



Australian Government

Defence Honours and Awards Appeals Tribunal

[REDACTED] and the Department of Defence [2022] DHAAT 6 (18 April 2023)

File Number(s) 2022/013

Re [REDACTED]
Applicant

And **The Department of Defence**
Respondent

Tribunal Ms Josephine Lumb (Presiding Member)
Air Commodore Anthony Grady AM (Retd)

Hearing Date 14 February 2023

Attendances [REDACTED]
Applicant

Mrs Catherine Morris
Assistant Director - Current Recognition Team
Directorate of Honours and Awards, Defence
For the Respondent

Mrs Kathleen O'Callaghan
Manager - Current Recognition Team
Directorate of Honours and Awards, Defence
For the Respondent

Mrs Jen Robinson
Manager - Policy and Review
Directorate of Honours and Awards
Department of Defence
For the Respondent

DECISION

On 18 April 2023, the Tribunal decided to affirm the decision that [REDACTED] [REDACTED] not be recommended for the Australian Operational Service Medal (Greater Middle East Operation).

CATCHWORDS

DEFENCE AWARD – Australian Operational Service Medal (Greater Middle East Operation) – eligibility criteria – Australian international activities - deployed or force assigned - declared operation – Operation ACCORDION - not less than aggregate of 30 days.

LEGISLATION

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

Defence Regulation 2016, Regulation 36

Australian Operation Service Medal Regulation 2012, Commonwealth of Australia Gazette S67, Letters Patent and Regulations, dated 6 June 2012.

Australian Operation Service Medal Regulation 2012, Amendment 2015, Commonwealth of Australia Gazette G00827, dated 1 June 2015.

Australian Operation Service Medal Regulation 2012, Amendment 2020, Commonwealth of Australia Gazette G00629, dated 5 August 2020.

Australian Operation Service Medal Regulation 2012, Australian Operation Service Medal (Greater Middle East Operation) Instrument 2014, Commonwealth of Australia Gazette G01531, dated 10 September 2014.

Australian Operation Service Medal Regulation 2012, Australian Operation Service Medal (Greater Middle East Operation) Instrument 2015, Commonwealth of Australia Gazette G00562, dated 21 April 2015.

Australian Operation Service Medal Regulation 2012, Australian Operation Service Medal (Greater Middle East Operation) Amendment 2019, Commonwealth of Australia Gazette G00489, dated 7 June 2019.

Australian Operation Service Medal Regulation 2012, Australian Operation Service Medal (Greater Middle East Operation) Amendment 2020, Commonwealth of Australia Gazette G00753, dated 17 September 2020.

Australian Operation Service Medal Regulation 2012, Australian Operation Service Medal (Greater Middle East Operation) Instrument Amendment 2022 (No 1), Commonwealth of Australia Gazette G00337, dated 20 April 2022.

Australian Operation Service Medal Regulation 2012, Australian Operation Service Medal (Greater Middle East Operation) Instrument Amendment 2022 (No 21), Commonwealth of Australia Gazette G00338, dated 20 April 2022.

Introduction

1. The Applicant, ██████████,¹ seeks review of a decision dated 28 July 2022 of Ms Kathleen O’Callaghan of the Directorate of Honours and Awards of the Department of Defence (the Directorate) to refuse to recommend him for the Australian Operational Service Medal (Greater Middle East Operation) (AOSM (GMEO)).²

Decision under review

2. On 26 September 2021, ██████████ applied to the Directorate for an assessment of his eligibility for the AOSM (GMEO). In response, Ms O’Callaghan wrote to ██████████ on 28 July 2022 advising that, as he had not completed 30 days on a declared Greater Middle East Operation, he could not be recommended for the award.³

3. On 28 July 2022, ██████████ made application to the Tribunal seeking review of the Directorate’s decision.⁴

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.

5. 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 Australian Operational Service Medal. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

██████████ service

6. ██████████ enlisted in the Australian Army on ██████████ and is still actively serving. Of relevance to this application, ██████████ was force assigned on Operation ACCORDION from ██████████. At that time ██████████ held the rank of ██████████.

7. ██████████ has been issued with the Australian Defence Medal for his service with the Australian Defence Force.

¹ At the time of making his application, ██████████ held the rank of ██████████ but was promoted during the course of the review.

² Letter to ██████████ from Ms O’Callaghan dated 28 July 2022.

³ Ibid.

⁴ Application to the Tribunal by ██████████ dated 28 July 2022.

