



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Walker and the Department of Defence [2023] DHAAT 3 (3 June 2024)**

File Number(s)	2023/009
Re	<b>Mr Jason Karl Walker</b> Applicant
And	<b>The Department of Defence</b> Respondent
<b>Tribunal</b>	Ms Karen Fryar AM (Presiding Member) Air Vice-Marshal Tracy Smart AO (Retd) Mr Jonathan Hyde
<b>Hearing Date</b>	5 April 2024
<b>Attendance</b>	Mr Jason Karl Walker (applicant), Ms Jo Callaghan, and Ms Cassandra Liplyn (Defence)

#### **DECISION**

On 3 June 2024, the Tribunal decided to affirm the decision of the Department of Defence that Mr Jason Karl Walker 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 – 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 VIIIC – 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, Amendments to Regulations, Commonwealth of Australia 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)*, dated 16 March 2021

## **Introduction**

1. The Applicant, Mr Jason Karl Walker, seeks review of a decision by a service assessments assessor in the Directorate of Honours and Awards (the Directorate) dated 17 June 2022, to refuse to recommend him for the Defence Long Service Medal for his Army service.

## **Decision under review**

2. On 20 April 2022, Mr Walker submitted an online application to the Directorate for an assessment of his eligibility for the Defence Long Service Medal. On 17 June 2022, the Directorate phoned Mr Walker and advised him that he had only completed 14 of the 15 years qualifying service to be eligible for the medal.<sup>1</sup>

3. On 17 May 2023, Mr Walker made application to the Tribunal seeking review of the above decision.

4. As per information provided in the Defence report, Mr Walker had submitted a further application to the Directorate on 27 April 2023 for re-assessment of his eligibility for the Defence Long Service Medal. However, as that re-assessment had not yet been conducted, and noting Mr Walker's application to the Tribunal on 17 May 2023, Defence reviewed the original decision from 2022 and conducted a re-assessment of his eligibility for the DLSP.<sup>2</sup> This review affirmed the original decision that Mr Walker was not eligible for the Defence Long Service Medal.

## **Tribunal jurisdiction**

5. 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 Walker's service**

6. As per Mr Walker's personnel files, he enlisted in the Australian Army Reserve on 12 August 2003 and transferred to the Australian Regular Army on 16 August 2004. Mr Walker transferred back to the Australian Army Reserve on 10 October 2016 where he remained enlisted until he discharged on 18 April 2022.<sup>3</sup>

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<sup>1</sup> Defence Report, dated 5 June 2023

<sup>2</sup> Ibid

<sup>3</sup> Mr Walker's personnel files as supplied with his application for review.

7. Mr Walker has been awarded the following for his service:
- a. Australian Active Service Medal with Clasp 'ICAT'
  - b. Australian Defence Medal (ADM)
  - c. Afghanistan Medal
  - d. Returned from Active Service Badge <sup>4</sup>

## **Eligibility Criteria for the Defence Long Service Medal**

### ***Letters Patent and Regulations***

8. The Defence Long Service Medal 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 the Defence Force*'<sup>5</sup> Regulations 3, as amended in 2002, and 5 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.* <sup>6</sup>

### ***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;* <sup>7</sup>

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<sup>4</sup> Defence report, dated 5 June 2023

<sup>5</sup> *Defence Force Long Service Medal Letters Patent and Regulations, Commonwealth of Australia Gazette No S352, dated 10 July 1998*

<sup>6</sup> *Defence Long Service Medal Regulations, Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S2, dated 3 January 2002*

<sup>7</sup> *Defence Force Long Service Medal Letters Patent and Regulations, Commonwealth of Australia Gazette No S352, dated 10 July 1998*

[...]

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*<sup>8</sup>

### **Chief of the Defence Force (CDF) Determinations**

10. *2021 CDF Determination* - On 16 March 2021 the CDF issued a Determination relevant to Mr Walker's circumstances, 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 ADF from 20 April 2000 would be 20 days.<sup>9</sup> The 2021 CDF Determination expressly revoked the previous CDF Determination dated 6 February 2013. The 2021 CDF Determination relevantly states that the required 20 days of service is to comprise *Days remunerated at Defence rates of salary or sessional fees*.

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.<sup>10</sup>

12. *2000 CDF Determination* - On 13 April 2000 the CDF issued a Determination, which – *inter alia*, and possibly relevant to Mr Walker'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].<sup>11</sup>

### **Mr Walker's application to the Tribunal**

13. In his application to the Tribunal, Mr Walker requested that consideration be given to service-related injuries he had sustained that prevented him from completing the required 15 years' service to be eligible for the Defence Long Service Medal. Mr Walker stated:

*...I would like to request a review of this determination on the grounds that eligible service would have been met had my service-related injuries not existed at the time of discharge.*

[...]

