



Australian Government

Defence Honours and Awards Appeals Tribunal

Bass and the Department of Defence [2014] DHAAT 37 (26 September 2014)

File Number(s) 2013/036

Re **Robert Albert Laurence Bass**
Applicant

And **Department of Defence**
Respondent

Tribunal Air Commodore M. Lax OAM, CSM (Retd) (Presiding
Member)
Ms C. Heazlewood

Hearing Date 26 September 2014

DECISION

On 26 September 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Robert Albert Laurence Bass is not eligible for the award of the Australian Defence Medal.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the award of the Australian Defence Medal – enlistment period.

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
Australian Defence Medal Regulations 2006

REASONS FOR DECISION

Introduction

1. The applicant, Mr Robert Albert Laurence Bass (Mr Bass), seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate), that he is not eligible for the award of the Australian Defence Medal (ADM). Mr Bass had lodged an application for the award of the ADM on 26 April 2013, which was rejected by the Directorate on 23 September 2013. Mr Bass sought a review of this decision in his application to the Tribunal on 14 November 2013.

The Tribunal's Jurisdiction

2. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence 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(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 Directorate made a decision to refuse to recommend Mr Bass for the ADM following his application. Reg 93C of the *Defence Force Regulations 1952* defines a *defence award* as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the ADM. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the Review

3. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 20 December 2013, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Bass's application for review and requesting that he provide a report. On 17 January 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. A copy of the report of the Directorate was forwarded to Mr Bass for comment. Mr Bass provided a written response to the Tribunal dated 28 January 2014.

4. The Tribunal met on 26 September 2014. During its meeting the Tribunal considered the material provided by Mr Bass and the Directorate. It also heard oral evidence from Mr Bass who appeared in person.

The Australian Defence Medal

5. The ADM was instituted by Her Majesty The Queen by Letters Patent on 20 March 2006, *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*. The *Australian Defence Medal Regulations 2006* (the Regulations) are set out in the Schedule attached to the Letters Patent. Those Regulations were amended between 2005 when they were originally instituted and 20 March 2006 when they came into force. As a result of that amendment the minimum period of service was changed to four years. Regulation 4 of the amended Regulations states:

(1) *The Medal may be awarded to a member, or former member, of the*

Defence Force who after 3 September 1945 has given qualifying service that is efficient service:

- (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 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 sub regulation (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.*

6. Following an Inquiry by the Defence Honours and Awards Tribunal in 2009 the Chief of the Defence Force (CDF) made a determination on 8 November 2009 pursuant to reg 4(2). The Determination stated that:

where a member or former member was discharged as medically unfit to serve due to a non-compensable injury or disease, and the period of service of that member or former member is less than that prescribed under regulations 4(1)(a) to (c), that lesser period may, subject to the individual circumstances, be considered as being efficient service for the award of a medal to members or former members of the Defence Force who qualify for the award of the medal under section 4 of the regulations.

7. The eligibility criteria for the medal therefore specified a length of service (commitment) being the completion of the shorter of four years or initial enlistment period and for efficient service (productivity). Both elements were required to be demonstrated.

Mr Bass's Service Record

8. Defence records of Mr Bass's service show that he enlisted in the Citizen Military Forces (CMF) on 4 August 1962 for a two year enlistment period. Mr Bass was posted to No. 1 Commando Company at Georges Heights, New South Wales where he underwent commando training. He qualified on 26 May 1963. Mr Bass then elected discharge on 16 May 1964.

9. The order discharging Mr Bass records that he was discharged pursuant to the *Defence Act* s.40 (DA 40) at his own request. Mr Bass had served for a period of one year, seven months and 12 days.

Mr Bass's Submission

10. Mr Bass seeks recognition for his service and while he freely admits he does not meet the four years' service or completion of initial enlistment period requirement as specified in the Regulations, he was forced to resign because of a demand made by his employer. Mr Bass stated that he was to be married and that his honeymoon and the commando unit's annual camp meant he would have been away from his civilian employment for six weeks and that this was not acceptable to his employer. He was given the choice between remaining in the Army and continuing with his civilian job. Mr Bass chose to keep his civilian job but believed 'I made the right decision then and have no regrets but it would be appreciated if I could be recognised for the effort and commitment I made many years ago'.¹

11. At interview, Mr Bass was asked about options given to him by his Commanding Officer, Major Johnson. Mr Bass stated that while the Major advised that he could 'force my employer to cooperate', Mr Bass felt that he would be fired from his civilian employment anyway. Mr Bass also stated that he regretted that Major Johnson did not advise him at the time to resign and reapply to the CMF at a later date. Had he known this, he stated would have reapplied to the Army. Mr Bass stated that under the medal Regulations, he understood that he was not eligible for the ADM, but wanted to explain his situation to the Tribunal in person.

The Directorate's Submission

12. In its written submission to the Tribunal, the Directorate noted that Mr Bass discharged from the Defence Force at own request. Those records show that Mr Bass had served for one year, seven months and 12 days. His initial enlistment period was two years. According to the Regulations, Mr Bass must serve his initial enlistment period of two years to be entitled to the ADM. Mr Bass did not serve his initial enlistment period and so has no entitlement to the ADM. None of the exceptions set out in reg 4(1)(d) applied in this case.

Conclusion

13. The Tribunal carefully considered all the material before it and considered the criteria for the ADM.

14. The facts in this matter are not in issue. There is no dispute about Mr Bass's service record and his subsequent discharge at own request before completing his initial two-year enlistment period. The Tribunal finds that Mr Bass enlisted in the CMF on 4 August 1962 for a period of two years. Mr Bass applied for a discharge from the CMF because of his personal circumstances and was formally discharged at his own request on 16 May 1964. Mr Bass did not serve his initial enlistment period having served one year, seven months and 12 days.

¹ Mr Bass's letter to the DHAAT dated 1 November 2013.

15. The Regulations set out the requirements to be met to be awarded the ADM. Pursuant to reg 4(1)(a), (b) and (c) Mr Bass needed to have given qualifying service that is effective service in the Australian Defence Force by completing his initial enlistment period. Alternatively Mr Bass would have needed to serve for at least four years. Mr Bass did not serve for his initial enlistment period and nor did he serve for a period that totalled four years.

16. Reg 4(1)(d) sets out three exceptions to the requirement that a person serve their initial enlistment period or a period of four years. None of those exceptions apply to Mr Bass's circumstances.

17. The Presiding Member explained to Mr Bass the service criteria for the ADM and that he did not qualify for the award. He further explained that the Tribunal had no discretionary powers in this instance regardless of how compelling the case. The Tribunal has to abide by the ADM Regulations as they were the law. Mr Bass accepted this explanation.

18. As Mr Bass did not complete his initial enlistment period of two years, and as his discharge was at own request Mr Bass does not qualify for the ADM.

DECISION

19. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Robert Albert Laurence Bass is not eligible for the award of the Australian Defence Medal.