



Australian Government

Defence Honours and Awards Appeals Tribunal

Turner and the Department of Defence re: Turner [2024] DHAAT 02 (16 April 2024)

File Number(s) 2023/010

Re **Mr Michael Turner on behalf of Mrs Karen Turner**
Applicant

And **The Department of Defence**
Respondent

Tribunal Air Commodore Anthony Grady AM (Retd)
(Presiding Member)
Commodore Vicki McConachie CSC RAN (Retd)
Ms Louise Hunt

Hearing Date 23 November 2023

Attendances Mrs Catherine Morris, Assistant Director, Current Entitlements, Defence
Honours and Awards
Ms Cassandra Liplyn, Current Recognition Manager, Defence Honours
and Awards

DECISION

On 16 April 2024, the Tribunal decided to affirm the decision that Mrs Karen Turner not be recommended for the Defence Long Service Medal.

CATCHWORDS

DEFENCE AWARD – Defence Long Service Medal – eligibility criteria – 14 years qualifying service – alternative approaches for determining qualifying years – no exception to 15 year qualifying service requirement – no discretion – recommendation for a review – requirements of Chief of Defence Force Determinations

LEGISLATION

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

Defence Regulation 2016, Regulation 36

Defence Long Service Medal Regulations 1998, Letters Patent, Commonwealth of Australia Gazette S352, dated 10 July 1998

Defence Long Service Medal Regulations 1998, Amendments of Letters Patent Commonwealth of Australian Gazette S160, dated 30 March 2000

Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force dated 13 April 2000

Defence Long Service Medal Regulations, Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S2, dated 3 January 2002

Defence Long Service Medal Regulations - Determination by the Chief of the Defence Force dated 6 February 2013

Defence Long Service Medal Determination 2021, 16 March 2021

Introduction

1. The Applicant, Mr Michael Turner, seeks review of a decision dated 31 May 2022 by the Current Recognition Manager, Mrs Cassandra Liplyn, of the Directorate of Honours and Awards in the Department of Defence (the Directorate), to refuse to recommend his wife, Mrs Karen Turner, for the Defence Long Service Medal (DLSM) for her service.

Decision under review

2. On 16 June 2021, Mrs Turner submitted an application to the Directorate for an assessment of her eligibility for the DLSM. On 31 May 2022, the Directorate advised Mrs Turner via letter that she had only served fourteen of the fifteen years qualifying service years to be eligible for the medal.¹

3. On 9 March 2023, with his wife's express permission, Mr Turner made application to the Tribunal on behalf of his wife seeking review of the above decision.

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 DLSM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

5. Additionally, pursuant to s110VB(3) of the *Defence Act 1903* the Tribunal may also make recommendations to the Minister that the Tribunal considers appropriate and that arise out of, or relate to, the review under consideration.

Mrs Turner's service

6. As per Mrs Turner's service records, she enlisted in the Royal Australian Air Force (RAAF) on 30 November 1988 and discharged on 31 August 2003.² Mrs Turner's RAAF medical records confirm that she was discharged on medical grounds.

7. Mrs Turner has been awarded the Australian Defence Medal for her service.³

Eligibility Criteria for the Defence Long Service Medal

Letters Patent and Regulations

8. The DLSM was instituted by Letters Patent issued on 26 May 1998 for the purpose of '*according recognition to persons who render long and efficient service as members of*

¹ Application for review, Mr Turner obo Mrs Turner, dated 9 March 2023.

² The Defence report lists Mrs Turner's end date as 1 September 2003.

³ Defence report, dated 4 July 2023.

the Defence Force⁴ Regulations three, as amended in 2002, and five made under the Letters Patent relevantly provide:

Award of the Medal

*Regulation 3 The Medal may be awarded to a member, or former member, of the Defence Force (the **member**) who:*

- (a) *has given:*
 - (i) *qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and*
 - (ii) *at least 1 day's qualifying service on or after 20 April 1994; or*
- (b) *has given:*
 - (i) *qualifying service for a period of at least 15 years or periods that, in total amount to at least 15 years; and*
 - (ii) *at least 1 day's qualifying service on or after 14 February 1975; and*
 - (iii) *all of the qualifying service before 20 April 1994; and*
 - (iv) *qualifying service, none of which can be recognised for the Defence Force Service Awards Regulations, either by reason of its length or its character.*⁵

Qualifying service

Regulation 5 Service in the Defence Force is qualifying service if:

where the service was given as a member of the Permanent Forces or the Reserve Forces – the member:

- (i) *fulfilled the requirements specified in directions given by the Chief of the Defence Force; and*
- (ii) *gave efficient service;*⁶

[...]