The Australian Operational Service Medal

8. The Australian Operational Service Medal was created by Letters Patent and Regulations dated 22 May 2012 and published in the *Commonwealth of Australia Gazette* S67 of 6 June 2012.⁵

9. The Regulations were amended on 30 April 2015 to recognise certain members of the Defence Forces of foreign countries. They were further amended on 13 July 2020 and published in the *Commonwealth of Australia Gazette* G00629 of 5 August 2020. The 2020 amendments provided for: the forfeiture of the medal; counter terrorism activities and special recovery activities to be declared as operations; and an accumulated service clasp for subsequent service by a civilian on a single declared operation.

10. The eligibility criteria for awarding the Australian Operational Service Medal are stated under paragraph three:

‘3 (1) *The Governor-General may, declare, in writing, on the recommendation of the Minister, that an operation is a declared operation.*

(2) *In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.*

(3) *The Governor-General must not make a declaration about an operation unless:*

(a) *the operation is, or were, carried out in conditions that are hazardous; and*

(b) *the operation is not an operation for which recognition for an award (other than an award under this regulation) already exists; and*

(c) *the operation meets the conditions (if any) determined, in writing, by the Governor-General.’*

11. Paragraph four provides that:

‘4 (1) *The Governor-General may declare, in writing, on the recommendation of the Minister, that service is:*

(a) *eligible service; or*

(b) *eligible service that is an additional period of qualifying service for the purposes of paragraph 6 (2) (c).*

(2) *In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.*

(3) *The Governor-General must not make a declaration about service unless:*

⁵ *Australian Operational Service Medal Regulations 2012, Commonwealth of Australia Gazette S67, Letters Patent and Regulations, dated 6 June 2012.*

- (a) *the service is given in the operational area, and within the period, of a declared operation; and*
- (b) *the service meets the conditions (if any) determined, in writing, by the Governor-General.'*

Australian Operational Service Medal (Greater Middle East Operation) Instrument 2015

12. The AOSM (GMEO) Instrument of 2015⁶ provides the eligibility criteria applicable to [REDACTED] case as follows:

6. Declared operations

For subsection 3(1) of the Australian Operational Service Medal Regulation, the Greater Middle East Operation is a declared operation comprising the following operations in the following areas and within the following dates:

...

(b) Operation ACCORDION, involving the activities of ADF members that commenced on 1 July 2014 within the area comprising the land territory, internal waters and superjacent airspace of Bahrain, Qatar and the United Arab Emirates.

...

7. Eligible service

(1) For paragraph 4(1)(a) of the Australian Operational Service Medal Regulation, service is eligible service if:

- (a) the service is given by an ADF member on deployment during the period of the Greater Middle East Operation; and*
- (b) the service occurs on 30 days during one or more such deployments, whether or not the service continues throughout the whole day and whether or not the 30 days are continuous; and*
- (c) the conditions determined for the service in section 7 of this instrument are met.*

(2) The service mentioned in paragraph (1)(b) of this section may be given on one or more operations that comprise the Greater Middle East Operation.

(3) If an ADF member gave service of a kind mentioned in paragraph (1)(a) of this section, but did not satisfy paragraph (1)(b) of this section because the member died or was evacuated due to service-related injury, illness or disability, the service given is taken to have occurred on 30 days during the deployment.

8. Conditions

For paragraph 4(3)(b) of the Australian Operational Service Medal Regulation, and paragraph 6(1)(c) of this instrument, the following conditions are determined in relation to service:

- (a) the service must be given while the ADF member giving the service is force assigned for Operational Duties on one or more operations that comprise the Greater Middle East Operation; and*

⁶ Australian Operation Service Medal Regulation 2012, Australian Operation Service Medal (Greater Middle East Operation) Instrument 2015, Commonwealth of Australia Gazette G00562, dated 21 April 2015.

(b) no other period of eligible service can have been completed during the deployment during which the service is given.

Notes: 1. the effect of paragraph (a) of this section is to exclude service involving non-operational duties such as the participation in planning activities and exercises and conferences (with no planning objectives); liaison visits; lessons learnt/fact finding activities; and command/staff visits.

2. the effect of paragraph (b) of this section is that an ADF member may be awarded only one Australian Operational Service Medal with the ribbon Greater Middle East Operation or accumulated service device per deployment.

