



Australian Government

Defence Honours and Awards Appeals Tribunal

Brown and the Department of Defence [2014] DHAAT 39 (27 December 2014)

File Number(s) 2014/055

Re **Mr Hilton Humphrey Brown**
Applicant

And **Department of Defence**
Respondent

Tribunal Air Commodore M. Lax OAM, CSM (Retd) (Presiding Member)
Brigadier Kevin O'Brien CSC (Retd)

Hearing Date 10 December 2014

DECISION

On 27 December 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Hilton Humphry Brown is not eligible for the award of the Pacific Star.

CATCHWORDS

DEFENCE AWARD – Pacific Star

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VA, 110VB(2)

Defence Force Regulations 1952 - reg 93C and Schd 3

Campaign Stars and the Defence Medal (1945 UK Command Paper)

United Kingdom Command Paper 6833 of June 1946

A Summary of the Conditions of the Award of the Campaign Stars, the Defence Medal and the War Medal (The Dedman Paper)

Commonwealth of Australia Gazette No. S326 dated 4 September 1996

REASONS FOR DECISION

Introduction

1. The applicant, Mr Hilton Humphry Brown (Mr Brown), a former member of the Australian Army, 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 Pacific Star award. Mr Brown lodged an application for the award of the Pacific Star on 6 August 2006, which was rejected by the Directorate on 23 March 2007. Mr Brown again wrote to the Directorate on 13 December 2009 seeking further awards. The Directorate replied on 8 February 2010 that Mr Brown was not eligible for further awards.

2. Mr Brown sought a review of the decision not to award him the Pacific Star in his application to the Tribunal on 30 April 2014.

Tribunal Jurisdiction

3. 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 Brown for the Pacific Star 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 Pacific Star. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the review

4. In accordance with its *Procedural Rules 2011*, on 14 May 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Brown's application for review and requesting that he provide a report. On 16 July 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Brown's service did not meet the eligibility criteria for the award he sought. On 22 July 2014 the Tribunal forwarded a copy of the report of the Directorate to Mr Brown for comment. On 29 July 2014, Mr Brown advised he had no comment on the Defence report but asked the case to go before the Tribunal.

5. The Tribunal met on 14 November 2014 to scope the review. The Tribunal next met on 10 December 2014 to hear the case. During its meetings the Tribunal considered the material provided by Mr Brown and the Directorate. It also heard oral evidence from Mr Brown who agreed to be available by telephone on 10 December 2014.

Eligibility criteria for the award of the Pacific Star

6. The Pacific Star and a number of other Stars¹ are campaign medals, of the British Commonwealth, established to recognise service in a number of operations, during the Second World War.

7. The Pacific Star was established in May 1945.² The conditions for the Pacific Star and other campaign Stars are contained in a paper, published by the Committee on the Grant of Honours Decorations and Medals in Time of War, in May 1945 (1945 Command Paper). Paragraph 9 of the 1945 Command Paper dealt with the establishment of the Pacific Star and the eligibility criteria for the award of that Star. That paragraph relevantly provided:

9. (i) A Pacific Star has been instituted for entry into operational service in the Pacific theatre from the 8th December, 1941, until further notice.

(ii) Ribbon details ...

(iii) The 1939-45 Star must be earned by six, or for air crew, two, month's service in operations before a candidate can qualify for the Pacific Star.

(iv) Naval and Merchant Navy service in the Pacific Ocean, including the South China Sea, and the Indian Ocean east of a line running due south from Singapore round the south-east coast of Sumatra, through Christmas Island, and southwards along the Meridian of 110^o E., will be qualification. Qualifying service on land will be restricted to operational service in territories in which there have been enemy or allied invasions, i.e., Hong Kong, the 8th December, 1941, to the 25th December, 1941; ... Timor, the 20th February, 1942, to the 31st March, 1942; ... New Guinea, the 7th March, 1942, until a future date to be notified. ...

(v) Island areas ...

(vi) Air crew service in operations against the enemy will qualify.

(vii) For Naval personnel on duty ashore and non-aircrew personnel of the Air Force, entry into the prescribe area of land operations will be a qualification.

(viii) A candidate who qualifies for both the Pacific and the Burma Star mentioned below will be awarded only one of these, the Star first earned. ...

8. Paragraph 11 of the 1945 Command Paper contained the following provisions in regard to each of the new campaign Stars and the Africa Star:

11. (i) Entry into operational service

¹ These include; the Africa Star, the Atlantic Star, the Air Crew Europe Star, the Italy Star, the France and Germany Star and the Burma Star.

