



Australian Government

Defence Honours and Awards Appeals Tribunal

Hall and the Department of Defence [2023] DHAAT 4 (14 March 2023)

File Number(s) 2022/007

Re **Mr Michael Hall**
Applicant

And **The Department of Defence**
Respondent

Tribunal Ms Josephine Lumb (Presiding Member)
Air-Vice Marshal Tracy Smart AO (Retd)

Hearing Date 15 February 2023

Attendances Mr Michael Hall
Applicant

Ms Jo Callaghan,
Assistant Director, Veterans and Families
Directorate of Honours and Awards
Department of Defence

Mr Wayne Parker, Manager, Veterans and Families
Directorate of Honours and Awards
Department of Defence

DECISION

On 14 March 2023, the Tribunal decided to affirm the decision that Mr Hall not be recommended for the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – Australian Defence Medal – Army Reserve service - eligibility criteria – initial enlistment conditions not met – reasons for cessation – limited exceptions to mandatory period of efficient service – no discretion.

LEGISLATION

Defence Act 1903 – Part VIIIIC – Sections 110T, 110V(1), 110VB(2), 110VB(6)

Defence Regulation 2016, Regulation 36

Australian Defence Medal Regulations 2006, Letters Patent, Commonwealth of Australia Gazette S48, dated 30 March 2006

Australian Defence Medal Regulations 2006, Chief of the Defence Force Determination dated 6 February 2013

REASONS FOR DECISION

Introduction

1. The Applicant, Mr Michael Hall, seeks review of a decision of Mrs Allison Augustine, Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the Australian Defence Medal (ADM).¹

Decision under review

2. On 10 May 2018, Mr Hall applied to the Directorate for an assessment of his eligibility for the ADM. On 13 July 2018, Mrs Augustine advised Mr Hall that he was ineligible for that award, for the following reasons:

“Examination of your application, service record and ADF pay record data, shows that while you served longer than four years, you do not have four qualifying years of service as you did not complete the minimum annual obligation in each year of service.

Additionally, your service record also shows that the reason for your discharge was not as a result of being medically unfit due to a compensable impairment or due to a prevailing discriminatory Defence policy.”

3. On 13 May 2022, Mr Hall made application to the Tribunal seeking review of the above decision.²

Tribunal jurisdiction

4. 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. Regulation 36 of the *Defence Regulation 2016* lists the defence awards that may be the subject of a reviewable decision. Included in the defence awards listed in Regulation 36 is the ADM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

Mr Hall’s service

5. Mr Hall enlisted in the Australian Army Reserves (ARES) on 11 April 2014 with an open ended engagement period, with a further requirement to serve in the Standby Reserve for a period of five years following the completion of his ARES service. Mr Hall’s last attendance in the ARES was on 25 April 2018. On 21 May 2018 he was transferred to Standby Reserve, Category 2 (SERCAT 2) and discharged from active Reserve service on that date.³

6. Mr Hall has not been issued with any awards for his service.⁴

¹ Letter to Mr Hall from Mrs Augustine dated 13 July 2018.

² Application to the Tribunal by Mr Hall dated 13 May 2022.

³ Letter to Mr Hall from Mrs Augustine dated 13 July 2018.

⁴ Letter from Defence to Tribunal dated 1 July 2022.

The Australian Defence Medal

7. In summary, in accordance with the *Australian Defence Medal Regulations 2006* (the ADM Regulations), in order to be eligible for the ADM, a member or former member of the Defence Force must have rendered the minimum annual qualifying service by completing an initial enlistment or appointment period, or a period of or totalling not less than four years' service.

8. The eligibility criteria for awarding the ADM is contained in paragraph 4(1) of the ADM Regulations which, at the time of making the reviewable decision (dated 13 July 2018) stated:

“4 *Award of the Medal*

- (1) *The Medal may be awarded to a member, or former member, of the Australian Defence Force who after 3 September 1945 has given qualifying service that is efficient service:*
- a) *by completing an initial enlistment or appointment period; or*
 - b) *for a period of not less than 4 years service; or*
 - c) *for periods that total not less than 4 years; or*
 - d) *for a period or periods that total less than 4 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 subregulation (1), the Chief of the Defence Force or his or her delegate may determine that a period of the member's qualifying service is efficient service.*
- (3) *The other conditions for the award are as determined by the Governor-General on the recommendation of the Minister.*⁵

⁵ *Australian Defence Medal Regulations, 2006 Commonwealth of Australia Gazette, S48 dated 30 March 2006 Folio 31-35.*

The Regulations were amended on 13 July 2020 to amend the provisions of subparagraphs 4(1)(d)(ii) and 4(1)(iii) and to add a new subparagraph 4(1)(iv) to include a provision for award of the ADM where 'mistreatment by a member of the Defence Force or an employee in the Department of Defence was a significant contributing factor'.

