



Australian Government

Defence Honours and Awards Appeals Tribunal

Turner and the Department of Defence [2021] DHAAT 10 (6 July 2021)

File Number(s) 2020/035

Re **Mr David Peter Turner**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr Stephen Skehill
Mr David Ashley AM

Appearances Mr David Turner

Ms Jo Callaghan, Directorate of Honours and Awards,
Department of Defence
Mr Wayne Parker, Directorate of Honours and Awards,
Department of Defence

Hearing Date 30 June 2021

DECISION

On 6 July 2021 the Tribunal affirmed the decision of 3 February 2020 of the Directorate of Honours and Awards in the Department of Defence that Mr David Peter Turner is not eligible for the award of the Australian Defence Medal for his service in the Australian Army between 1995 and 1998.

CATCHWORDS

DEFENCE AWARD - AUSTRALIAN DEFENCE MEDAL – neither initial enlistment period nor minimum period of service met – discharge at own request – exceptions to mandatory period of efficient service – no discretion.

LEGISLATION

Defence Act 1903 – Part VIIIC – Sections 110T, 110VB(1) and 110VB(6).

Defence Regulation 2016 – Section 36.

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

Australian Defence Medal Regulations 2006 – Instrument of Delegation, dated 23 September 2018.

REASONS FOR DECISION

Introduction

1. Mr David Peter Turner is seeking award of the Australian Defence Medal (ADM) for his service in the Australian Army between 1995 and 1998.
2. On 5 December 2019, Mr Turner applied to the Directorate of Honours and Awards for award of the ADM. On 3 February 2020 Mr Wayne Parker, then Manager Service and Campaign Award Assessments, responded to Mr Turner and advised that he was not eligible for the ADM.¹
3. The reason for Defence's refusal of Mr Turner's application for the ADM was because he did not serve for a minimum period or periods that totalled less than four years and that there was no evidence that the reason for his discharge was as a result of being medically unfit due to a compensable impairment or due to a prevailing Defence policy.
4. Mr Turner has applied for a review of that decision, stating that he left the Army only because of a concern that his future career prospects were adversely affected by the policy of the Army to gradually eliminate the role of Steward, which he performed, in the Australian Army Catering Corps. He believes that his service and the reason for departure justify an exception to the normal requirements of the award. The key question for consideration is whether any of the provisions for exception might meet Mr Turner's case.

Tribunal Jurisdiction

7. 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 to refuse to recommend a person for a defence 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.
8. The Tribunal was satisfied that Mr Turner's application to Defence of 5 December 2019 constitutes an application as required by s110V(1)(c) of the Act. The Tribunal was satisfied that Mr Parker's advice of 23 November 2019 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*.
9. 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.

Conduct of the Review

11. Mr Turner applied to the Tribunal on 24 November 2020 for a review of the decision. On 30 November 2020, in accordance with the Tribunal's Procedural Rules, the Tribunal wrote to the Secretary of the Department of Defence advising of the review of Mr Turner's eligibility

¹ DHA Letter BN13178399 (DHA – 3809312) dated 3 February 2020.

for the ADM and inviting submissions and an explanation of how Defence had reached its decision to refuse the award.² A written submission was issued by the Directorate on 14 January 2021. This submission supported the original decision not to recommend Mr Turner for the ADM.

12. The Defence submission was provided to Mr Turner on 18 January 2021.³ Mr Turner provided a response on 25 February 2021.⁴ On 30 June 2021 the Tribunal heard evidence by video from Mr Turner at a hearing also attended by Ms Jo Callaghan, Mr Wayne Parker as representatives of the Department of Defence.

The Australian Defence Medal

13. The ADM was instituted 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.*

14. 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.⁵*

15. On 13 July 2020 (after the date of the reviewable decision), 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 and mistreatment by a member of the Defence Force or an employee of the Department of Defence was considered a significant contributing factor.⁶

² DHAAT/OUT/2020/339 dated 30 November 2020.

³ DHAAT/OUT/2021/009 dated 18 January 2021.

⁴ Mr Turner email to the Tribunal dated 25 February 2021.

⁵ *Australian Defence Medal Regulations 2006*, Commonwealth of Australia Gazette No. S48, 30 March 2006.

⁶ *Australian Defence Medal Regulations 2006*, Amendment Regulations, Commonwealth of Australia Gazette, No. G000629, 5 August 2020.

Mr Turner's Service Record

21. Mr Turner's service record indicates that he enlisted in the Australian Regular Army on 23 May 1995 for a period of 4 years. Mr Turner was discharged from the Australian Regular Army at his own request on 26 May 1998, having served for 3 years and 4 days.

The Tribunal's Consideration of Eligibility for the ADM

23. There is no dispute regarding Mr Turner's period of service in the Australian Regular Army or that it fell short of the four years. At issue is whether the circumstances of Mr Turner's departure from service could fall within any of the exception criteria for the ADM.

24. We are satisfied that the Directorate decision was made by an appropriately authorised Delegate and the correct legislation was applied in the making of the decision, being the *Australian Defence Medal Regulations*.

25. The Tribunal is bound by the eligibility criteria that govern the award of the ADM. Accordingly, for Mr Turner to qualify having completed less than the four years of his initial engagement, he must have satisfied one of the exceptions laid down in the *Regulations*.

26. At the hearing the Tribunal discussed each of those criteria with Mr Turner. It noted that there was nothing in his service record that indicated that any of them would be applicable, but offered him the opportunity to make any contrary submission that he wished. Mr Turner confirmed that he was in good health during service and at the time of his discharge and he made no claim to have been affected by any of the discriminatory policies that have been determined by the Chief of the Defence Force or his or her delegate (relating to transgender, homosexuality, pregnancy or marriage) or (noting that this criteria was introduced after the date of the reviewable decision) to have been subject to mistreatment by a member of the Defence Force or an employee of the Department of Defence.

27. It is clear that Mr Turner's sole reason for seeking discharge was due to his understandable and quite reasonable perception and belief that his career prospects had been adversely affected by the Commercial Support Program being implemented as part of the Defence Structure Review. Under that Program, various functions were being increasingly outsourced to private contractors rather than being performed by serving members, and these included the role of Stewards in the Australian Army Catering Corps. On recognising the potential impact of this on him, Mr Turner had sought and been granted the opportunity to transfer to the Australian Army Medical Corps but, unfortunately, he was unable to complete the training that was necessary to secure a permanent position in that Corps. Having been offered alternative private sector employment, and discouraged by his assessment of his career prospects, he sought discharge at his own request and this was granted. It is apparent, however, that he was not forced or pushed to seek discharge, and that he did receive some encouragement from an Army Chaplain to remain in the service.

Finding

34. For the above reasons we find that Mr Turner is not eligible for the ADM. We therefore find that the decision of the Directorate should be affirmed.

35. The Tribunal acknowledges that its decision will be a matter of disappointment to Mr Turner who is justifiably proud of his service in the Army, which was rated very well by his superiors, and keen to be able to wear a medallic recognition of it. However, the Tribunal is bound to apply the eligibility criteria as they stood at the date of the reviewable decision and has no discretion to depart from those criteria. The Tribunal does notes, however, that Mr Turner is eligible to seek and receive the Veteran's Lapel Pin from the Department of Veterans' Affairs.

DECISION

37. The Tribunal affirms the decision of 3 February 2020 of the Directorate of Honours and Awards of the Department of Defence that Mr David Peter Turner is not eligible for the award of the Australian Defence Medal for his service in the Australian Army between 1995 and 1998.