



Australian Government

Defence Honours and Awards Appeals Tribunal

Jackson and the Department of Defence [2021] DHAAT 14 (13 October 2021)

File Number	2021/008
Re	Mr Adam Jackson Applicant
And	The Department of Defence Respondent
Tribunal	Mr Graham Mowbray (Presiding Member) Ms Karen Fryar AM
Appearances	Mr Adam Jackson (by Skype) Ms Allison Augustine, Directorate of Honours and Awards, Department of Defence (by Skype) Ms Catherine Morris, Directorate of Honours and Awards, Department of Defence (by telephone)
Hearing Date	11 October 2021

DECISION

On 13 October 2021 the Tribunal affirmed the decision of the Department of Defence of 21 May 2021 that Mr Adam John Jackson is not eligible for the award of the Defence Long Service Medal.

RECOMMENDATION

Pursuant to section 110VB(3) of the *Defence Act 1903*, the Tribunal recommends to the Minister for Defence Personnel that he review whether an exception should be made to the Regulations and Determinations concerning the Defence Long Service Medal and other Australian long service awards to waive the requirement for 15 years of qualifying service where a member is discharged due to an accepted service caused medical condition.

CATCHWORDS

DEFENCE AWARD – Defence Long Service Medal – discharge resulting from service caused medical condition – qualifying service – 14 years qualifying service – alternative approaches for determining qualifying years – efficient service – no exception to 15 year qualifying service requirement – no discretion – recommendation for a review

LEGISLATION

Defence Act 1903 – ss 110VB(2), 110VB(3), 110VB(6)

Commonwealth of Australia Gazette No S352, Letters Patent and Regulations for the Defence Long Service Medal, 10 July 1998

Commonwealth of Australia Gazette No S160, Letters Patent and Amending Regulations for the Defence Long Service Medal, 30 March 2000

Commonwealth of Australia Gazette No S2, Letters Patent and Amending Regulations for the Defence Long Service Medal, 3 January 2002

Defence Long Service Medal Determination 2021, 16 March 2021

REASONS FOR DECISION

Introduction

1. Mr Adam John Jackson seeks review of a decision of 21 May 2021 by Ms Erin Ashley, Assessments Manager, Directorate of Honours and Awards of the Department of Defence, refusing the award of the Defence Long Service Medal (DLSM).¹

2. Mr Jackson enlisted in the Australian Regular Army (ARA) on 24 July 2006. He served in a full time capacity as an Avionics Technician. Mr Jackson also served overseas in Afghanistan in 2010 for eight months and in 2012 for five months. His full time service with the Australian Regular Army ended on 25 January 2018. On the next day, 26 January 2018, he transferred to the Active Reserve (ARES). Mr Jackson then worked as a Career Manager at Defence Force Recruiting Maroochydore, Queensland with the Active Reserve.² His last day of Reserve service was 4 March 2020.³

3. On 12 March 2020 Mr Jackson suffered a stroke which resulted in him being permanently disabled and unable to work. He was medically discharged from the Australian Army Reserve on 31 August 2021 at the rank of Corporal.⁴

4. For his service with the Australian Army Mr has been awarded

- the Australian Active Service Medal with Clasp ‘ICAT’
- the Afghanistan Medal
- the NATO Non Article 5 Medal with Clasp ‘ICAT’
- the Multiple Tour Indicator 2 NATO ISAF
- the Australian Defence Medal
- the Returned from Active Service Badge⁵
- the Army Combat Badge.⁶

¹ This review also encompasses a further unsuccessful assessment of Mr Jackson’s eligibility for the DLSM by Ms A Augustine, Assistant Director Current Recognition, Department of Defence on 23 June 2021

² Jackson, Adam John, ADO Service Record

³ Email, Mr Jackson to Tribunal, 1 September 2021

⁴ Letter, Director Honours and Awards, Department of Defence to Tribunal

⁵ Submission, Department of Defence to Tribunal, 29 July 2021

⁶ Jackson, Adam John, ADO Service Record

Eligibility Criteria for the Defence Long Service Medal

5. The DLSM was instituted by Letters Patent issued on 26 May 1998 *for the purpose of according recognition to persons who render long and efficient service as members of the Defence Force ...*⁷ Regulations 3 and 5, as amended, made under the Letters Patent relevantly provide

Award of the Medal

3. *The Medal may be awarded to a member, or former member, of the Defence Force (the member) who:*

- (a) *has given:*
 - (i) *qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and*
 - (ii) *at least 1 day's qualifying service on or after 20 April 1994; or*

...

