



Australian Government

Defence Honours and Awards Appeals Tribunal

Corica and the Department of Defence [2024] DHAAT 8 (30 October 2024)

File Number(s) 2023/014

Re **Mr Giovanni Corica**
Applicant

And **The Department of Defence**
Respondent

Tribunal Commodore Vicki McConachie CSC RAN (Retd)
(Presiding Member)
Air Vice-Marshal Tracy Smart AO (Retd)
Ms Louise Hunt

Hearing Date 23 October 2024

Attendance Mr Giovanni Corica

Ms Jo Callaghan, Assistant Director Honours and Awards,
Department of Defence

Mrs Cassandra Liplyn Current Service Manager, Honours and
Awards, Department of Defence

DECISION

On 30 October 2024, the Tribunal decided to affirm the decision that Mr Giovanni Corica not be recommended for the First Clasp to the Defence Long Service Medal.

CATCHWORDS

DEFENCE AWARD – Defence Long Service Medal – First Clasp - eligibility criteria – service-caused medical condition – Compulsory retirement age – no exception – 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 Giovanni Mario Corica, sought review of a decision dated 25 September 2023 of the Department of Defence to refuse to recommend him for the First Clasp to the Defence Long Service Medal.

Decision under review

2. On 21 April 2023,¹ Mr Corica submitted an online application to the Directorate of Honours and Awards in the Department of Defence (the Directorate) for an assessment of his eligibility for the First Clasp to the Defence Long Service Medal. On 25 September 2023, the Directorate advised Mr Corica by email that he had only completed nineteen of the 20 qualifying years' service required to be awarded the First Clasp to the Defence Long Service Medal.²

3. On 27 September 2023, Mr Corica made application to the Tribunal seeking review of the Department's 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). It 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 Corica's service

5. Mr Corica enlisted in the Australian Army Reserve (ARES) on 26 October 2002 on an open-ended enlistment period. He served in the Australian Military Police Corps, where he reached the rank of Corporal. Mr Corica was discharged on 28 October 2022 as he had reached the Military Compulsory Retirement Age. At discharge he had served in the Army for 20 years and two days.³

6. In recognition of his service in the Army Mr Corica has been issued the Australian Defence Medal and the Defence Long Service Medal.⁴

Eligibility Criteria for a clasp to 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 '*according recognition to persons who render long and*

¹ Defence report, dated 23 November 2023

² Application for review, Mr Giovanni Corica, dated 27 September 2023

³ Mr Corica's service records

⁴ Defence report, dated 23 November 2023

*efficient service as members of the Defence Force*⁵. Regulations four and five made under the Letters Patent relevantly provide in relation to an award of a clasp to the Defence Long Service Medal:

Award of clasp

Regulation 4

A clasp may be awarded to a person who:

- (a) has been awarded the Medal; and*
- (b) has given qualifying service for each period of at least 5 years or periods that, in total, amount to at least 5 years, additional to the period mentioned in regulation 3*⁶

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;*⁷

[...]

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 Force⁸

Chief of the Defence Force (CDF) Determinations

9. *2021 CDF Determination* - On 16 March 2021 the Chief of the Defence Force (CDF) issued a Determination relevant to Mr Corica's circumstances that is still in force. The Determination stipulates:

The following table specifies the minimum annual periods of service to be completed by a member for a year of qualifying service. The period of service may consist of one, or a combination, of the following:

- a. Days remunerated at Defence rates of salary or sessional fees.*

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

⁶ *Ibid*

⁷ *Ibid*

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

b. *Days on which the member is eligible for a Reserve service payment under Chapter 4 Part 9 Division 4 of the Defence Determination 2016/19, Conditions of service, as in force from time to time.*

c. *Days of approved voluntary unpaid Reserve service.*

10. The table specifies 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 from 20 April 2000 is 20 days.⁹ The word ‘days’ is not further defined in the Determination.

11. The 2021 CDF Determination expressly revoked the previous 2013 CDF Determination dated 6 February 2013, which had also stipulated that the minimum qualifying period was 20 days for all Australian Defence Force members.¹⁰

12. *2000 CDF Directions* - On 13 April 2000 the CDF issued Directions 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].¹¹*

Mr Corica’s application to the Tribunal

13. In his application to the Tribunal, Mr Corica said he had served in the Australian Defence Force as an Army Reservist for 20 years. He said he and his sons, who were also in the Australian Defence Force as regular soldiers, were a very proud military family and that, from 2008 until his final year, he had exceeded the parade days required, and attended parade days even when he was undergoing chemotherapy. Mr Corica took annual leave and long service leave from his employment so that he could carry out his role in the Australian Defence Force.