*I believe that if it wasn't for my service-related injuries forcing me to retire early from the Defence force, I would have completed the required service to be eligible for my DLSP. Therefore, I ask that you please consider my service-related injuries which prevented me from completing my eligible and consider granting me my DLSP for my 14+ years of service to Australia.*<sup>12</sup>

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<sup>8</sup> *Defence Long Service Medal, Letters Patent and Amending Regulations, Commonwealth of Australia Gazette No S160, 30 March 2000*

<sup>9</sup> *Defence Long Service Medal Determination 2021, dated 16 March 2021*

<sup>10</sup> *Defence Long Service Medal Regulations, Determination by the Chief of the Defence Force dated 6 February 2013*

<sup>11</sup> *Defence Long Service Medal Regulations, Directions by the Chief of the Defence Force dated 13 April 2000*

<sup>12</sup> *Application for review Mr Jason Walker, dated 17 May 2023*

14. Mr Walker also supplied a copy of correspondence from Lieutenant Colonel Holbeck (undated, although apparently sent in 2022) which advised that Joint Health Command, after reviewing all of Mr Walker's records and supporting information, advised that there was sufficient evidence to conclude that medical separation could have been appropriate at the time he transferred to the Reserve. Accordingly, as the delegate of the Chief of Defence Force, Lieutenant Colonel Holbeck determined that Mr Walker should be treated as if he were medically separated, with effect 10 October 2016.<sup>13</sup>

## Defence report

15. The Defence report confirmed that following Mr Walker's application to the Tribunal, the Directorate re-assessed his eligibility for the Defence Long Service Medal and that the re-assessment supported the original decision to not recommend him for the medal.<sup>14</sup>

16. Defence reviewed Mr Walker's service against the Defence Long Service Medal Regulations and Determinations outlined above. Defence confirmed that Mr Walker enlisted in the Australian Army Reserve on 12 August 2003 and transferred to the Australian Regular Army on 16 August 2004. It further noted that Mr Walker transferred back to the Australian Army Reserve on 10 October 2016 before discharging on 18 April 2022.

17. Defence confirmed that Mr Walker had completed 14 years of qualifying service and stated that there were no provisions in the medal Regulations to award the Defence Long Service Medal to personnel who had not completed 15 years of qualifying service. Further, Defence submitted that there were no discretionary powers to apply the award outside of the 15-year milestone where a member had discharged due to a service-related medical condition.

18. Defence provided the following table detailing Mr Walker'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
12/08/2003	11/08/2004	ARES	20	125	Yes	1	
12/08/2004	11/08/2005	ARES/ ARA	20	>20	Yes	2	
12/08/2005	11/08/2006	ARA	20	>20	Yes	3	
12/08/2006	11/08/2007	ARA	20	>20	Yes	4	
12/08/2007	11/08/2008	ARA	20	>20	Yes	5	
12/08/2008	11/08/2009	ARA	20	>20	Yes	6	
12/08/2009	11/08/2010	ARA	20	>20	Yes	7	
12/08/2010	11/08/2011	ARA	20	>20	Yes	8	
12/08/2011	11/08/2012	ARA	20	>20	Yes	9	
12/08/2012	11/08/2013	ARA	20	>20	Yes	10	
12/08/2013	11/08/2014	ARA	20	>20	Yes	11	
12/08/2014	11/08/2015	ARA	20	>20	Yes	12	
12/08/2015	11/08/2016	ARA	20	>20	Yes	13	
12/08/2016	11/08/2017	ARA/ ARES	20	>20	Yes	14	FNP 09/09/2016

<sup>13</sup> Ibid

<sup>14</sup> Defence report, dated 5 June 2023

							- 10/09/2016 [ 2 days]
12/08/2017	11/08/2018	ARES	20	0	No	14	0 days
12/08/2018	11/08/2019	ARES	20	0	No	14	0 days
12/08/2019	11/08/2020	ARES	20	0	No	14	0 days
12/08/2020	11/08/2021	ARES	20	0	No	14	0 days
12/08/2021	11/08/2022	ARES	20	0	No	14	Discharge 18/04/2022

### Mr Walker's comments on the Defence report

19. On 6 July 2023, Mr Walker was provided with a copy of the Defence Report and was asked to provide his comments on that report. Mr Walker provided his comments on 9 July 2023, acknowledging that his service did not meet the criteria as outlined in the Regulations but again sought an exception because, as he said in his submission, had he sought medical treatment in Defence at the time of his discharge he would have rendered qualifying service by being medically downgraded during the treatment process. Mr Walker also claimed that had he known he had only rendered 14 years qualifying service he would have ensured he stayed enlisted to render the final qualifying year. Mr Walker stated:

