



Australian Government

Defence Honours and Awards Appeals Tribunal

Condon and the Department of Defence [2024] DHAAT 4 (3 June 2024)

File Number(s) 2023/014

Re **Mr Richard Condon**
Applicant

And **The Department of Defence**
Respondent

Tribunal Commodore Vicki McConachie CSC RAN (Retd)
(Presiding Member)
Air Commodore Anthony Grady AM (Retd)
Mr Jonathan Hyde

Hearing Date 13 February 2024

Attendance Mr Richard Condon

Ms Catherine Morris, Directorate of Honours and Awards,
Department of Defence

Ms Cassandra Liplyn, Directorate of Honours and Awards,
Department of Defence

DECISION

On 3 June 2024, the Tribunal decided to affirm the decision of the Department of Defence that Mr Richard Condon not be recommended for the Defence Long Service Medal.

CATCHWORDS

DEFENCE AWARD – Defence Long Service Medal – eligibility criteria – discharge resulting from service caused medical condition – 14 years qualifying service – no exception to 15 year qualifying service requirement – 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 Richard Condon, seeks review of a decision dated 23 June 2023 of the Department of Defence to refuse to recommend him for the Defence Long Service Medal (DLSM) for his service.

Decision under review

2. On 17 December 2022, Mr Condon submitted an application to the Directorate of Honours and Awards in the Department of Defence for an assessment of his eligibility for the Defence Long Service Medal. On 23 June 2023, the Directorate advised Mr Condon via letter that he had only served 14 of the 15 qualifying service years to be eligible for the medal.¹

3. On 28 August 2023, Mr Condon made application to the Tribunal.

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 Defence Long Service Medal. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

Mr Condon's service

5. Mr Condon's service records indicate he served two periods in the Army Reserve from 7 July to 26 September 2001, and again from 19 August 2003 to 24 July 2005. Mr Condon then served in the Australian Regular Army from 25 July 2005 to 21 February 2018 where he reached the rank of Sergeant. Mr Condon's records confirm that he was discharged on medical grounds on 21 February 2018.²

6. Mr Condon has been awarded the following for his service:

- Australian Active Service Medal with Clasps IRAQ 2003 and ICAT
- Afghanistan Medal
- Iraq Medal
- Australian Service Medal with clasp TIMOR-LESTE
- Australian Defence Medal
- NATO Non Article 5 Medal with clasp - ISAF
- Medalha Solidariedade de Timor-Leste (Timor-Leste Solidarity Medal)
- Infantry Combat Badge³

¹ Application for review, Mr Condon, dated 28 August 2023

² Mr Condon's service records

³ Ibid

Eligibility Criteria for the Defence Long Service Medal

Letters Patent and Regulations

7. The Defence Long Service Medal was instituted by Letters Patent issued on 26 May 1998 for the purpose of 'accord[ing] recognition to persons who render long and efficient service as members of the Defence Force'⁴ 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;*
 - (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:

- (a) 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*
- [...]*

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*

8. 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

9. *2021 CDF Determination* - On 16 March 2021 the CDF issued a Determination, which stipulated that in order to qualify for the Defence Long Service Medal, the minimum period of annual qualifying service for all members of the Australian Defence Force (ADF) from 20 April 2000 would be 20 days.⁸ The 2021 CDF Determination expressly revoked the previous CDF Determination dated 6 February 2013.⁹

10. *2000 CDF Determination* - On 13 April 2000 the CDF issued a Determination that, among other things, provided:

...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 Condon's application to the Tribunal

11. In his application to the Tribunal, Mr Condon stated that he was denied the opportunity to serve the required period to qualify for the Defence Long Service Medal, due to not being able to extend the date of his medical discharge. Mr Condon said that he had requested to use his long service and annual leave balance to extend his discharge date by the three months he required so that he could qualify for the medal.

At the time that I was being medically discharged and was given a discharge date, I raised the matter that I had a long service and annual leave balance to push my discharge date back to qualify for the awarding of the DLSM.

I wrote a minute raising this to the IRAR XO Major BJ Pearce and this was forwarded on to SCMA and a reply sent back to me from the Senior Medical Officer denying my request.