9. Amendments to the Regulations in 2000 inserted the following definition of efficient service into Regulation 2:

*efficient service means service determined to be efficient service by the Chief of the Defence Force*⁷

Chief of the Defence Force (CDF) Determinations

10. *2021 CDF Determination* - On 16 March 2021 the CDF issued a Determination relevant to Mrs Turner's circumstances, which stipulated that in order to qualify for the DLSSM, the minimum period of annual qualifying service for all members of the ADF from

⁴ *Defence Force Long Service Medal Letters Patent and Regulations, Commonwealth of Australia Gazette No S352, dated 10 July 1998.*

⁵ *Defence Long Service Medal Regulations, Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S2, dated 3 January 2002.*

⁶ *Defence Force Long Service Medal Letters Patent and Regulations, Commonwealth of Australia Gazette No S352, dated 10 July 1998.*

⁷ *Defence Long Service Medal, Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S160, 30 March 2000*

20 April 2000 would be 20 days.⁸ The 2021 CDF Determination expressly revoked the previous CDF Determination dated 6 February 2013.

11. *2013 CDF Determination* - While the 2021 and 2013 Determinations differ in a number of aspects, both Determinations stipulate 20 days for all ADF members.⁹

12. *2000 CDF Determination* - On 13 April 2000 the CDF issued a Determination, which – *inter alia*, and possibly relevant to Mrs Turner's case – provides:

*...1b. On and after 20 April 2000 a member will undertake qualifying service for the purpose of the Defence Long Service Medal if the member undertakes a minimum of 20 days service per year **calculated at the anniversary of the enlistment or appointment of the member** [emphasis added].¹⁰*

Mr Turner's application to the Tribunal

13. In his application to the Tribunal, Mr Turner focused on what he believed was mistreatment of his wife in the workplace, which he said forced her into early retirement via a medical discharge. Mr Turner stated:

...pertinent information regarding Karen being bullied by her superiors post-surgery leading up to her being her forcibly retired early via Medically Discharged.

Karen was removed from her workplace as an Air Traffic Controller by the bullies and placed in an administrative totally (sic) unrelated to her training and position at the Officer's Mess. My superiors observed the actions of the bullies and intervened by taking Karen out of the Mess and employed her within the 1St Aviation Regiment Operations Cell where her Talent, Skills, Knowledge and Experience could be utilised to its potential as opposed to wasting away in silence while the bullies enacted their plan to have Karen discharged.

Karen was ordered to undergo a PFT "Physical Fitness Test" which was an unlawful command/order as Karen was in the midst of her recovery and in the care of the Medical Officer. As Karen was ordered to perform this test by her superiors she followed their orders as they backed up their order by stating that unless Karen completed the PFT their stats would be placed in jeopardy and she didn't want to be that individual that let the section down. Karen subsequently failed the PFT and after this occurred the bullies second part of their plan was enacted as they then ordered Karen to report to the medical centre and report that she failed a PFT. The medical officer was extremely upset that Karen had attempted a PFT as she was undergoing remedial treatment for the surgery to her ankle. Karen was in a very bad Position as the bullies were putting pressure on her to conform to their Will and the medical officer was extremely upset at Karen for potentially setting her recovery back. She became the tug toy between the bullies and the medical officer.¹¹

⁸ *Defence Long Service Medal Determination 2021*, dated 16 March 2021.

⁹ *Defence Long Service Medal Regulations, Determination by the Chief of the Defence Force* dated 6 February 2013.

¹⁰ *Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force* dated 13 April 2000.