² Committee on the Grant of Honours Decorations and Medals in Time of War – Campaign Stars and the Defence Medal, HMSO, London, May 1945. Available at www.northeastmedals.co.uk/britishguide/hmsso/campaign_stars_defence.htm

(a) *Service in ships making occasional visits to the defined areas for fuelling and so forth will not necessarily be a qualification.*

(b) *The expression “entry into operational service” in the case of the new Stars is subject to the qualification that six or two months operational service must already have been rendered. Qualifying service for any one of the new Stars may not run concurrently with service qualifying for, and preceding the date on which a candidate qualifies for the award of the 1939-45 Star.*

9. In June 1946, some further amendments were made to the eligibility criteria for the award of the 1939-45 Star and the various Campaign Stars³ (Cmd. 6833 or 1946 Command Paper). The reason for the amendments was described in paragraph 4 of the Command Paper as follows:

Changes to Time Qualifications for the Campaign Stars

4. *When the present rules were drawn up, the war continued both in Europe and the Pacific and no one could tell for how long it would last. The whole matter has now been examined in retrospect, and it is evident that in relation to service on land and in the air the requirement that, for the award of the other Stars, the 1939-45 Star must first be earned by six or two months previous operational service, has produced a number of hard cases. The fact that per contra there is only a one day rule for the Africa Star has also given rise to some noticeable inequalities of treatment as between the earning of this Star and of the others. ...*

10. The changes to the award of the Pacific Star were contained in paragraph 5 which relevantly provides as follows:

Pacific Star

5. (i) Service on land

(a) *The time qualification for these Stars is at present six months and one day, that is to say, the 1939-45 Star must be earned by six months service before any of these Stars may be awarded, and they are then earned by entry into the theatre of operations.*

(b) *The six months time qualification for these four Stars is now cancelled, and the time qualification is reduced to one day, that is to say, to entry into the qualifying area.*

(c) *Visits, journeys and inspections will not be a qualification unless they amount to thirty days and where specifically approved by the Department concerned, or, in a Command comprising both operational and non-operational areas, by the General Officer Commanding-in-chief or Air Officer Commanding-in-chief.*

(ii) Service at sea in the Royal Navy and Merchant Navy...

³ United Kingdom Command Paper No 6833, June 1946.

(iii) *Air crew service ...*

11. As can be seen from the terms of the above changes, the qualifying periods for the 1939-45 Star did not change (i.e. six, or for air crew, two months service in 'operations'). Other than removing the pre-requisite of having qualified for the award of 1939-45 Star, there were also no substantive changes to the award of the Pacific, Burma, Italy and France and Germany Stars. They continued to be awarded for '*entry into operational service in the Pacific theatre*' as described in cl 9.(i) of the 1945 Command Paper. However, the 1946 Command Paper described this entry in terms of the '*one day*' or '*one sortie*' rule.

12. Attached to the 1946 Command Paper was an Appendix that summarised the conditions of the award of the 1939-45 Star and the other campaign Stars, as they applied following the 1946 approved amendments. This summary, however, must be read subject to the terms of the 1945 and 1946 Command Papers. To the extent the summary is inconsistent with the terms of the 1945 and 1946 Command Papers, the latter will prevail.

13. In December 1948, The Hon. John J. Dedman, the Australian Minister of State for Defence, issued a *Summary of the Conditions of the Award of the Campaign Stars, The Defence Medal and the War Medal*.⁴ Known generally as the Dedman Paper, it is also a summary of the provisions of the 1945 and 1946 Command Papers. However, it too must be read subject to the terms of the provisions in the 1945 and 1946 Command Papers. Where there is a conflict, the provisions of the Command Papers prevail. To the extent there are inconsistencies between the Appendix to the 1946 Command Paper and the Dedman Paper, the Tribunal has given precedence to the Appendix.

14. On 3 September 1996, the Governor-General of Australia, amended the conditions to the award of the Pacific Star to include 'any member of the Australian Defence Force who was on board the Australian Hospital Ship CENTAUR when it was torpedoed and sunk on 14 May 1943'.⁵

Mr Brown's Service Record

15. Defence records of Mr Brown's service show that he enlisted in the Citizen Military Forces (CMF) on 9 October 1941 and served with the 30th Battalion. On 4 July 1942, Mr Brown embarked on the MV *Duntroon* in Sydney and disembarked ten days later in Fremantle. The Battalion was sent to Western Australia for defence against possible Japanese attack.

⁴ A copy of the '*Dedman Paper*' can be found on the following web site:
<http://www.defence.gov.au/medals/Content/+040%20Campaign%20Medals/+100%20World%20War%20II/WW2%20Dedman%20Paper%20transcript.pdf>

⁵ *Commonwealth of Australia Gazette*: No. S 326, 3 September 1996. On 18 January 1995, the then Prime Minister, the Hon. P J Keating MP, wrote to Her Majesty the Queen, recommending that She delegate, to the Governor-General for the Commonwealth of Australia, Her powers to amend the conditions of award of the WWII awards specified in Comd. Paper 6833 and also the Australian Service Medal 1939-45. On 20 February 1995, the Governor-General wrote to the Prime Minister, to advise that Her Majesty the Queen had approved the recommendation.