Qualifying service

5. *Service in the Defence Force is qualifying service if:*

- (a) *where the service was given as a member of the Permanent Forces or the Reserve Forces – the Member:*
 - (i) *fulfilled the requirements specified in directions given by the Chief of the Defence Force; and*
 - (ii) *gave efficient service; or*⁸

...

6. Amendments to the Regulations in 2000 inserted the following definition of *efficient service* into Regulation 2

*efficient service means service determined to be efficient service by the Chief of the Defence Force*⁹

7. On 16 March 2021 the Chief of the Defence Force made a Determination pursuant to Regulation 5 which relevantly provides that the minimum period of annual qualifying service for all members in the Army for service from 20 April 2000 is 20 days.¹⁰

⁷ Commonwealth of Australia Gazette No S352, Letters Patent and Regulations for the Defence Force Long Service Medal, 10 July 1998

⁸ Ibid, as amended by Letters Patent and Amending Regulations for the Defence Long Service Medal, Commonwealth of Australia Gazette No S160, 30 March 2000, and Letters Patent and Amending Regulations for the Defence Long Service Medal, Commonwealth of Australia Gazette No S2 3 January 2002

⁹ Commonwealth of Australia Gazette No S 160, Letters Patent and Amending Regulations for the Defence Long Service Medal, 30 March 2000

¹⁰ Defence Long Service Medal Determination 2021, 16 March 2021

Agreed Facts

8. At the hearing the Tribunal obtained the agreement of both Mr Jackson and the representatives of Defence to the relevant eligibility criteria and a number of salient facts which are not contested

- Mr Jackson's service in the Australian Army extended from 24 July 2006 to 31 August 2021 when he was medically discharged¹¹
- for Mr Jackson to be eligible for the DLSM he would need to have *qualifying service* of at least 15 years¹²
- the minimum annual period of service in each year for that service to amount to *qualifying service* was 20 days¹³
- that service must have been *efficient service ... as determined ... by the Chief of the Defence Force*¹⁴
- Mr Jackson met these requirements for each of the 14 service years from enlistment on 24 July 2006 until 23 July 2020¹⁵
- Mr Jackson's last day of Reserve service was 4 March 2020¹⁶
- Mr Jackson suffered a stroke on 12 March 2020 leaving him permanently disabled and unable to work¹⁷
- as a consequence Mr Jackson undertook no days of service during the year from 24 July 2020 to 23 July 2021.

The Issues

9. The issues are

- Mr Jackson's qualifying service for the DLSM using the standard approach for assessing qualifying years
- alternative approaches to determine qualifying years in assessing Mr Jackson's qualifying service
- Mr Jackson's 'Statement of Claims' and Defence's response
- *efficient service*

¹¹ Authority to Commence Medical Separation Administration and Separation Order – 8517714 CPL
AJ Jackson, RAEME

¹² Regulation 3(1)(a)(i)

¹³ *Defence Long Service Medal Determination 2021*, op cit, Schedule 1B

¹⁴ Regulations 2 and 5(a)(ii)

¹⁵ Submission, Department of Defence to Tribunal, op cit, paragraph 23(5)

¹⁶ Email, Mr Jackson to Tribunal, op cit

¹⁷ Submission, Department of Defence to Tribunal, op cit, paragraph 11

- scope for applying an exception to the normal rules where there has been a medical discharge.

Mr Jackson's qualifying years of service

10. Mr Jackson's service was with the Australian Regular Army (ARA) from 24 July 2006 until 25 January 2018 and the Army Reserve (ARES) from 26 January 2018 until 31 August 2021. The table below outlines Mr Jackson's entire Australian Defence Force service with Defence's assessment based on the standard approach for assessing qualifying service.