*At the time of my discharge from the Australian Army Reserve on the 19 April 2022, I was under the belief that I had qualified for the DLMS.*

*...I was not informed before my discharge from the Australian Army Reserve that I only had 14 qualifying years of service. Had I had been informed I would not have submitted my discharge from Australian Army Reserve nor retrospective discharge until I had rendered 20 days service in the Australian Army Reserve.*

*[...]*

*In relation to the current medal regulations and my retrospective discharge, I am now ineligible to ever render qualifying service for the DLMS.*

*[...]*

*The DLMS should have provisions like the Australian Defence Medal where there is scope for members who have been medically discharged to obtain that medal.*<sup>15</sup>

20. At the hearing of the review Mr Walker agreed again with the Defence assessment of the length of his service, and in particular that he had completed 14 years of efficient service in accordance with the relevant regulations, but unfortunately fell short of the required 15 years' service for this particular award.

### Tribunal consideration

21. The Tribunal agreed with the assessment of Mr Walker's service, in that he had not completed 15 years of qualifying service before discharge.

22. In determining Mr Walker's eligibility for the Defence Long Service Medal, the Tribunal was bound to apply the criteria in the Regulations set out above, in association

<sup>15</sup> Letter, Mr Walker to Tribunal providing comments on Defence report dated 9 June 2023

with the CDF Determination of the minimum annual periods of service to be completed by a member for a year of qualifying service. Importantly there was no provision in the Defence Long Service Medal Regulations or the CDF Determination which allowed for an exception to be made, even where a member was discharged because of a service-related medical condition.

23. Accordingly the Tribunal found that Mr Walker was not entitled to the award of the Defence Long Service Medal.

#### **‘Efficient service’**

24. 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,<sup>33</sup> 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.*

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

26. Having regard to the issues raised by Mr Walker in his submissions to the Tribunal, it was apparent that had he served only a further 20 days of efficient service in his fifteenth year in the Australian Army Reserve before his discharge, he would then have been eligible for the award of the Defence Long Service Medal.

27. In his initial statement dated 17 May 2023, Mr Walker stated that he had elected to voluntarily discharge from the military in 2016 as he *...was no longer able to perform (his) duties as a soldier due to (his) service-related injuries*. This has since been corroborated by Defence’s decision that Mr Walker should now be treated as if he were medically separated with effect from 10 October 2016.



28. In his response to the Defence report and his comments during the Tribunal hearing, Mr Walker provided more detail on why he had made an election to discharge. Specifically, he referred to a 'code of silence' that he believed he was subject to relating to his deployment as part of the Special Operations Task Group in Afghanistan in 2007. Mr Walker believed that this 'code' prevented him from seeking medical treatment within Defence despite his evident health issues at the time, and that this was the reason he elected to instead seek treatment outside of Defence.

29. Mr Walker stated that a Senior Non-Commissioned Officer had spoken of the 'code' during his Afghanistan deployment and that, being a young soldier at the time, he had believed in its existence. He went on to state that the culture within the combat arms was one of hiding health problems, both physical and mental, not only because it could lead to a member being made non-deployable, but also because such individuals were ostracised and made to feel 'other' by their peers. He submitted that they were also often removed from their Units and other supportive structures.

30. The Tribunal acknowledged Mr Walker's concerns regarding what he perceived as a stigma and culture within Defence at that time, which made him reluctant to disclose health information while serving because he thought this may be detrimental to his career. Having regard to Mr Walker's evidence, the Tribunal is of the view that the perceived cultural pressure to not disclose his health concerns while serving, and to instead seek treatment outside of Defence, not only potentially delayed his treatment but it also appeared that it has cost him recognition of his long service to the ADF through the awarding of the Defence Long Service Medal.

31. The Tribunal accepted that unlike the Australian Defence Medal Regulations, the Defence Long Service Medal Regulations contain no exception clause for members who do not meet the eligibility criteria due to the impact of service related injuries or medical discharge. While unfortunate, the Tribunal simply had no discretion under the relevant regulations to take into account anything other than the strict number of days served.

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

33. In this regard it is noted that:

- a) in the matter of *Jackson and the Department of Defence* [2021] DHAAT 14 (13 October 2021) 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 also be made aware of that case which bore strong similarities to the Jackson case.

34. 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 Walker 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 and so his situation was very comparable to that of Mr Jackson.

35. 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.

36. However, before that draft could be 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:

*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.*

37. As the circumstances of Mr Walker were so closely aligned to those of Mr Jackson and Mr Clarke, the Tribunal concluded that this decision of the Minister would be equally applicable to Mr Walker 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.

38. 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.

## **Decision**

39. Accordingly the Tribunal decided to affirm the decision of the Department of Defence that Mr Jason Karl Walker not be recommended for the Defence Long Service Medal.