*My concern and issue is that I had enough leave accumulated to push my discharge date out past my anniversary date and thus qualify for the DLSM.*¹¹

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

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

⁹ While the 2021 and 2013 CDF Determinations differ in a number of aspects, both Determinations stipulate 20 days qualifying service for all ADF members

¹⁰ *Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force dated 13 April 2000.* The Tribunal noted that calculations of Mr Condon's service had been correctly baselined against Mr Condon's anniversary of enlistment/re-appointment

¹¹ Application for review, Mr Richard Condon, dated 28 August 2023

Defence report

12. The Defence report stated that following Mr Condon's application to the Tribunal, the Directorate of Honours and Awards re-assessed his eligibility for the Defence Long Service Medal and that the re-assessment supported the original decision to not recommend him for award of the medal.¹²

13. Defence reviewed Mr Condon's service against the Defence Long Service Medal Regulations and Determinations outlined above. Defence confirmed that it had applied an 'aggregation method', which moved Mr Condon's enlistment/anniversary date to 27 May each year. Defence explained that *the prior period of service is aggregated with the re-enlistment period to re-establish a consistent 12 month period*. While Defence explained that the method is used 'to potentially favour individuals' whose periods of service might otherwise be discounted, Defence concluded that Mr Condon had completed 14 years of qualifying service.

14. Notwithstanding that Mr Condon had completed 14 full years, and more than 20 days of qualifying service in his fifteenth year of service, Defence considered that his fifteenth year was 'incomplete'.¹³

15. Defence acknowledged Mr Condon's claim that he had sought approval to extend his discharge date to allow him to qualify for the Defence Long Service Medal, however stated that the decision was a matter for the Army Military Employment Classification Review Board and the assessing Defence Senior Medical Officer. It stated that there were no provisions or discretionary powers to apply the award outside of the 15-year milestone where a member had been medically discharged.

16. Defence provided the following table detailing Mr Condon's qualifying service.

Long Service and Australian Defence Medal							
Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
7/07/2001	27/05/2004	ARES/ ARES	20	87	Y	1	Gap/Break in service END 26/09/2001 REHIRE 19/08/2003 [691 days break]
28/05/2004	27/05/2005	ARES	20	83	Y	2	
28/05/2005	27/05/2006	ARES/ ARA	20	>20	Y	3	END ARES 24/07/2005 REHIRE ARA 25/7/2005 MARS 20.5 days
28/05/2006	27/05/2007	ARA	20	>20	Y	4	
28/05/2007	27/05/2008	ARA	20	>20	Y	5	
28/05/2008	27/05/2009	ARA	20	>20	Y	6	
28/05/2009	27/05/2010	ARA	20	>20	Y	7	
28/05/2010	27/05/2011	ARA	20	>20	Y	8	
28/05/2011	27/05/2012	ARA	20	>20	Y	9	
28/05/2012	27/05/2013	ARA	20	>20	Y	10	
28/05/2013	27/05/2014	ARA	20	>20	Y	11	

¹² Defence report, dated 13 October 2023

¹³ Ibid

28/05/2014	27/05/2015	ARA	20	>20	Y	12	
28/05/2015	27/05/2016	ARA	20	>20	Y	13	
28/05/2016	27/05/2017	ARA	20	>20	Y	14	
28/05/2017	21/02/2018	ARA	20	>20	N	14	TER Discharge prior to qualifying date

Mr Condon's comments on the Defence report

17. On 16 October 2023, Mr Condon was provided with a copy of the Defence report and asked to provide his comments on that report. Mr Condon replied via email on 18 October 2023, reiterating his view that he would have qualified for the Defence Long Service Medal had Defence allowed him to extend his discharge date.

*I would like the tribunal to assess the report that was provided by Defence in regard to my application for the DLSM. In particular paragraph 23.*¹⁴

I put forward that if I wasn't medically discharged and discharged on my own accord then I would of put in my remaining leave and discharged past my qualifying period. Like many have done before me.

*However because I was medically discharged I was denied this opportunity. I had the leave and I should of been allowed to access it.*¹⁵

18. The Tribunal noted that in Mr Condon's email of 28 August 2023 he stated that he had raised the matter of taking long service leave to extend his discharge date, and had written a minute raising this to the 1RAR Executive Officer, Major BJ Pearce. He submitted that the minute *was forwarded onto SCMA and a reply sent back to me from the Senior Medical Officer denying my request.*¹⁶

19. During the hearing the Tribunal put to Mr Condon that his representation of 22 December 2017, based his request for an extension to his discharge date on allowing him to *reengage and recommence final health assessments and attend to outstanding and possible future medical appointments.*¹⁷ The minute did not request he be allowed to use his recreation and long service leave. It did however, note his desire to serve until 25 May 2018 to allow him to qualify for the Defence Long Service Medal and requested a discharge date of 1 June 2018. Mr Condon was asked if he had submitted any other requests for an extension which referred to his leave. Mr Condon's response was that he had not put in any other written requests, and he must have taken it for granted his leave would be considered and discussed with his superiors.