Start of 12mth	Service transfers, discharge or re-enlistment	End of Month	Service Type	Days Required	Days Served	Qualifying year	Aggregated year
24/07/2006	>	23/07/2007	ARA	20	>20	Yes	1
24/07/2007	>	23/07/2008	ARA	20	>20	Yes	2
24/07/2008	>	23/07/2009	ARA	20	>20	Yes	3
24/07/2009	>	23/07/2010	ARA	20	>20	Yes	4
24/07/2010	>	23/07/2011	ARA	20	>20	Yes	5
24/07/2011	>	23/07/2012	ARA	20	>20	Yes	6
24/07/2012	>	23/07/2013	ARA	20	>20	Yes	7
24/07/2013	>	23/07/2014	ARA	20	>20	Yes	8
24/07/2014	>	23/07/2015	ARA	20	>20	Yes	9
24/07/2015	>	23/07/2016	ARA	20	>20	Yes	10
24/07/2016	>	23/07/2017	ARA	20	>20	Yes	11
24/07/2017	25/01/2018		ARA				
	26/01/2018	23/07/2018	ARES	20	>20	Yes	12
24/07/2018	>	23/07/2019	ARES	20	>20	Yes	13
24/07/2019	>	23/07/2020	ARES	20	>20	Yes	14
24/07/2020	>	23/07/2021	ARES	20	0		

11. This table calculates Mr Jackson's qualifying service commencing from his enlistment date and applying each qualifying year from that date.

12. On this basis Mr Jackson served the requisite 20 days in 14 years, but having served no days in the last year 2020-2021 he is unable to meet the 15 year requirement.

Alternative approaches to determine qualifying years

13. Defence applied alternative approaches in determining the period of a qualifying year to see if these variations enabled Mr Jackson to qualify for the DLSM. Instead of using years from his enlistment date, Defence used financial years, calendar years and a variation commencing on his enlistment dates in each of the ARA and ARES.¹⁸

14. Tables showing these approaches are set out in Annexure A.

15. On none of these alternative approaches was Mr Jackson able to satisfy the 15 years qualifying service requirement.

Mr Jackson's 'Statement of Claims'

16. Mr Jackson put a number of claims before the Tribunal to support his entitlement to the DLSM

- on 23 July 2021 he would have spent 15 years in the Defence Force
- on 12 March 2020 he suffered a massive stroke leaving him permanently disabled and unable to work again
- the Department of Veterans' Affairs accepted this condition as related to his service
- had it not been for this service related condition he would have served for many more years and qualified for the DLSM
- at the time of the application he had 14 years' service and was only 20 days of effective service away from qualifying for the DLSM
- he was to be medically discharged on 17 August 2021¹⁹ and at the time of the application was still a serving member
- under the *Pay and Conditions Manual, 5.3.9 Payment of salary and allowances on a medical absence*, full-time members on medical absences have their leave counted as effective service
- as the condition is service related and he has spent countless hours undertaking rehabilitation there should be exceptions for the DLSM
- the DLSM should have provisions similar to the Australian Defence Medal where there is scope for members who have been medically discharged to obtain that medal
- there is a similar exceptional circumstances provision under the Defence Home Ownership Assistance Scheme

¹⁸ Letter, Defence to Tribunal, 24 September 2021, page 2 – folio 105; Submission, Department of Defence to Tribunal, op cit, Attachment E

¹⁹ Later changed to 31 August 2021

- one such provision is *illness or injury – an extended period of illness or injury that prevents you from completing effective service across the whole financial year (or part of the financial year)*.²⁰

Defence’s submissions

17. Defence acknowledged and accepted Mr Jackson’s first six claims in paragraph 16 above.²¹ It put the following submissions in relation to the remaining claims.

18. **Pay and Conditions Manual.** This section of the manual applies to full time current serving members at the time of their medical injury. There are no similar provisions for Reserve members.

19. **Australian Defence Medal exception.** There is no provision in the DLSSM Regulations similar to that in the Australian Defence Medal Regulations.

20. **Defence Home Ownership Assistance Scheme.** The DLSSM Regulations which are legislative documents do not allow for exceptional circumstances or exception from effective service in the eligibility criteria, unlike the Defence Home Ownership Assistance Scheme which is a Defence Scheme.²²

21. Defence concluded

CPL Jackson has not and will not complete the minimum requirement by the time of his discharge due to his medical condition.