¹¹ Application for review, Mr Turner obo Mrs Turner, dated 9 March 2023, Note the PFTs are also referred to, especially within Army, as PFAs (Physical Fitness Assessments).

Defence Report

14. The Defence report confirmed that following Mr Turner's application to the Tribunal, the Directorate re-assessed Mrs Turner's eligibility for the DLSM and that the re-assessment supported the original decision to not recommend her for the medal.¹²

15. Defence reviewed Mrs Turner's service against the DLSM Regulations and Determinations outlined above. Defence confirmed that Mrs Turner enlisted in the RAAF on 30 November 1988 and discharged on 1 September 2003,¹³ and that she had completed 14 years of qualifying service. Defence further clarified that although Mrs Turner had rendered service in her fifteenth year, she had not completed a full year of service as required under the Regulations.¹⁴

16. Defence further acknowledged the claims of mistreatment of his wife raised by Mr Turner and stated that there were no provisions or discretionary powers to apply the award outside of the 15-year milestone where a member had discharged due to mistreatment.

17. Defence provided the following table in its Tribunal Assessment Working Paper document, which detailed Mrs Turner's qualifying service for the Long Service and Australian Defence Medal.

Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
30/11/1988	29/11/1989	PAF	365	365	Yes	1	
30/11/1989	29/11/1990	PAF	365	365	Yes	2	
30/11/1990	29/11/1991	PAF	365	365	Yes	3	
30/11/1991	29/11/1992	PAF	365	365	Yes	4	
30/11/1992	29/11/1993	PAF	365	365	Yes	5	
30/11/1993	29/11/1994	PAF	365	365	Yes	6	
30/11/1994	29/11/1995	PAF	365	365	Yes	7	
30/11/1995	29/11/1996	PAF	365	365	Yes	8	
30/11/1996	29/11/1997	PAF	365	365	Yes	9	
30/11/1997	29/11/1998	PAF	365	365	Yes	10	
30/11/1998	29/11/1999	PAF	365	365	Yes	11	
30/11/1999	29/11/2000	PAF	20	>20	Yes	12	
30/11/2000	29/11/2001	PAF	20	>20	Yes	13	
30/11/2001	29/11/2002	PAF	20	>20	Yes	14	
30/11/2002	01/09/2003	PAF	20	>20	No	14	TER – Discharge prior to qualifying date

18. Notwithstanding that Mrs Turner completed 14 full years, and more than 20 days of qualifying service in her fifteenth year of service, Defence consider that her fifteenth year was 'incomplete'.

¹² Defence report, dated 4 July 2023.

¹³ The Tribunal took the view that Mrs Turner separated on 31 August 2003, and that 1 September 2003 was actually Mrs Turner's first day as a civilian.

¹⁴ Defence report, dated 4 July 2023.

Mr Turner's comments on the Defence report

19. On 6 July 2023, Mr Turner was provided with a copy of the Defence Report and asked to provide his comments on that report. Mr Turner replied via email on 28 July 2023, with his comments focused solely on the Directorate's offer to refer his complaints of bullying towards Mrs Turner to Air Force for consideration and management. Mr Turner provided his consent to the Directorate's offer and also advised he would raise the matter with the Commonwealth Ombudsman.

Related DHAAT reviews

20. There are some similarities between Mrs Turner's case and two DHAAT reviews in which members were medically discharged just short of 15 years of service. Both cases are currently with the Minister for Defence Personnel for consideration.

21. **Jackson and the Department of Defence.**¹⁵ Mr Jackson enlisted in the Australian Regular Army in 2006, serving full time as an Avionics Technician. He transferred to the Active Reserve in January 2018 and worked as a Career Manager at Defence Force Recruiting. In March 2020, Mr Jackson suffered a stroke which resulted in his being permanently disabled and unable to work. The Department of Veterans' Affairs (DVA) accepted this condition as related to his service and he was medically discharged from the Army Reserve in August 2021.

22. Defence applied alternative approaches in determining the period of a qualifying year to see if these variations enabled Mr Jackson to qualify for the DLSP. In addition to using years calculated from enlistment date, Defence used financial years, calendar years and a variation commencing on his enlistment dates in each of the Australian Regular Army and Army Reserve. None of the alternative approaches satisfied the 15 years qualifying service requirement.

