



Australian Government

Defence Honours and Awards Appeals Tribunal

Bounds and the Department of Defence [2021] DHAAT 7 (23 June 2021)

File Number 2020/026

Re **Mr Richard Bounds**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Jane Schwager AO (Presiding Member)
Mr David Ashley AM

Hearing Date 28 May 2021

Appearances Mr Richard Bounds (by telephone)
Ms Jo Callaghan and Mr Wayne Parker,
Directorate of Honours and Awards, Department of Defence.

DECISION

On 23 June 2021, the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence of 10 May 2011 to not recommend Mr Richard Bounds for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal – initial enlistment period not met – limited exceptions to service requirement – no discretion - retention not in the interests of the Military – review of reason for discharge.

LEGISLATION

*Defence Act 1903 – Part VIIIIC – Sections 110T, 110VB (2), 110VB(6).
Defence Regulation 2016 – Sections 26, 36.
Australian Defence Medal Regulations 2006.
Australian Defence Medal Regulations, Amendment Regulations, dated 5 August 2020.*

REASONS FOR DECISION

Introduction

1. The Applicant, Mr Richard Bounds, seeks review of the decision of Mr Jeff Bermingham of the Directorate of Honours and Awards in the Department of Defence (the Directorate) of 10 May 2011,¹ that he is not eligible for the award of the Australian Defence Medal (ADM). The decision was a reiteration of previous advice from the Directorate of 28 August 2006 that he is not eligible for the award.²

2. The substance of Mr Bounds' application to Defence for the ADM, also set out in his application for review, was that at the time of his discharge in 1972, he asked for a compassionate discharge to care for his mother, who was terminally ill with cancer.³

3. In response, the 10 May 2011 Defence decision regarding his application stated that Mr Bounds' service record confirmed that the reason for his discharge was on the ground that his retention was 'not in the interests of the Military'. The decision went on to explain that '*Retention not in the interests of the Military, is a legal form of discharge based on behavioural and or managerial issues and is not a discriminatory service and enlistment policy.*' The decision also stated '*As you failed to meet the qualifying criteria as listed for the ADM, I can only reiterate that you still have no entitlement to the ADM.*'

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. The ADM is included in the defence awards listed in Section 36.

5. The Tribunal was satisfied that Mr Bounds' application to Defence constitute an application as required by s110V(1)(c) of the Act. The Tribunal was satisfied that Mr Bermingham's advice of 10 May 2011 constitutes a refusal to recommend the award, thus satisfying the requirements of s110V(1)(a) and (b) of the Act and creating the *reviewable decision*.

6. As required by s110VB(6), the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision. 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.

¹ Letter from Directorate to Mr Bounds dated 10 May 2011.

² Letter from Directorate to Mr Bounds dated 28 August 2006.

³ Mr Bounds application for review to the Tribunal dated 23 July 2020.

Conduct of the review

7. In accordance with the Tribunal's Procedural Rules, on 17 September 2020, in response to Mr Bounds' application for review, Defence provided the Tribunal with a report detailing departmental consideration of the matter. Mr Bounds has read and provided comments on that report. The report stated that Defence could no longer locate a copy of Mr Bounds' service or medical records, but indicated there was some information available to Defence decision makers in 'electronic archives'. After obtaining Mr Bounds' consent and making an approach to the Department of Veterans' Affairs (DVA), copies of these records were located by the Tribunal Secretariat in Mr Bounds' DVA files, and were provided to Mr Bounds and to Defence prior to the hearing.

8. A hearing was conducted in Canberra on 28 May 2021. Mr Bounds participated via telephone, while Ms Jo Callaghan (Assistant Director Service and Campaign Awards), and Mr Wayne Parker (Manager, Service & Campaign Awards Assessment) represented Defence in person.

The Australian Defence Medal

9. 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.'*

10. 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 reviewable decision, states:

- (1) *The Medal may be awarded to a member, or a former member, of the Defence Force who after 3 September 1945 has given qualifying service that is efficient:*
 - (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 four years; or*
 - (d) *For a period or periods that total less than four 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 Defence Force or his or her delegate may determine that a period of the member's qualifying service is efficient service.⁴*

11. 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 a member ceased service because of mistreatment by a

⁴ *Australian Defence Medal Regulations 2006*, Commonwealth of Australia Gazette No. S48, 30 March 2006.

member of the Defence Force or an employee of the Department of Defence was considered a significant contributing factor.⁵

Mr Bounds' service

12. Mr Bounds enlisted into the Regular Army Supplement (Operations) (ARAS(O)) on 26 May 1970 for a period of three years. During his service, Mr Bounds performed active service in Vietnam, being deployed with the 3rd Battalion, Royal Australian Regiment from 15 February to 16 October 1971. He was discharged on 3 February 1972 on the grounds of '*Retention not in the interests of the Military*', serving for a total period of one year, eight months and nine days.

13. Mr Bounds' service record confirms that he was charged with and found to have committed various offences on 10 occasions between 3 August 1970 and 2 November 1971.