14. Mr Corica said that during his last year of service he was subjected to *bullying and harassment, and psychological torment by the Platoon LT...*, which was detrimental to his health and made him *unable to attend Reserves during that year* and unable to parade.¹² Mr Corica noted an *investigation was conducted, and the LT moved on to another unit at the end of that year*. Mr Corica also relayed a particular incident where he said *the LT had pointed a gun at me during a field exercise*.¹³

15. Mr Corica provided a psychologist report detailing the effects on his psychological condition related to his treatment in the work place during his final years of service.¹⁴

⁹ *Defence Long Service Medal Determination 2021*, dated 16 March 2021

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

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

¹² Application for review, Mr Giovanni Corica, dated 27 September 2023

¹³ Ibid

¹⁴ Ibid

16. Mr Corica said:

I thoroughly enjoyed my time with the army and looked forward to achieving my 20-year service. Not being able to complete my last 20 days of service was completely out of my control and was a result of treatment within the ADF. Reaching my 20 years of service in the ADF has been a long Goal that I worked hard for, battling cancer at the same time....¹⁵

Defence report

17. The Defence report confirmed that following Mr Corica's application to the Tribunal, the Directorate re-assessed his eligibility for the First Clasp to the Defence Long Service Medal and that the re-assessment supported the original decision not to recommend him for the Clasp.¹⁶

18. Defence reviewed Mr Corica's service against the Defence Long Service Medal Regulations and Determinations. Defence confirmed that Mr Corica had rendered nineteen years' eligible service as an Army Reservist, however he did not render any days of service towards achieving his twentieth year of eligible service.¹⁷

19. Defence acknowledged Mr Corica's claims regarding his personal circumstances and experience during his final years of service, however stated that the regulations did not provide for discretionary consideration by a decision maker in recommending a member for the award of the Defence Long Service Medal and Clasps in circumstance when they have not completed the required qualifying service.¹⁸

20. Defence provided the following table detailing Mr Corica's qualifying service.

Long Service and Australian Defence Medal		Long Service and Australian Defence Medal					
Start of 12mth	End of 12mth	Status	Days Required	Days Served	Qualifying Year	Aggregate Year	Remarks
26/10/2002	25/10/2003	ARES	20	91.5	Yes	1	
26/10/2003	25/10/2004	ARES	20	44.33	Yes	2	
26/10/2004	25/10/2005	ARES	20	42.67	Yes	3	
26/10/2005	25/10/2006	ARES	20	33.83	Yes	4	
26/10/2006	25/10/2007	ARES	20	42.33	Yes	5	
26/10/2007	25/10/2008	ARES	20	50	Yes	6	
26/10/2008	25/10/2009	ARES	20	28.83	Yes	7	
26/10/2009	25/10/2010	ARES	20	28.33	Yes	8	
26/10/2010	25/10/2011	ARES	20	73.33	Yes	9	
26/10/2011	25/10/2012	ARES	20	56	Yes	10	
26/10/2012	25/10/2013	ARES	20	41.33	Yes	11	
26/10/2013	25/10/2014	ARES	20	36	Yes	12	
26/10/2014	25/10/2015	ARES	20	67	Yes	13	
26/10/2015	25/10/2016	ARES	20	80.5	Yes	14	
26/10/2016	25/10/2017	ARES	20	61	Yes	15	

¹⁵ Application for review, Mr Giovanni Corica, dated 27 September 2023

¹⁶ Defence report, dated 23 November 2023

¹⁷ Ibid

¹⁸ Defence report, dated 23 November 2023

26/10/2017	25/10/2018	ARES	20	89.16	Yes	16	
26/10/2018	25/10/2019	ARES	20	115.33	Yes	17	
26/10/2019	25/10/2020	ARES	20	86.33	Yes	18	
26/10/2020	25/10/2021	ARES	20	66.33	Yes	19	
26/10/2021	25/10/2022	ARES	20	0	No	19	No Days Served
26/10/2022	28/10/2022	ARES	20	0	No	19	No Days Served
Qualifying Dates							
Medal	1st Clasp	2nd Clasp	3rd Clasp	4th Clasp	5th Clasp	6th Clasp	7th Clasp
25/10/2017							

Mr Corica's comments on the Defence report

21. On 30 November 2023, Mr Corica was provided with a copy of the Defence report and asked to provide his comments on that report. Mr Corica replied via email on 19 December 2023, reiterating his view that medical issues stopped him from serving in his final year of service. Mr Corica resupplied his medical report for the Tribunal's consideration. He later provided a consultant psychiatrist report dealing with the effects of his treatment during his final years of service.¹⁹

I have read the ADF response and fully realize that my unit had not contacted or had any correspondence with the ADF over my health issue. I must say it is very disappointing that soldiers are thrown aside after serving their country for such a long time. My absolute goal in my career was to achieve my 20-year service.