16. On 4 November 1942, Mr Brown was discharged from the CMF and was re-enlisted in the Australian Imperial Forces on 5 November 1942. After spending 18 months in Western Australia, Mr Brown was posted back to NSW where he remained for the rest of the war. Mr Brown was discharged on 19 November 1945.

17. For his service, Mr Brown has the following awards:

The War Medal 1939-45, and
Australia Service Medal 1939-45.

Mr Brown's Submission

18. In his written submission to the Tribunal dated 30 April 2014, Mr Brown claims that he served in the 30th Battalion and that they 'were sent to West Australia to protect that area'. In a previous submission to the Directorate dated 6 September 2006, and supplied as part of his Tribunal submission, Mr Brown explained that he sailed on the troopship MV *Duntroon* and that they transited between Sydney and Fremantle over a ten day period in July 1942. Because of his time aboard ship during a period of Japanese submarine attacks around the Australian coast, Mr Brown believes he should be entitled to the Pacific Star.

19. To further support his case, Mr Brown stated that 'the Department of Veterans' Affairs [(DVA)] accepted my service as overseas and the RSL'. He indicated that this should also be taken into consideration by the Tribunal.

20. Mr Brown's final claim is that just as the service members who were torpedoed in the AHS *Centaur* were eligible for the Pacific Star, this determination by the Governor-General should also apply to members who sailed around Australia as they too were under Japanese submarine threat. Mr Brown provided a summary of 37 ships sunk by submarines between 1940 and 1944 to support his claim.

21. At the hearing, Mr Brown explained his war service and stated that when the troops embarked on the MV *Duntroon*, they 'thought it was going to PNG'. Furthermore, he stated that he 'joined to fight anywhere' and reiterated the comments he made in his written submission.

The Directorate's Submission

22. In its written submission to the Tribunal, the Directorate referred to the criteria for the Pacific Star as presented in the UK Command and Dedman Papers. Included in their report was a map illustrating the area of the Pacific theatre for the purposes of the Pacific Star, showing the defined area to be well north and east of the Australian continent. Defence confirmed as Mr Brown did not serve on land in or journey across the Pacific as defined in the UK Command and Dedman Papers, he is not eligible for the award of the Pacific Star.

Conclusion

23. The Tribunal carefully considered all the material before it, Mr Brown's oral submission at the hearing and the eligibility criteria for the Pacific Star.

24. There is no dispute about Mr Brown's service record or that he served in the 30th Battalion and that he sailed between Sydney and Fremantle on the MV *Duntroon* in July 1942. There is no other period of Mr Brown's service that is applicable to his claim.

25. The requirements to be met to be awarded the Pacific Star are set out in the 1945 and 1946 UK Command Papers and in the 1948 Dedman Paper. For members of the Australian Army to be eligible, they must have made 'entry into operational service in the Pacific theatre' in the area as described in the Appendix to the 1946 Command Paper. The Tribunal noted that the Pacific is defined as an expanse of the Pacific Ocean and land masses well to the north and east of the Australian Continent. Mr Brown was provided a map of the operational area in the Defence report illustrating this.

26. The 1946 UK Command Paper at paragraph 5(v) also specifically excludes 'journeys' unless they amount to 30 days and were specifically approved. Mr Brown's journey in the MV *Duntroon* was for ten days across the Great Australian Bight.

27. The Tribunal noted that Mr Brown used the DVA acceptance of his 'overseas service' to help justify why he believed he met the qualifying criteria for the Pacific Star. However, the DVA criteria for overseas service are not applicable to award of the Pacific Star. The Pacific Star qualifying criteria are set out in the UK Command Papers and the Annex to the 1946 UK Command Paper. Therefore, the Tribunal did not consider Mr Brown's claims derived from correspondence with the Department of Veterans' Affairs.

28. Mr Brown also believed that an amendment of conditions for award of the Pacific Star made in 1996 by the Governor-General regarding the AHS *Centaur* should somehow apply to the MV *Duntroon*. This is not the case. The Governor-General's amendments to the conditions of the Pacific Star only apply to those members who were aboard AHS *Centaur* when sunk on 14 May 1943 and to no other vessel.

29. At interview, the Presiding Member explained to Mr Brown that the AHS *Centaur* had no bearing on his case or any other member who came under threat from Japanese submarines, including those who were sunk or were killed.

30. The Tribunal finds that the MV *Duntroon* that transported Mr Brown and other members of the 30th Battalion did not enter the Pacific operational area as defined by the UK Command and Dedman Papers, nor did its transit to Western Australia constitute a 'journey' of more than 30 days. Mr Brown spent his entire World War Two service in Australia. For this reason, the Tribunal finds that Mr Brown did not serve in the Pacific operational area and therefore he is not eligible for the award of the Pacific Star.

DECISION

31. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Hilton Humphrey Brown is not eligible for the award of the Pacific Star.