20. While the evidence before the Tribunal did not support Mr Condon's contention that he formally applied to use his leave to extend his discharge date, the Tribunal accepted Mr Condon's oral evidence that he discussed his desire to take his leave to enable him to be eligible to be awarded the Defence Long Service Medal with his superiors. The Tribunal also noted that Mr Condon had sufficient leave, if taken as

¹⁴ Paragraph 23 of the Defence report relates to Mr Condon's discharge date being a matter for the Army Military Employment Classification Review Board and the assessing Defence Senior Medical Officer

¹⁵ Mr Condon's response to the Defence report, dated 18 October 2023

¹⁶ Email, Mr Condon to Tribunal, dated 28 August 2023

¹⁷ Sergeant Condon minute 1 RAR/OUT/2017, dated 22 December 2017

recreation leave and long service leave on half pay, to allow him to take paid leave from 22 February to 1 June 2018.¹⁸

21. Mr Condon's request for a later separation date was denied on 22 January 2018 by Career Management - Army.¹⁹ While an officer advising on the discharge was sympathetic to the extension request on the basis of qualifying for the Defence Long Service Medal, he considered other factors mitigated against it.²⁰ As approval of leave is discretionary, its approval or denial was entirely a matter for the authorised Defence authorities.

22. The Clinical Advice to the Medical Classification Review of 28 September 2017 sets out the medical condition which caused Mr Condon to be medically reclassified. This reclassification led to Mr Condon being discharged for not meeting the required ADF medical fitness standards. The Department of Veterans' Affairs accepted that the condition which led to Mr Condon's discharge was related to his service under the *Military Rehabilitation and Compensation Act 2004*.²¹

Tribunal analysis

23. In determining Mr Condon's eligibility for the Defence Long Service Medal the Tribunal is required to apply the criteria in the Defence Long Service Medal Regulations as amended on 5 December 2001. Sub regulation 3(1) of the regulations provides that the medal may be awarded to a former member of the Defence Force who has given *qualifying service for a period of at least 15 years or periods that in total, amount to at least 15 years*. Service in the Defence Force is *qualifying service* where it fulfils the requirements specified in directions given by the Chief of the Defence Force and is *efficient service*²². The requirement for *qualifying service* specified in the Chief of the Defence Force Defence Long Service Medal Determination 2021 of 16 March 2021 is that the minimum annual period of service to be completed for a year of qualifying service is *20 days remunerated at Defence rates of salary...*

24. This means that to be eligible to be awarded the Defence Long Service Medal, Mr Condon must have, in the first instance, served for 15 years from the date of enlistment *and*, where it can be shown that this requirement had been met, also have provided at least 20 days qualifying service in each of those 15 years. The Regulations and the Determination do not provide for any exception to be made to these criteria for matters such as medical discharge for a condition caused by a person's service.

25. Mr Condon provided 20 days qualifying service in each of 15 years. He did not however serve in the Australian Defence Force for 15 years because he was discharged on the basis of a medical condition that was service related before he had served for 15 years. While the Tribunal acknowledged that Mr Condon would have reached 15 years of service had he applied, and been permitted, to extend his discharge date by taking his leave, at his actual discharge date of 22 February 2018 Mr Condon only had 14 years' qualifying service in the Australian Defence Force.

¹⁸ Email, Mr Condon to Tribunal, dated 31 August 2023, forwarding email from Ms Kelly Jones, dated 30 June 2023 titled *Condon, Richard – Information regarding Long Service Leave*

¹⁹ Minute DCMI-A/OUT/2018/AB34187171, from Major E Shelly (SO2 CM-A), dated 22 January 2018

²⁰ Email, Major E Shelly to Dr D. Duncan, dated 25 January 2018

²¹ Electronic Records for Mr Condon obtained from the Department of Veterans' Affairs, 3 April 2024

²² Defence Long Service Medal Regulations sub regulation 5(a)

26. This meant that Mr Condon was not eligible for the award of the Defence Long Service Medal.

27. This ineligibility for the Defence Long Service Medal does not detract in any way from the valued and respected service given by Mr Condon to the Australian Defence Force, including service in Timor-Leste, Iraq and Afghanistan.

‘Efficient service’

28. For the sake of completeness, the Tribunal endorsed the following observations in relation to the issue of ‘efficient service’ which were highlighted in the Tribunal decision in *Clarke and the Department of Defence* [2022] DHAAT 06 (27 May 2022).