Unfortunately, the DLSSM Regulations do not have an exception clause for members who do not meet the eligibility criteria due to medical discharge.

*As such, CPL Jackson did not complete the minimum requirement of 15 years qualifying service for the DLSSM.*²³

Tribunal consideration of Mr Jackson’s ‘Statement of Claims’

22. We accept, as does Defence, the accuracy of each of the first six claims in paragraph 16.

23. However, in determining Mr Jackson’s eligibility for the DLSSM, we are bound to apply the criteria in the Regulations for the DLSSM set out in paragraphs 5 and 6 above, in association with the Chief of the Defence Force’s Determination of the minimum annual periods of service to be completed by a member for a year of qualifying service (paragraph 7 above). They are the eligibility criteria that Ms Ashley of Defence was obliged to rely upon in making the reviewable decision on 21 May 2021.²⁴

²⁰ Statement of Claims attached to Corporal Adam Jackson’s Application to the Tribunal, 15 June 2021

²¹ Submission, Department of Defence to Tribunal, op cit, pages 4 - 5

²² Ibid, page 5

²³ Ibid, paragraphs 24 and 25

²⁴ s 110VB(6), *Defence Act 1903*

24. We agree with Defence that the provisions contained in the Pay and Conditions Manual, the Australian Defence Medal Regulations and the Defence Home Ownership Assistance Scheme are not relevant in the consideration of Mr Jackson's eligibility for DLSM. Confusing though the apparent inconsistencies between these different schemes may be, the rules in those schemes do not assist us when assessing eligibility for the DLSM.

25. Importantly, there is no provision in the DLSM Regulations or the Chief of the Defence Force's Determination which allows for an exception to be made where a member is discharged because of an accepted service caused medical condition.

26. Thus on the evidence and for the reasons given above we find that Mr Jackson has not given qualifying service for a period of at least 15 years.

Efficient service

27. Regulation 5(a)(ii) provides that service can only be qualifying service if during that time the member gave *efficient service*, defined as *service determined to be efficient service by the Chief of the Defence Force*.²⁵ It is an essential separate criterion, in addition to meeting the number of qualifying years of service.

28. There does not appear to be any current operative Determination by the Chief of the Defence Force of *efficient service*, the 6 February 2013 Determination²⁶ having been revoked by the current Determination,²⁷ and the previous 13 April 2000 Determination only referring to service prior to 20 April 2000 as *efficient service*.²⁸

29. The current Determination sets out minimum annual periods of service to be completed for a year of qualifying service.²⁹ It does not make any mention of what amounts to *efficient service*.

30. Defence appears to assume that if a member serves for the requisite number of qualifying years, that member has given *efficient service*. This is a conflation of two discrete criteria. It is inconsistent with the Regulations which require a separate assessment of *efficient service* in accordance with a Determination by the Chief of the Defence Force.

31. In Mr Jackson's case it is unnecessary to consider whether he gave *efficient service* as he did not satisfy the 15 qualifying years criterion.

²⁵ Regulation 2 definition of *efficient service*

²⁶ Defence Long Service Medal Regulations, Determination by the Chief of the Defence Force, 6 February 2013

²⁷ Schedule 3, *Defence Long Service Medal Determination 2021*, 16 March 2021, op cit – folio 58

²⁸ Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force, 13 April 2000

²⁹ Clause 5 and Schedule 1, *Defence Long Service Medal Determination 2021*, 16 March 2021, op cit

No discretion to disregard eligibility criteria

32. As mentioned above neither the DLSM Regulations nor the Chief of the Defence Force's Determination allow for an exception to be made where a member is discharged because of a service caused medical condition.

33. Furthermore the Tribunal does not have a discretion to disregard the criteria set out in these instruments.³⁰

Finding - Mr Jackson is not entitled to the DLSM

34. For the reasons given above Mr Jackson is not entitled to the DLSM.

35. This ineligibility for the DLSM does not detract in any way from the valued and respected service given by Mr Jackson to the Australian Army.

