of Defence 'Vietnamese Campaign Medal' dated 16 September 1966.

⁴ Emphasis added by Tribunal.

(b) 'Special service' **in Vietnam**⁵ of less than six months duration since 31 July 1962 if:

- (i) killed on active service or wounded-in-action and evacuated,
- (ii) captured and later released or escaped.

11. Some of these criteria were reiterated in Navy, Army and Air Force instructions and orders between 1966 and 1970.

12. The Naval criteria were complicated by the error in the original Australian Navy Order 500/67 *Vietnamese Campaign Medal – Award for Service in South Vietnam*⁶ which stated that the award would be granted on the basis of allotment for special service in Vietnam for a minimum of six months. Such allotment included all the time between departure from the last Australian port to return to Australia (the port to port provisions), rather than the just the period spent in the operational area.

13. However, in 1987, advice was provided to Navy that its original interpretation was incorrect and that no period in transit to or from Vietnam outside the operational area should be included in the calculation.⁷ This advice was acknowledged by Navy and, from April 1987, award of the RVCM was made only on the basis of time in theatre. This advice is consistent with the wording of the Memorandum which stipulated service 'in Vietnam'.

14. Over the years there have been two inquiries conducted by the Tribunal as to whether eligibility criteria should or could be changed. Relevantly, the accepted recommendation of the second inquiry stated 'that the eligibility criteria for the Republic of Vietnam Campaign Medal not be amended because the Australian Government does not have the legal authority to do so'.⁸

Mr Donnan's submissions

15. During the hearing, Mr Donnan confirmed the accuracy of his service records. It was not in dispute that he spent one day in HMAS *Duchess* and a total of 14 days in HMAS *Sydney* within the operational area during the relevant time.

16. As part of his submissions, Mr Donnan stated that he had been encouraged to apply for the medal on the basis of his 196 days Vietnam service, which he had thought would satisfy the 181 day requirement. He explained that confusion had arisen as two different Commonwealth departments, namely the Department of Veterans' Affairs (DVA) and Defence, viewed his Vietnam service differently. He explained that DVA counted days served in transit to Vietnam, as well as days in Vietnamese waters, for the purposes of repatriation benefits. If transit time counted, he argued he would have 196 days deployed to the Vietnam War, thus satisfying the eligibility criteria.

⁵ Emphasis added by Tribunal.

⁶ Australian Navy Order 500/67, *Vietnamese Campaign Medal, Award for Service in South Vietnam*, Navy Office Canberra, dated 27 November 1967,

⁷ Minute, CDF 54/1987 'Vietnamese Campaign Medal – Conditions Governing Awards'

⁸ Report of the *Inquiry into the Feasibility of Amending the Eligibility Criteria for the Republic of Vietnam Campaign Medal* dated 25 June 2015, p. 14.

17. During the hearing, the eligibility criteria for the medal were explained. Mr Donnan accepted the differences between the eligibility for repatriation benefits and the RVCM. During the hearing he also conceded that he had not served 181 days in Vietnamese waters and that his circumstances did not enliven any of the exceptions. He conceded he was not, in fact, eligible for the medal.

Defence's submission

18. Defence's position was that as Mr Donnan did not complete 181 days of service in Vietnam or Vietnamese waters or fall with an exception, he was not eligible for the RVCM.

Tribunal consideration

19. As set out in Section 110VB (6) of the *Defence Act 1903*, in considering any application for review, the Tribunal is bound by the relevant eligibility criteria that governed the making of the reviewable decision. There is no discretion.

20. The general qualifying criterion for the RVCM for Australian personnel as prescribed in paragraph (b) set out in the Memorandum is a minimum of 181 days of service in Vietnam.

21. As Mr Donnan was only in Vietnamese waters for a total of 15 days, he would still be eligible for the RVCM if he satisfied one of the exceptions within the criteria. However, Mr Donnan was neither killed in action nor captured, nor was he wounded in action.

22. Having failed to meet those criteria, there are no broader discretionary grounds for award of the medal by the Tribunal.

23. Nevertheless, the Tribunal takes this opportunity to acknowledge Mr Donnan's significant commitment and contribution through his service in the RAN.

TRIBUNAL DECISION

24. The Tribunal affirms the decision of 13 April 2018 of Mr Mark Jordan, Assessments Manager of the Directorate of Honours and Awards in the Department of Defence, that Mr Alan Robert Donnan is not eligible for the award of the Republic of Vietnam Campaign Medal.