‘Regulation 5(a)(ii) provides that service can only be qualifying service if during that time the member gave efficient service, defined as service determined to be efficient service by the Chief of the Defence Force. It is an essential separate criterion, in addition to meeting the number of qualifying years of service.

There does not appear to be any current operative Determination by the CDF of efficient service, the 6 February 2013 Determination having been revoked by the 2021 CDF Determination,³³ and the previous 13 April 2000 Determination only referring to service prior to 20 April 2000 as efficient service.

The various CDF Determinations sets out minimum annual periods of service to be completed for a year of qualifying service. They make no mention of what amounts to efficient service.

Defence appears to assume that if a member serves for the requisite number of qualifying years, that member has given efficient service. This is a conflation of two discrete criteria. It is inconsistent with the Regulations which require a separate assessment of efficient service in accordance with a Determination by the CDF.’

29. In Mr Condon’s case it was unnecessary to consider whether he gave efficient service as he did not satisfy the 15 qualifying years’ of service criterion.

Service-related medical condition

30. Mr Condon provided qualifying service in the Australian Defence Force for 15 years but only completed 14 calendar years of service because he was discharged due to a service-related medical condition. He is thus not eligible for the Defence Long Service Medal.

31. Having concluded that Mr Condon did not meet the current eligibility criteria for the Defence Long Service Medal and that it was thereby bound to affirm the decision under review, the Tribunal considered whether it was appropriate for it to do anything additional.

32. In this regard it noted that:

- a) in the matter of *Jackson and the Department of Defence* [2021] DHAAT 14 the Tribunal decided on 13 October 2021 to affirm the Defence decision that

Mr Jackson was not eligible for award of the Defence Long Service Medal but also decided to recommend to the Minister, under section 110VB(3) of *the Defence Act 1903*, that he should review whether an exception should be made to the Regulations and Determinations to waive the requirement for 15 years of qualifying service where a member is discharged due to an accepted service-related medical condition; and

- b) in the matter of *Clarke* the Tribunal decided on 27 May 2022 to affirm the Defence decision that Mr Clarke was not eligible for award of the Defence Long Service Medal but expressed the view that the Minister should be made aware of that case which bore strong similarities to the Jackson case.

33. In the Jackson case the applicant had served at least 20 days in each of 14 years but no days in the fifteenth year before he was discharged due to a service-related medical condition. In the Clarke case the applicant had served at least 20 days in each of 15 years, but was not enlisted for the entirety of the fifteenth year before he was discharged due to a service-related medical condition. As noted above, Mr Condon served at least 20 days in each of 15 years, but was not enlisted for the entirety of the fifteenth year before he was discharged due to a service-related medical condition and so his situation was comparable to that of Mr Clarke.

34. In preparing the draft of this statement of Reasons for Decision, because of that similarity the Tribunal was initially minded to include the same recommendation to the Minister as it had made in the Jackson case, to which the Minister had at that time not responded.

35. However, before that draft was finalised, on 7 May 2024 the Minister wrote to the Chair of the Tribunal in reference to the Jackson and Clarke cases. In that letter he stated that:

I have decided not to recommend amendments to the DLSM Regulations which would allow the medal to be awarded to members who have not provided 15 years of eligible remunerated service in the Australian Defence Force.

The singular intention of the DLSM is to recognise long service. I consider it appropriate to establish and maintain a minimum time period for members to be considered efficient for the award of the DLSM in order to set a reasonable standard and retain a degree of esteem for the award.

36. As the circumstances of Mr Condon were so closely aligned to those of Mr Jackson and Mr Clarke, the Tribunal concluded that this decision of the Minister would be applicable to Mr Condon and that accordingly there would be no point in making any recommendation to the Minister in these Reasons for Decision along the lines that had been made in the Jackson case.

37. In reaching that conclusion the Tribunal noted that:

- a) its recommendation in the Jackson case, and inferentially in the Clarke case, was simply that the Minister should give consideration to making an exemption from the 15-year requirement where a member was discharged because of a service-related medical condition;

- b) the Tribunal's recommendation did not suggest what conclusion the Minister should reach as a result of that consideration;
- c) the Minister has clearly given the recommended consideration to the issue;
and
- d) the Tribunal has no role in its review jurisdiction to seek to assess the conclusion reached by the Minister.

Tribunal decision

38. The Tribunal decided to affirm the decision of the Department of Defence that Mr Richard Condon not be recommended for the Defence Long Service Medal.