Recommendation to Minister

36. At the hearing on 11 October 2021 Mr Jackson clearly accepted that his service did not meet the criteria in the current Regulations and Determination of the Chief of the Defence Force. However he put a persuasive case in support of reconsideration of the eligibility criteria for situations such as his, being -

- on 23 July 2021 he would have spent 15 years in the Defence Force
- he only needed a further 20 days of efficient service to meet the qualifying service requirement for the DLSM
- he was still a member of the Defence Force for the whole of the 2020 - 2021 year, and until 31 August 2021
- whilst still serving during this period, he attended countless medical appointments relating to his service caused medical condition, paid for by the Department of Veterans' Affairs, and on average 6-10 hours per week on rehabilitation appointments through the NDIS³¹
- all these appointments would have been counted towards his service had he not been a reservist or if he had been full time as a reservist on Continuous Full-Time Service (CFTS)
- he had been paid 'Reserve Income' by the Department of Veterans' Affairs from the date of his stroke, 12 March 2020, based on the number of Reserve days it was anticipated he would have attended (40 full day parades in a year) had it not been for his stroke³²

³⁰ s 110VB(6), *Defence Act 1903*

³¹ Email, Mr Adam Jackson to Defence, 14 July 2021

³² Reserve Income was based on the number of Reserve parades attended from 12 March 2019 to 12 March 2020 'equalling 40 full days'. ³² See letter, Department of Veterans' Affairs to Mr Jackson, 16 August 2021

- he did 15 years' service, but it was 'just not counted because of the disability'.

37. Ms Augustine told the Tribunal at hearing that Defence has done everything possible to find a way for Mr Jackson to be awarded the DLSM. It had assessed Mr Jackson's service 'multiple ways' but 'on each re-assessment 15 qualifying years could not be identified'.³³ We accept this and appreciate Defence's beneficial efforts on behalf of Mr Jackson.

38. When questioned why other medals such as the Australian Defence Medal contained an exception for medical discharges, Ms Augustine pointed out that the DLSM was for a different type of recognition, that is for *length* of service not the *nature* of the service.

39. It is particularly unfortunate that Mr Jackson is only ineligible because of his stroke, accepted by Defence as service caused. We substantially agree with Mr Jackson's submissions. We consider it appropriate that the Minister review whether there should be an exception in the DLSM criteria, and the criteria that apply to other medals for 15 years service, for cases such as this.

40. Therefore pursuant to section 110VB(3) of the Defence Act, we recommend that the Minister for Defence Personnel review whether an exception should be made to the requirement for 15 years of qualifying service for Australian long service awards where a member is discharged due to an accepted service caused medical condition.

TRIBUNAL DECISION

41. The Tribunal affirms the decision of the Department of Defence of 21 May 2021 that Mr Jackson is not eligible for the award of the Defence Long Service Medal.

³³ Submission, Department of Defence to Tribunal, op cit, paragraph 13

ANNEXURE A

ALTERNATIVE APPROACHES

Long Service Assessment – Current Assessment

Long Service Assessment							
Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
24/07/2006	23/07/2007	ARA	20	>20	Yes	1	
24/07/2007	23/07/2008	ARA	20	>20	Yes	2	
24/07/2008	23/07/2009	ARA	20	>20	Yes	3	
24/07/2009	23/07/2010	ARA	20	>20	Yes	4	
24/07/2010	23/07/2011	ARA	20	>20	Yes	5	
24/07/2011	23/07/2012	ARA	20	>20	Yes	6	
24/07/2012	23/07/2013	ARA	20	>20	Yes	7	
24/07/2013	23/07/2014	ARA	20	>20	Yes	8	
24/07/2014	23/07/2015	ARA	20	>20	Yes	9	
24/07/2015	23/07/2016	ARA	20	>20	Yes	10	
24/07/2016	23/07/2017	ARA	20	>20	Yes	11	
24/07/2017	23/07/2018	ARA / ARES	20	>20	Yes	12	Transfer ARES 26/01/2018
24/07/2018	23/07/2019	ARES	20	>20	Yes	13	
24/07/2019	23/07/2020	ARES	20	>20	Yes	14	
24/07/2020	23/07/2021	ARES	20	0	No	14	
24/07/2021	17/08/2021	ARES	20	0	No	14	Incomplete year