14. Mr Bounds has been awarded the following for his service:

- the Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- the Vietnam Medal; and
- the Republic of Vietnam Campaign Medal.

Mr Bounds' submission

15. Mr Bounds told the Tribunal about his discipline record. While admitting that he was guilty of the recorded offences, and that they were a contributing factor in his discharge from the Army, he believed them to be minor in nature and he disputed some of the detail found in his service record. Mr Bounds discussed his combat record, particularly during the Battle of Long Khanh in June 1971. Mr Bounds also stressed that leading up to his discharge, he had requested discharge on compassionate grounds to care for his terminally ill mother.

16. The Tribunal reminded Mr Bounds that it was bound by the eligibility criteria that governed the making of the reviewable decision and offered to take him to each one in turn in order to consider if any of the criteria, or exceptions, applied to him. Mr Bounds declined stating that he had read the criteria and none of them applied to him. Mr Bounds asked for an exception from the criteria for the ADM to be made in his case, given his circumstances.

17. The Tribunal discussed Mr Bounds' medical conditions at the time of his service in Vietnam with him, in particular his deafness from the firing of his machine gun and a tropical ulcer on his right leg, first diagnosed on 7 July 1971 and which his medical file records as still being treated on 22 November of that year.⁶ The Tribunal also discussed seven other illnesses later attributed to his war service by DVA,⁷ including Post Traumatic Stress Disorder. At hearing, Mr Bounds could not recall whether he was suffering any symptoms of these ailments at the time of his service in Vietnam and his return to Australia.

⁵ *Australian Defence Medal Regulations 2006, Amendment Regulations*, Commonwealth of Australia Gazette, No G000629, 5 August 2020.

⁶ Mr Bounds DVA Medical File.

⁷ Mr Bounds DVA Medical Summary.

The Defence submission

18. The Directorate acknowledged Mr Bounds' personal circumstances at the time of his discharge, and thanked him for his service in the Australian Army and for his contribution to the defence of Australia.

19. The Directorate stated that in making its decision, it was bound by the eligibility criteria for the ADM, explained what these criteria meant in relation to his service and stated that regretfully, as Mr Bounds did not meet any of the criteria or exceptions, it could not recommend that he be awarded the ADM.

20. However, the Directorate stated that had it been in possession of Mr Bounds medical file at the time of its decision, it may have suggested to Mr Bounds that an application could be made by him under Section 26 of the *Defence Regulation 2016* to request a retrospective review of his discharge from '*Retention not in the interests of the Military*' to one that could be deemed as a medical discharge for the purposes of eligibility for the ADM. The Directorate made clear that it could not guarantee such an application if lodged by Mr Bounds would be successful but if it was, then he would become eligible for the award of the ADM.

21. Mr Bounds agreed with this potential course of action and during the discussion the Directorate offered to assist Mr Bounds with the lodging of his application.

Issues for the Tribunal:

Does Mr Bounds meet the eligibility criteria for the ADM as set out in the ADM Regulations?

22. The Tribunal determined that Mr Bounds was legally discharged as '*Retention not in the interests of the Military*' and noted that he appeared to agree that this was, at least, a contributing factor in his discharge. This form of discharge is not specified for eligibility in the Regulations for the ADM, nor in any of the exceptions to the criteria. As the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision, it determined that Mr Bounds does not meet the eligibility criteria for the ADM as set out in the ADM Regulations.

Was there an option, at the time of Mr Bounds' discharge, to discharge him on medical grounds or; is there an option to amend his discharge retrospectively for the purposes of eligibility for the award of the ADM?

23. Whilst it is not within the remit of the Tribunal to make a decision to amend the nature of a Defence discharge, the Tribunal considers that as recorded by his Army medical file, and as discussed in evidence at the hearing, Mr Bounds was suffering from a serious and long-term illness to his right leg and hearing loss from the firing of his machine gun. The Tribunal also assumes, based on his post discharge DVA determinations, that Mr Bounds would likely have been suffering with at least some symptoms of the seven conditions later attributed by DVA to his war service. Whilst considering this issue some time after his discharge, the Tribunal is of the view that a medical discharge may have been an option for Defence at the time of his discharge on 3 February 1972, and that evidence is available that

may make a retrospective amendment to his discharge possible, which would lead to his eligibility for the ADM.

Findings

24. For the reasons stated in this report the Tribunal finds that Mr Richard Bounds is not eligible for the award of the Australian Defence Medal.

25. The Tribunal supports the Directorate's offer of facilitating an application to review Mr Bounds' discharge from '*Retention not in the interests of the Military*' to consider amendment to medical discharge, which would result in him being eligible for the award of the ADM.

Decision

26. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence of 10 May 2011 to not recommend Mr Richard Bounds for the award of the Australian Defence Medal.

27. The Tribunal acknowledges Mr Bounds' contribution to our nation through his service with the Australian Army particularly during his active service in Vietnam, and thanks the Directorate for its cooperation and courtesy in the conduct of this review.