23. On 13 October 2021, the Tribunal affirmed the decision of the Department of Defence of 21 May 2021 that Mr Jackson was not eligible for the award of the DLSP. However, pursuant to section 110VB(3) of the *Defence Act 1903*, the Tribunal recommended that the Minister for Defence Personnel review *whether an exception should be made to the Regulations and Determinations concerning the Defence Long Service Medal and other Australian long service awards to waive the requirement for 15 years of qualifying service where a member is discharged due to an accepted service caused medical condition*.

24. **Clarke and the Department of Defence.**¹⁶ Wing Commander Clarke served with the RAAF until July 2006 when he transferred to the General Reserve Air Force. He served as a reservist until December 2006 when he transferred back to the permanent forces. He served full time in this capacity until November 2015, deploying to Iraq and Afghanistan, where he was injured in a rocket attack. In November 2015, Wing Commander Clarke transferred to the Active Reserve Air Force where, at the time of the review, he was still serving.

25. Wing Commander Clarke was diagnosed with Post-Traumatic Stress Disorder (PTSD), liability for which has been accepted by DVA. Wing Commander Clarke tendered evidence that his treating psychiatrist had advised that he cease reserve work to avoid

¹⁵ *Jackson and the Department of Defence* [2021] DHAAT 14 (13 October 2021).

¹⁶ *Clarke and the Department of Defence* [2022] DHAAT 06 (27 May 2022).

exacerbating his PTSD and that, as a consequence of this advice, he was unable to serve the additional days required to become eligible for the award of the DLSM. Although the Tribunal decided that Wing Commander Clarke was not eligible for the award of the DLSM, by virtue of the strong similarities with the Jackson case, and noting that the Jackson recommendation had yet to be finalised, the Tribunal requested that the Minister be made aware of the Clarke case.

Detailed sequence of events: enlistment to termination

26. Mrs Turner enlisted in the RAAF on 30 November 1988 and was initially trained as an Air Surveillance Operator, reaching the rank of Corporal. In October 1997, she was posted to the School of Air Traffic Control at RAAF Base East Sale to undertake No. 125 Basic Air Traffic Course. She graduated in April 1998, was commissioned, and posted to Air Traffic Control (ATC) Detachment at Oakey.

27. On 28 June 2001, Mrs Turner had surgery on her right ankle. (This was the fourth¹⁷ procedure performed on her right ankle,¹⁸ the first having been completed in August 1985, more than three years prior to enlistment.) She returned to work on or around 22 August 2001, and was provided a medical chit that contained a series of limitations, the most relevant being: *Fit to control -- in Approach room only, and only for half days for 1st week....No running at all. Walk as tolerated. PT¹⁹/sports—ONLY as per physio rehabilitation program.*

28. On 21 October 2001, her doctor at the Army Medical Centre at Oakey completed a Unit Medical Employment Classification Review (UMECR) in which he described the history and impact of Mrs Turner's chronic right ankle dysfunction in some detail, including listing the onset of the injury as 'in teens'. He concluded that, despite her being able to manage the control tower stairs [at that point], *'in view of the chronicity of her complaint and the underlying pathology one must still be quite guarded about the eventual outcome.'*²⁰ The UMECR also sought to manage her pregnancy, and as a consequence her employment limitations addressed both ankle rehabilitation and pregnancy, the most relevant to this review being: *Not deployable. No field/bush exercises....PT or sport - only as per physiotherapist's ankle rehabilitation programme. Not for PFT.....*

29. Mrs Turner commenced Maternity Leave on 15 April 2002 and returned to work on 14 October 2002. Soon thereafter, Mr Turner claims that Mrs Turner was required to undertake a PFT.

30. Mrs Turner's service documentation shows that she underwent a Central Military Employment Classification Review on 21 November 2002, the results of which were subsequently presented to a Military Employment Classification Review Board (MECRB) in Canberra in February 2003.²¹

¹⁷ Specialist Report, Greg Staunton Smith (Rheumatologist), 19 December 2002, Mrs Turner's medical file (CMR2/ page 50).

