



Australian Government

Defence Honours and Awards Appeals Tribunal

Hogan and the Department of Defence [2014] DHAAT 30 (4 July 2014)

File Number 2013/019

Re **Aubrey John Hogan**
Applicant

And **Department of Defence**
Respondent

Tribunal Mrs S. Higgins (Presiding Member)
Mr K. Woods CSC, OAM

Hearing Date 22 October 2013

Decision

On 4 July 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Aubrey John Hogan is not eligible for the award of the Australian Service Medal 1945-75 with Clasp 'JAPAN'.

CATCHWORDS

DEFENCE AWARD – eligibility criteria for the award of the Australian Service Medal 1945-75 with Clasp 'JAPAN' whether the applicant, having served in Japan in 1953-54 and 1954-55, met the eligibility criteria

LEGISLATION

*Defence Act 1903 – ss 110V(1), 110T
Defence Force Regulations 1952 - reg 93C and Schd 3
Australian Service Medal 1945-75 Regulations 1995*

REASONS FOR DECISION

Introduction

1. On 16 October 2012, the applicant, Mr Aubrey John Hogan (Mr Hogan), made an application to the Directorate of Honours and Awards of the Department of Defence (the Directorate), seeking the Clasp 'JAPAN' to the General Service Medal.
2. On 3 June 2013, the Directorate wrote to Mr Hogan informing him that there was no General Service Medal [with Clasp] 'Japan' and that it was assumed he was seeking the award of the Australian Service Medal 1945-75 (ASM 1945-75) with Clasp 'JAPAN'. The Directorate pointed out that this clasp was awarded for service with the British Commonwealth Occupation Force (BCOF) in Japan during the period commencing on 3 September 1945 to 28 April 1952. As Mr Hogan's service in Japan did not commence until 8 November 1953, the Directorate found that he was not eligible for the award of the ASM 1945-75 with Clasp 'JAPAN'.
3. Being dissatisfied with the decision of the Directorate, on 3 June 2013, Mr Hogan lodged this application for review of the decision of the Directorate. In his application for review, Mr Hogan said:

'I served twenty one years in the Australian Military Forces, over seven years in overseas theatres. Service in Korea, Borneo, Malaya, Vietnam and Papua New Guinea have been recognised by medal or clasp. My request is that my service in Japan be similarly recognised. Thank you.'

4. There is no dispute that the Tribunal has jurisdiction to review the Directorate's decision in regard to Mr Hogan's application: see subsection 110V(1) and 110T of the *Defence Act 1903* and regulation 93C and Item 24 of Part 2 of Schedule 3 of the *Defence Force Regulations 1952*.

Steps taken in the inquiry

5. On 11 July 2013, in accordance with the Tribunal's Procedural Rules, the Chair of the Tribunal, Mr Alan Rose wrote to the Secretary of the Department of Defence advising him of Mr Hogan's application for review and inviting him to make submissions and provide the Tribunal with any material on which it sought to rely. A written submission was received from the Directorate on behalf of the Secretary, on 1 August 2013. In its submissions, the Directorate confirmed its position that Mr Hogan's service in Japan did not meet the eligibility criteria for the award of the ASM 1945-75 with Clasp 'JAPAN'.
6. Mr Hogan was provided with a copy of the Directorate's written submissions and he was invited to respond by submitting any further material, or argument in support of his claim. Mr Hogan responded in a letter dated 26 August 2013. In that letter Mr Hogan said that on his 80th birthday he decided to have his medals, badges etc framed and the person who did this work had asked him why there was no Japan on any of his clasps. This, he said was the reason he made his application for review.

7. The Tribunal Panel (the Tribunal) met on 22 October 2013. During its meeting the Tribunal considered the material provided by Mr Hogan and the Directorate. The Tribunal also heard oral evidence from Mr Hogan, who agreed to be available, by telephone, that afternoon.

The Australian Service Medal 1945-75 Regulations 1995

8. The ASM 1945-75 was established, in 1995, with the coming into force of the *Australian Service Medal 1945–75 Regulations 1995* (the ASM 1945-75 Regulations)¹.

9. The relevant provisions of these Regulations are as follows:

Declared Operations

3. *The Governor-General, on the recommendation of a Minister, may declare a non-warlike operation in which members of the Defence Force were engaged at any time during the period that commenced on 3 September 1945 and ended on 16 September 1975, to a declared operation for the purposes of these Regulations.*

Conditions for award of the Medal

4. (1) *The Medal may be awarded to:*
(a) *a member, or former member, of the Defence Force; or*
(b) *...*
who served in connection with a declared operation.

(2) *The conditions for the award of the Medal are determined by the Governor-General on the recommendation of a Minister.*

(3) *The Medal may only be awarded to a person who fulfils the conditions for the award of the Medal.*

(4) *An initial award of the Medal to a person is made in the form of the Medal with a clasp denoting the declared operation for which the Medal is being awarded.*

(5) *A subsequent award of the Medal to the person may only be made in the form of an additional clasp to the Medal.*

10. On 20 October 1995, the Administrator of the Government of the Commonwealth of Australia declared, pursuant to regulation 3 of the ASM 1945-75 Regulations, that the '*Australian Defence Force activities with the British Commonwealth Occupation Forces in Japan ... **during the period commencing 3 September 1945 and extending to 28 April 1952***' to be a non-warlike operation for the purpose of those Regulations.²

¹ See *Commonwealth of Australia Gazette* No S 122 dated 3 April 1995 – Australian Service Medal 1945 – 75 Regulations 1995.