ARES service and qualification for the ADM

9. Further eligibility criteria for the ADM, contained in a Determination by the Chief of the Force dated 6 February 2013 and made pursuant to Regulation 4(2)⁶ stated:

| Service Category | Minimum Qualifying Period | Effective Dates | Comments |
|--------------------------|---|-----------------------------------|--------------------------------------|
| Australian Army | | | |
| Army Reserve | 26 days, including such periods of continuous training and home training as directed by the proper military authority | Until 30 June 1993 | |
| | 14 days | From 1 July 1993 to 20 April 2000 | |
| Special Conditions Units | 26 continuous service | Until 30 June 1993 | From 1 July 1993 as for Army Reserve |
| All members | 20 days | From 20 April 2000 | |

10. Similar periods were set out in earlier determinations by the Chief of the Defence Force. The periods set out in the 2013 Determination remained in force until 16 March 2021. The 2013 Determination applies to Mr Hall's application and in summary dictates that the minimum required period is 20 days service in the ARES per enlistment year.

Mr Hall's application to the Tribunal

11. In his application to the Tribunal, Mr Hall stated that:

'The decision concerning the above (application to DHA dated 18 May 2018) did not rule in my favour as I did not attend five scheduled Parade times in the year 2016 due to civilian employment commitments. I was appointed to the ADF on 11 April 2014, and discharged from active service on 28 April 2018 equating to over four years service. As I could not attend the above mentioned parade times, I still faithfully served the Australian Army (Reserves) as an active member under Her Majesty Queen Elizabeth II until I lawfully discharged on the above mentioned date.'

12. Mr Hall further stated:

'I wish to express my disappointment reflecting the decision made as the Defence Medal is a sole indicator of my service. Five days less of the required service is a minority. It should also be noted that during the year of 2016, I attended a training course for a period of fourteen days. This should count towards the eligibility criteria. I am so proud to have served under the Australian Army banner and wanted the ADM to show for it. I beg of you to please overturn the decision. I completed four years of service out of good faith.'

⁶ Australian Defence Medal Regulations Chief of the Defence Force Determination dated 6 February 2013.

The Defence Report

13. The Defence Report reiterated its position that, while Mr Hall served in the ADF for more than four years, he does not have four qualifying years of service given he did not complete the minimum annual obligation in each enlistment year.⁷ Further, Mr Hall's discharge was not as a result of being medically unfit due to a compensable impairment or due to a prevailing discriminatory Defence policy, meaning that the (limited) exceptions set out in the ADM regulations do not apply in his case.⁸

14. The following table, extracted from the Defence Report, outlines its position on Mr Hall's qualifying service.

| Start 12 Months | Service, Transfer, Discharge | End 12 Months | Service Type | Days Required | Days Served | Qualifying Year | Aggregate Year |
|-----------------|------------------------------|---------------|--------------|---------------|-------------|-----------------|----------------|
| 11/4/2014 | | 10/4/2015 | ARES | 20 | >20 | Yes | 1 |
| 11/4/2015 | | 10/4/2016 | ARES | 20 | >20 | Yes | 2 |
| 11/4/2016 | | 10/4/2017 | ARES | 20 | 15 | No | 2 |
| 11/4/2017 | | 10/4/2018 | ARES | 20 | >20 | Yes | 3 |
| 11/4/2018 | 21/5/2018 | | ARES | 20 | | | |

15. The Defence Report includes an attachment copy of Mr Hall's Global Payroll Attendance Record,⁹ which details every period of Mr Hall's service attendance for which he received payment from the ADF.

Tribunal consideration

16. There is no dispute regarding Mr Hall's period of service nor the fact that he does not have four qualifying years of service given he did not complete the minimum annual obligation in each enlistment year.

17. Further, there is no dispute that the circumstances surrounding Mr Hall's discharge from active Reserve service do not fall within any of the (limited) exception criteria for the ADM. At the hearing the Tribunal canvassed those exception criteria with Mr Hall who confirmed that none were applicable to his case.

18. At the hearing the Tribunal discussed with Mr Hall the circumstances surrounding the October 2016 training courses referenced in his application to the Tribunal. The Tribunal noted in this context that Mr Hall's service records indicate that this course was 'dropped'.¹⁰ At the hearing Mr Hall advised the Tribunal that he was unable to complete the courses in question (Army First Aid and Combat First Aid) as it had triggered his Post-Traumatic Stress Disorder (PTSD). He had therefore made the decision to withdraw from the course in the best interests of his mental health. The Tribunal notes that Mr Hall attributed his PTSD to his civilian employment as a first responder.

⁷ Letter from Mr Ian Heldon, Director, Honours and Awards, to Tribunal dated 1 July 2022.

⁸ Ibid.

⁹ Defence Report dated 1 July 2022.

¹⁰ ADO Service Record, Michael James Hall, 860930.

19. The Tribunal is bound by the eligibility criteria that govern the award of the ADM. Accordingly, for Mr Hall to qualify for the ADM having not completed the minimum obligation in each enlistment year, he must have satisfied one of the limited exceptions laid down in the Regulations. The Tribunal is satisfied that none of those exceptions apply in Mr Hall's case.

Finding

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

21. The Tribunal acknowledges that its decision will be a matter of disappointment to Mr Hall who is justifiably proud of his service in the Army. 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 note, however, that Mr Hall is eligible to apply for the Reservist Lapel Pin from the Department of Veterans' Affairs.

DECISION

22. The Tribunal affirms the decision of 13 July 2018 of the Directorate of Honours and Awards of the Department of Defence that Mr Michael Hall is not eligible for the award of the Australian Defence Medal for his service in the Australian Army between 2014 and 2018.