¹⁸ Mrs Turner's orthopaedic surgeon commented at the time: *In my opinion, she will have normal function of the right ankle for the foreseeable future, and is fit in this regard for enlistment in any of Her Majesty's Services.* (CMR1/ page 271). In May 2000, an arthroscopy was performed on her right ankle, Mrs Turner's medical file (CMR1/ page 73).

¹⁹ Physical Training.

²⁰ Mrs Turner's medical file (CMR2/ page 101).

²¹ **MECRB process.** *Military Employment Classification (MEC) Cell is responsible for processing and presenting Central Military Employment Classification Review (CMECR) cases to a Military Employment*

31. The following medical advice was tabled at MECRB:

*FLTLT Turner has experienced right ankle pain and instability since her enlistment in 1988. She has seen numerous specialists and undergone several treatment modalities, the most recent being a reconstruction of the joint in Apr 01. Despite a pleasing result initially, her symptoms have recurred and she now experiences significant difficulties in the performance of lower limb activities. In addition, she has been investigated for chronic pain and stiffness that affects many of her joints. To date, no formal diagnosis has been provided for these symptoms, but they are noted to be contributing to her functional limitations.²² Her symptoms are such that she is only fit for **part time employment of a sedentary nature external to the control tower**. Her current restrictions render her **unfit for duties of her category** and this situation is unlikely to change in the foreseeable future. She is unable to perform general service duties. - She is considered non deployable in the long term.²³*

32. The statement from the Career Manager to the MECRB raised similar concerns in relation to the adverse impact of her condition on career progression, before concluding that:

FLTLT Turner's lack of deployability makes her unsuitable for any other category in the RAAF.²⁴

33. Mrs Turner's Member statement to the MECRB was as follows:

1. My right ankle gave way and I slipped and fell on the Control Tower steps in 1998. My right ankle sustained quite a severe injury as a result, which is an ongoing concern.²⁵

2. My right ankle is now giving me continuous trouble. It has a constant dull ache and often it will shoot very sharp pains up both sides of my leg. When the sharp pain is present I find it very difficult to concentrate. There is also considerable swelling present throughout the whole day.

3. Both knees, both hips and my lower back also give me considerable pain.

Classification Review Board (MECRB) for a determination on a member's physical and/or mental fitness for continued employment and deployment within the Air Force. A MECRB determination will also impose any employment restrictions necessary to ensure the ongoing safety/rehabilitation of the member and/or the safety of others. A MECRB will take into consideration the medical recommendations, unit advice and member's statement; however, the MECRB determination is ultimately a personnel management decision, which balances the member's employability against the needs of the Service. ([Pages - Military Employment Classification](#)).

²² The Tribunal noted that this assessment was largely consistent with Mrs Turner's Member Statement.

²³ MECRB Medical perspective, provided by Lieutenant Colonel R. Blakley, Joint Health Services Agency, 5 February 2003, Mrs Turner's medical files (CMR2/ page 44).

²⁴ MECRB career management perspective, provided by Wing Commander P. Willmot, Air Operations, 5 February 2003, Mrs Turner's personnel files, (H2/ page 78).

²⁵ This statement is slightly at odds with the Incident Report generated at the time which showed that three weeks after her arrival in Oakey, Mrs Turner slipped on the steps of the air traffic control tower and sprained her right ankle. Mrs Turner was given three days restricted duty, Mrs Turner's personnel files, (File P1/ page 96).

4. *While employed in my primary duty as an Air Traffic Controller I cannot take any pain relief medication.*

5. *Working in the Air Traffic Control Complex in extremely cold air conditioning makes my joints, particularly my right ankle, both knees, both hips and my lower back, ache continuously. In addition I have been experiencing bad pain in the joints of my fingers, particularly my thumbs, and in my wrists, causing simple tasks to become increasingly difficult to complete.*

6. *I have had to limit the number of times I ascend the Control Tower steps each day to minimise the pain in both my legs and lower back.*

[.....]