² See *Commonwealth of Australia Gazette* No S 414, 27 October 1995.

11. The conditions for the award of the ASM 1945–75 for service rendered in Japan during this declared non-warlike operation was 90 days, or for periods amounting to an aggregate of 90 days.

12. On 2 June 1996, the Governor-General revoked the abovementioned declaration and substituted it with a new declaration.³ The declared Japan non-warlike operation was in the same terms as that contained in the revoked determination. However, the conditions for the award of the ASM 1945-75 with Clasp ‘JAPAN’ was reduced to 30 days, or for periods amounting to an aggregate of 30 days.

13. On 1 December 1997, the Governor-General revoked the above 1996 declaration and substituted it with a further new declaration.⁴ The declared Japan non-warlike operation was amended in respect to service rendered at sea as part of the Australian Defence Force activities with the BCOF in Japan. Otherwise the terms of the Japan non-warlike operation were the same, including the period of the operation (i.e. from 3 September 1945 to 28 April 1952). The 30 days, or periods amounting to an aggregate of 30 days conditions for the award also remained the same.

Mr Hogan’s service

14. Defence records of Mr Hogan’s service state that he served a total of 21 years with the Australian Defence Force.

15. He initially enlisted for National Service, on 7 August 1951. He enlisted for five years, but was discharged on 13 November 1951 upon his transfer to the Citizen Military Force (CMF). He served with the CMF until 2 July 1952 and enlisted the following day in the Australian Regular Army (ARA).

16. Mr Hogan was discharged from the ARA, on 2 July 1973. At the time of his discharge he held the rank of Warrant Officer Class II.

17. During the time Mr Hogan served in the ARA, he served overseas on a number of occasions as follows:

- Japan from 8 November 1953 to 11 March 1954
- Korea from 11 March 1954 to 14 May 1954
- Japan from 14 May 1954 to 26 July 1955
- Penang Malaya from 28 October 1961 to 28 July 1962
- North Borneo from 28 July 1962 to 12 November 1962
- Singapore from 12 November to 16 June 1963
- Bangkok from 16 June 1963 to 3 July 1963
- Singapore via Hong Kong from 3 July 1963 to 17 November 1963
- Special Services Vietnam from 26 April 1966 to 3 April 1967
- PNG from 5 January 1970 to 4 February 1970

³ See *Commonwealth of Australia Gazette* No S 274, 18 July 1996.

⁴ See *Commonwealth of Australia Gazette* No S 498, 1 December 1997.

18. For the service he rendered, Mr Hogan has been awarded the following Australian, Imperial and foreign medals:

- Australian Active Service Medal 1945-75 with Clasps 'THAI-MALAY' and 'VIETNAM'
- United Nations Service Medal (Korea)
- Vietnam Medal
- ASM 1945-75 with Clasps 'KOREA', 'SE ASIA' and 'PNG'
- Long Service and Good Conduct Medal
- Australian Defence Medal
- Anniversary of National Service 1951-1972 Medal
- Republic of Vietnam Campaign Medal
- Pingat Jasa Malaysia

Mr Hogan has also been issued his Return from Active Service Badge

19. Mr Hogan has not questioned the accuracy of his service record.

The Defence Case

20. The Directorate, in its submission, reiterated what it had said in its decision. That is, Mr Hogan had not served in Japan during the qualifying period of 3 September 1945 to 28 August 1952 and is therefore not eligible for the ASM 1945-75 with Clasp 'JAPAN.'

The Tribunal's Consideration and Findings

21. In determining Mr Hogan's application the Tribunal (as was the Directorate before it) is bound by the provisions of the ASM 1945-75 Regulations and the declarations made pursuant to those Regulations.

22. As noted above, in order for Mr Hogan to be eligible for the award of the ASM 1945-75 with Clasp 'JAPAN' the following matters must be satisfied:

- (a) Mr Hogan served as part of the ADF activities with the British Commonwealth Occupation Forces in Japan;
- (b) he served in this capacity for 30 days, or for periods amounting to an aggregate of 30 days; and
- (c) that service was rendered during the period 3 September 1945 to 28 April 1952 (inclusive).

23. Mr Hogan did serve in Japan as part of ADF activities in that country, on two occasions. He also served for more than 30 days. However, the period during which he served in Japan did not commence until after 28 April 1952. Hence, Mr Hogan's service in Japan falls outside the period of time declared, under the Regulations for the ASM 1945-75 with Clasp 'JAPAN'. Accordingly, Mr Hogan's service in Japan does not satisfy (c) above and on this basis alone he is not eligible for the award of the ASM 1945-75 with Clasp 'JAPAN'.

24. On the basis of the above findings the Tribunal determines that the decision of the Directorate that Mr Hogan is not eligible for the award of the ASM 1945-75 with Clasp 'Japan' is the correct and preferred decision and should be affirmed. In making this finding the Tribunal does not in any way seek to diminish the valuable contribution Mr Hogan made while serving in Japan.

DECISION

25. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Aubrey John Hogan is not eligible for the award of the Australian Service Medal 1945-75 with Clasp 'JAPAN'.