Long Service Assessment – Financial Year Assessment

Long Service Assessment							
Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
24/07/2006	30/06/2007	ARA	20	>20	No	0	Incomplete year
01/07/2007	30/06/2008	ARA	20	>20	Yes	1	
01/07/2008	30/06/2009	ARA	20	>20	Yes	2	
01/07/2009	30/06/2010	ARA	20	>20	Yes	3	
01/07/2010	30/06/2011	ARA	20	>20	Yes	4	
01/07/2011	30/06/2012	ARA	20	>20	Yes	5	
01/07/2012	30/06/2013	ARA	20	>20	Yes	6	
01/07/2013	30/06/2014	ARA	20	>20	Yes	7	
01/07/2014	30/06/2015	ARA	20	>20	Yes	8	
01/07/2015	30/06/2016	ARA	20	>20	Yes	9	
01/07/2016	30/06/2017	ARA	20	>20	Yes	10	
01/07/2017	26/01/2018	ARA	20	>20	No	10	Transfer ARES 26/01/2018 Incomplete year
27/01/2018	30/06/2018	ARES	20	>20	No	10	Incomplete year
01/07/2018	30/06/2019	ARES	20	>20	Yes	11	
01/07/2019	30/06/2020	ARES	20	>20	Yes	12	Transfer ARES 26/01/2018
01/07/2020	30/06/2021	ARES	20	0	No	12	
01/07/2021	17/08/2021	ARES	20	0	No	12	Incomplete year

Long Service Assessment – Service Enlistment Date Assessment

Long Service Assessment

Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
24/07/2006	23/07/2007	ARA	20	>20	Yes	1	
24/07/2007	23/07/2008	ARA	20	>20	Yes	2	
24/07/2008	23/07/2009	ARA	20	>20	Yes	3	
24/07/2009	23/07/2010	ARA	20	>20	Yes	4	
24/07/2010	23/07/2011	ARA	20	>20	Yes	5	
24/07/2011	23/07/2012	ARA	20	>20	Yes	6	
24/07/2012	23/07/2013	ARA	20	>20	Yes	7	
24/07/2013	23/07/2014	ARA	20	>20	Yes	8	
24/07/2014	23/07/2015	ARA	20	>20	Yes	9	
24/07/2015	23/07/2016	ARA	20	>20	Yes	10	
24/07/2016	23/07/2017	ARA	20	>20	Yes	11	
24/07/2017	25/01/2018	ARA	20	>20	No	11	Transfer ARES 26/01/2018 Incomplete year
26/01/2018	25/01/2019	ARES	20	>20	Yes	12	
26/01/2019	25/01/2020	ARES	20	>20	Yes	13	
26/01/2020	25/01/2021	ARES	20	5	No	13	
25/01/2021	17/08/2021	ARES	20	0	No	13	Incomplete year

Long Service Assessment – Calendar Year Assessment

Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
24/07/2006	31/12/2006	ARA	20	>20	No	0	Incomplete year
01/01/2007	31/12/2007	ARA	20	>20	Yes	1	
01/01/2008	31/12/2008	ARA	20	>20	Yes	2	
01/01/2009	31/12/2009	ARA	20	>20	Yes	3	
01/01/2010	31/12/2010	ARA	20	>20	Yes	4	
01/01/2011	31/12/2011	ARA	20	>20	Yes	5	
01/01/2012	31/12/2012	ARA	20	>20	Yes	6	
01/01/2013	31/12/2013	ARA	20	>20	Yes	7	
01/01/2014	31/12/2014	ARA	20	>20	Yes	8	
01/01/2015	31/12/2015	ARA	20	>20	Yes	9	
01/01/2016	31/12/2016	ARA	20	>20	Yes	10	
01/01/2017	31/12/2017	ARA	20	>20	Yes	11	
01/01/2018	31/12/2018	ARA / ARES	20	>20	Yes	12	Transfer ARES 26/01/2018
01/01/2019	31/12/2019	ARES	20	>20	Yes	13	
01/01/2020	31/12/2020	ARES	20	8	No	13	
01/01/2021	17/08/2021	ARES	20	0	No	13	Incomplete year