8. *I have to limit my sporting activities to very low or no impact activities. Impact activities cause severe pain and swelling in my right ankle, and pain in both knees, both hips and my lower back.*

9. *My right hip continuously “clunks” every time I take a step.*

10. *I have bad pain in the joints of my fingers, particularly my thumbs, and in my wrists. The pain is worst in the mornings and evenings. I have difficulty opening jars/bottles and holding a pen and. My fingers are often very swollen in the morning.*

11. *The day that my current medical restrictions came into effect I was advised by SQNLDR Johnson (OFC) that I could no longer continue to work as an Air Traffic Controller (my primary duty), stating that only working three days per week I would not be able to maintain my currency. The following workday I was to report to LTCOL Lawler for duties in the Officers Mess. I now work at the 1st Aviation Regiment helping out with Aviation related tasks.*

34. The Chairman of the MECRB concluded that:

....FLTLT Turner is, as a result of her chronic right ankle dysfunction and the chronic pain and stiffness that affects many of her joints, non-deployable in the long term. She is, therefore, Medically Unfit for Further Service (MUFS).²⁶

35. The Tribunal noted that Mrs Turner’s statement appeared to make a strong case for her own medical discharge, in essence pre-emptively vindicating the MECRB decision. (The Tribunal noted that the PFT that was central to Mr Turner’s claims of mistreatment was not featured in any document submitted to the MECRB, including Mrs Turner’s own statement.)

36. Mrs Turner was notified of the MECRB determination in a document dated 28 February 2003.²⁷ Records show that Mrs Turner accepted the MECRB decision on 24 March 2003, initially electing a discharge date of 1 July 2003. This date was largely in

²⁶ MECRB Chairman's Decision, Group Captain A. Needham, Director of Personnel-Officers, 27 February 2003, Mrs Turner’s medical files, (CMR2/ page 40).

²⁷ Medical Employment Classification Review Board Decision, Minute to Mrs Turner, WGCDR McDonald, 28 February 2003, Mrs Turner’s personnel files, (File H2/ page 71).

accordance with the defence policy that discharge should occur within four months of notification.²⁸ Shortly thereafter, Mrs Turner sought a minor extension to the discharge date to 6 July 2003. This request was accepted and the Termination Notice issued on 4 June 2003 proposed this same date [6 July 2003].

37. On 24 June 2003, Mrs Turner submitted a subsequent request based on a number of service-related and personal reasons for an extension to her termination date [to 6 December 2003], in part stating:

*While I fully accept the MECRB decision, that I am no longer medically suitable for Service, I wish to apply for an extension to the discharge date.....My request is that my discharge date be extended for five months to allow me time to come to terms with the roller coaster of emotions that I am experiencing.*²⁹

38. This request also included a Defence Community Organisation report with a recommendation that Mrs Turner's discharge date be extended for five months. The request was considered by the Director of Personnel-Officers, Group Captain Needham, who responded stating:

*The request.....has been reviewed and I have approved an extension of her discharge date until 31 Aug 03. This should allow FLTLT Turner sufficient time to prepare herself for her departure from military life.*³⁰

39. Despite the approval of two of the five months requested, Mrs Turner re-applied, this time stating:

*I am writing this statement to reapply for the original requested discharge date of 1 December 2003....I request to expend all my leave entitlements from 31 August 2003. (Amended discharge date). This will allow my length of service to be such as to qualify for the Defence Force Service Medal (DFSM).....My preferred options to clear the leave and obtain my DFSM.*³¹

40. This request was considered by Group Captain Needham and denied. Mrs Turner was subsequently discharged on 31 Aug 2003.

Allegations of mistreatment and the DLMS

41. The Tribunal noted that the submissions made by Mr Turner were largely based on allegations of unacceptable behaviour and/or mistreatment. These allegations were a consistent feature of Mr Turner's correspondence, including the application and commentary on both the defence report and subsequent responses by Defence to Tribunal request for information.

²⁸ Medical Employment Classification Review Board Decision, Minute to Mrs Turner, Wing Commander McDonald, 28 February 2003, paragraph 5, Mrs Turner's personnel files, (File H2/ page71).

²⁹ Standard Application, attached to Minute, *Termination Notice*, dated 24 June 2003, Mrs Turner's personnel files, (File H2/ page 23).