9. Eligible service-additional period of qualifying service

For paragraph 4(1)(b) of the Australian Operational Service Medal Regulation, service (the subsequent service) given by all ADF members on a deployment is eligible service that is an additional period of qualifying service for the purposes of paragraph 6(2)(c) of that Regulation if:

(a) the ADF member has previously completed at least one period of eligible service within the meaning of section 6 of this instrument on a previous deployment; and

(b) the subsequent service is eligible service within the meaning of section 6 of this instrument.

application to the Tribunal

13. In his application to the Tribunal, [REDACTED] advised that he had been denied eligibility for the AOSM (GMEO) as he had only served 29 of the required 30 days to receive the award.⁷

14. [REDACTED] stated:

“After receiving notification from my friends who recently deployed and did not completed the 30 days required as eligibility, this made me extremely frustrated and disgruntled with the support from defence. Why is my service less than others when I slaved my body and mind to the job for a month? I fell short by one day... but those that fell short for longer periods of time were still awarded?”

15. [REDACTED] also provided what he considered to be evidence of named personnel who had received the AOSM (GMEO) for less than 30 days of service to the Afghanistan Non-Combatant Evacuation Operation in 2021.⁸

The Defence Report

16. In summary, the Defence position was that, for [REDACTED] to be eligible for the AOSM (GMEO), he would be required to render service as part of a Greater Middle East Operation for a period of not less than an aggregate of 30 days.

⁷ Application to the Tribunal by [REDACTED] dated 28 July 2022.

⁸ Ibid.

17. Defence determined that [REDACTED] was force assigned on Operation ACCORDION from [REDACTED], completing a total of 29 of the required 30 days.

18. Following [REDACTED] application to the Tribunal, Defence reviewed the original decision of 27 July 2022 and recommended that the decision to not recommend [REDACTED] for the AOSM (GMEO) be affirmed.⁹

19. Defence referenced the submission by [REDACTED] of a list of members who ostensibly had been awarded the AOSM (GMEO) where service of less than 30 days had been rendered. In this context Defence noted that on 31 March 2022, amendments to the AOSM (GMEO) Medal Instruments were approved to allow for recognition of ADF and civilian personnel who deployed in support of the emergency evacuations from Afghanistan during August 2021. Defence noted that the Government deemed it appropriate to recognise their service, and reduced the required days of eligibility to acknowledge the unique nature and extraordinary circumstances of that operation.

20. Defence noted that the eligibility requirements for other operations – including Operation ACCORDION to which [REDACTED] was force assigned – listed in the AOSM (GMEO) Instrument 2015 - remain extant.

Tribunal consideration

21. There is no dispute regarding [REDACTED] period of service nor the fact that he did not complete the 30 days required to be eligible for the award of the AOSM (GMEO).

22. At the hearing the Tribunal discussed with [REDACTED] the circumstances surrounding his departure from Afghanistan. [REDACTED] told the Tribunal that he had returned to Australia earlier than originally envisaged due to his replacement being ‘moved sideways’ from elsewhere in the GMEO to fill [REDACTED] billet as a consequence of COVID limitations.

23. The Tribunal is bound by the eligibility criteria that govern the award of the AOSM. Accordingly, for [REDACTED] to qualify he would be required to render service as part of a Greater Middle East Operation for a period of not less than an aggregate of 30 days. The Tribunal is satisfied that [REDACTED] served for 29 days - falling one day short of the required 30 days. The fact that a different qualifying period was specified for the Afghanistan Non-Combatant Evacuation Operation does not affect the eligibility criteria for Operation ACCORDION on which [REDACTED] served.

Finding

24. For the above reasons the Tribunal finds that [REDACTED] is not eligible for the AOSM (GMEO). The Tribunal therefore finds that the decision of the Directorate should be affirmed.

25. The Tribunal acknowledges that its decision would be a matter of disappointment to [REDACTED]. However, the Tribunal is bound to apply the eligibility criteria as they stood at the date of the reviewable decision and has no discretion

⁹ Letter to Tribunal from Mr Ian Heldon, Director Honours and Awards as provided with the Defence report dated 9 September 2022.

to depart from those criteria. In making its finding in this case, the Tribunal does not take anything away from his very commendable service. The Tribunal believes that it is fitting to acknowledge the great professionalism and integrity [REDACTED] displayed by returning to Australia in accordance with the revised plan, rather than delaying *in situ* to meet the eligibility criteria, a course of action that we heard was put to him in theatre by a senior supervisor. By knowingly and selflessly denying himself the possibility of a medal, [REDACTED] has acted in the finest traditions of the ADF and brought great credit upon himself. The Tribunal also thanks him for the professional and constructive manner in which he assisted the Tribunal and its staff throughout the review process.

DECISION

26. The Tribunal affirms the decision of 28 July 2022 of the Directorate of Honours and Awards of the Department of Defence that [REDACTED] not be recommended for the Australian Operational Service Medal (Greater Middle East Operation).