³⁰ Director of Personnel-Officers response dated 01 July 2003, Mrs Turner's personnel files, (File H2/ page 31).

³¹ Note that the DFSM was one of a suite of three ADF long service (15 year) awards, all of which were replaced by the DLMS on 20 April 1999. More correctly, this application should have referred to the DLMS rather than the DFSM.

42. Throughout the review process, Mr Turner provided a significant amount of detail in relation to three specific instances of alleged mistreatment, these being that Mrs Turner had been:

- a. required to complete a PFT whilst recovering from surgery on her right ankle, and that this activity acted as the catalyst for a series of employment limitations and medical reviews that resulted in her being medically discharged;
- b. inappropriately removed from her workplace by an *untrustworthy and spiteful chain of command*;³² and
- c. denied the opportunity to extend the termination date by expending accrued leave that, had it been approved, would have resulted in her meeting the DLSM eligibility criteria.

43. Mr Turner contended that the PFT, conducted over 15 months after the surgery on her right ankle,³³ was the catalyst for Mrs Turner's medical discharge. Mr Turner also stated that Dr Kleinig (Mrs Turner's managing physician at Oakey) *went through the roof* after being informed that Mrs Turner had been required to complete the PFT.³⁴

44. Although there was some doubt over aspects of the PFT, there was no doubt that Mrs Turner was removed from her primary place of work by her supervisor in early November 2002, around two weeks after returning to work from maternity leave. This followed the issuing of a PM101 from Dr Kleinig that restricted Mrs Turner to a three day working week.³⁵ Mr Turner claimed that this PM101 was issued immediately following the failed PFT and that this restriction acted as the catalyst for her removal from the workplace.³⁶ The Tribunal noted that Mrs Turner's supervisor claimed to have made the decision to remove Mrs Turner from the workplace on the basis of concerns that a three day week was insufficient to retain air traffic rating currencies.³⁷

45. Lastly, Mr Turner claimed that Mrs Turner had been denied *her entitlement* to expend accrued leave that, had it been approved, would have resulted in her meeting the criteria for the award of the DLSM.³⁸ The Tribunal accepted that Mrs Turner had sufficient long service leave to be able to cover her intended absences until 1 December 2003.³⁹ The Tribunal also

³² Email correspondence, Mr Turner and Department of Defence, dated 4 August 2022 as supplied with Defence report of 4 July 2023.

³³ Mrs Turner's ankle surgery was conducted on 28 June 2001; the Tribunal place the timing of the PFT post 14 October 2002.

³⁴ The Tribunal noted that as part of Mrs Turner's Final Medical Board, which was completed as part of her transition from Defence on 14 April 2003, Dr Kleinig commented that: *With respect to PFTs – says only ever failed one in '97 (passed it second time around). But due to 'restrictions'/pregnancies has not attempted a PFT for the last 3 years. (She says she always 'struggled' with her PFT's)*. Comments in Mrs Turner's Final Medical Board (FMB) documentation, Mrs Turner's medical file, (CMR1/ page 314).

³⁵ Documentation shows that Dr Kleinig signed a PM101 on 31 October 2002 that included the restrictions *'Not to ascend the tower'* and that included a three day working week.

³⁶ *Series of Events Following Being Placed on Medical Restrictions*, FLTLT Turner, undated, provided by e-mail from Mr Turner, 24 November 2023.

³⁷ Ibid.

³⁸ The application stated that *'Yet in Karen's case she completed 275 efficient service but due [to] not being give [sic] her entitlement to take her three months long service leave...'*. Email Mr Turner to Department of Defence, dated 4 August 2022, as supplied with the Defence report of 4 July 2023.

³⁹ A rudimentary analysis shows that Mrs Turner would have accrued just short of 4.5 months of long service leave in her service career, 61 days of which were at full pay as part of her maternity leave between mid-April and mid-October 2002. This would have left approximately 2.5 months, sufficient to apply for roughly five months of long service leave at half-pay.

noted that although Defence policy considers the *accrual* of long service leave, and the ability to apply for it, to be entitlements^{40,41}, approval of long service leave by the chain of command is *discretionary*.⁴² The Tribunal also noted that Defence policy provides for members to be paid out for unexpended leave (in lieu of being approved to take leave) as was the case with Mrs Turner.

46. Unlike the ADM, which provides for the award of the medal in circumstances where *the member ceased service in the Permanent Force or Reserves of the Defence Force and mistreatment by a member of the Defence Force or an employee in the Department of Defence was a significant contributing factor*, there are no such provisions within the DLSM regulations.

47. Section 110VB(6) of the *Defence Act 1903* expressly provides that the Tribunal is bound by the eligibility criteria that were applicable to the honour or award in dispute at the time of the decision under review. This means that the Tribunal has no discretion to recommend an honour or award if the terms and conditions laid down in the applicable Regulations and other legal determinations are not met. The Tribunal therefore is unable to factor alleged mistreatment of Mrs Turner into its consideration of this matter.

48. Because of this, and noting Mr Turner's declared intent to pursue the allegations of unacceptable behaviour and/or mistreatment through other avenues, the Tribunal has not made any findings in relation to these claims.

Qualifying service in the fifteenth year

49. The Tribunal noted the similarities between this case, and a number of other DLSM cases where applicants had served more than the requisite number of 'qualifying days' in their fifteenth year of service. Invariably, applicants claimed that they had met the DLSM eligibility criteria by virtue of having met or exceeded the 'qualifying days' requirement.

50. Current Defence policy is embedded in the *Defence Honours and Awards Manual* Volume 1 Chapter 30.12 (the Manual), which states that:

...for service to be recognised, the 20 days has to be completed in conjunction with serving a full year as a member of the ADF, continuous or in aggregate.

51. Notwithstanding that previous cases had made reference to alternative methodologies that determined the number of days served by calendar year and financial year (in addition to years calculated from enlistment), in *Clarke*, the Tribunal found that the alternative methodologies were inconsistent with the relevant CDF Determination (this being the *2000 CDF Determination*), and that DLSM assessments should be confined to calculations based on the anniversary of enlistment.⁴³ The Tribunal noted that Mrs Turner's case uses the correct methodology.

⁴⁰ *Defence Determination 2016/19*, Part 5, section 5.5.1, paragraph 4; also PACMAN, Part 5: *Long service leave, Overview*, paragraph 4.

⁴¹ Currently, members assessed as MEC J5x (MUFS), who have been assigned a termination date, are able to apply to take leave *prior to* the date determined for separation, in accordance with PACMAN, Chapter 5.

⁴² 'The grant of long service leave is a discretion.' *Defence Determination 2016/19*, Part 5, section 5.5.1, paragraph 4.

⁴³ *The Tribunal considers that the Directorate's policy of assessing an applicant's service by financial year and calendar year can only be viewed as inconsistent with that Determination* [the 2000 CDF Determination],

52. Regardless of the methodology used to calculate annual qualifying service, the Tribunal took the view that the process of calculating the number of ‘qualifying days’ within a given year of service is entirely contingent upon a determination that the member has completed *15 years* of service in the first instance.⁴⁴

Tribunal Decision

53. As things stand, and by virtue of the fact that there are no discretionary provisions in the DLSM Regulations that allow for the award of the DLSM short of 15 years of service, Mrs Turner does not qualify for the DLSM.

54. However, the Tribunal acknowledges that should the Minister for Defence Personnel agree to make an exception to the DLSM Regulations and Determinations to provide for the case where a member is discharged due to an *accepted service caused medical condition* **and** in the event that it can be established that Mrs Turner’s medical discharge were the result of *service-caused* injuries, it would be open to the Turners to again seek the award of the DLSM.

55. In making its decision in this case, the Tribunal acknowledges Mrs Turner’s significant commitment to Defence and the nation over many years.

given the clear stipulation contained therein that calculation of annual service be confined to enlistment year only. Clarke and the Department of Defence [2022] DHAAT 06 (27 May 2022), paragraph 44.

⁴⁴ These aspects were discussed at length in *Clarke and the Department of Defence [2022] DHAAT 06 (27 May 2022)*.