I have attached my medical report for the Tribunal to reference. After the intense bullying I received from the Officer in the Military Police there was no way I was able to attend my final days. I had kept my Warrant Officer informed the entire time of my treatment.²⁰

Mr Corica's submissions before the Tribunal on 23 October 2024

22. During the Tribunal hearing on 23 October 2024 Mr Corica spoke passionately of his pride in, and commitment to, serving in the Army and serving Australia for 20 years. This pride and commitment was something he shared with his sons who had been in the Australian Defence Force full time. He spoke of his sons' service and how proud they all were to serve together.

23. Mr Corica stressed how important it was for him to be recognised as having completed 20 years' service. He joined the Army when he was in his forties with the express intention of completing 20 years. He emphasised that he paraded over a long period while having treatment for cancer from 2009. He maintained over 20 days qualifying service for nineteen years. Indeed, during his service, he performed around 1134 days qualifying service.

24. Mr Corica expressed his deep disappointment that the bullying and harassment he was subjected to prevented him from parading because he became very sick. He said that

¹⁹ Report by consultant psychiatrist, Dr Chris Martin, dated 13 February 2024

²⁰ Mr Corica's response to the Defence report, dated 19 December 2023

he attempted to attend the base, however, he was physically ill at the front gate and could not go in. Mr Corica said his consultant psychiatrist advised him to stay home and not attend the base. In these circumstances he could not complete his final year of qualifying service, though he did continue to serve.

25. Mr Corica expressed that the lack of discretion in the legislation to make the award in his circumstance was deeply unfair. He felt that his record showed he did enough for the award of the clasp. He was simply physically unable to undertake his last period of qualifying service because of the way he was treated in the Australian Defence Force.

Defence submission before the Tribunal on 23 October 2024

26. Defence acknowledged Mr Corica's service and his disappointment at its decision. Defence noted that it did not have discretion in relation to the decision to make a recommendation for the award of the clasp to the Defence Long Service Medal under the regulations. Defence submitted that it was not years of service Mr Corica was missing but days of remunerated service during his last year of service.

27. The Defence representative, Ms Callaghan, thanked Mr Corica for sharing his experience, noting it must have been difficult to do so. She said that she respected his and his sons' decision to enlist as a family and that she understood how difficult it could be as a reserve member, having two jobs. Ms Callaghan further offered to assist Mr Corica in obtaining a certificate of service as tangible evidence of his service for 20 years and two days.

Tribunal analysis

28. The Tribunal acknowledges that Mr Corica was a dedicated member of the Army for over 20 years. He served with pride and commitment. The Tribunal accepts Mr Corica was determined to complete 20 years' service and would likely have completed his final year of qualifying service for his first clasp to the Defence Long Service Medal if he had not been prevented from attending parades because of ill-health.

29. In determining Mr Corica's eligibility for the first clasp to the Defence Long Service Medal, the Tribunal was required to apply the criteria in the Defence Long Service Medal Regulations as amended on 5 December 2001. Regulation 4 of the Regulations provides that a clasp may be awarded to a person who has been awarded the Defence Long Service Medal and has given qualifying service for each period of at least five years or periods that, in total amount to at least five years, additional to the period of qualifying service for the Defence Long Service Medal.

30. Service in the Australian 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.²¹ 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...*

31. This means that to be eligible to be awarded a clasp, Mr Corica must have been awarded the Defence Long Service Medal, and have completed a further five years of qualifying service. The Regulations and the Determination do not provide for any

²¹ Defence Long Service Medal Regulations sub regulation 5(a)

exception to be made to these criteria for matters such as medical discharge for a condition caused by a person's service or inability to undertake days remunerated at Defence rates of salary due to service caused medical conditions.

32. Mr Corica has been awarded the Defence Long Service Medal, having completed 15 years of qualifying service on 25 October 2017. Mr Corica served for a further five years and two days, retiring on 27 October 2022. For reasons beyond his control, Mr Corica's service from 26 October 2021 until 28 October 2022 was not qualifying service as it did not include *at least 20 days remunerated at Defence rates of salary*. This means that Mr Corica has not completed a further five years of qualifying service, though he did complete a further five years of service. Mr Corica is therefore not eligible for the award of a clasp to the Defence Long Service Medal.

33. This ineligibility for a clasp does not detract in any way from the valued and respected service given by Mr Corica during his 20 years and two days' service in the Army.

Tribunal decision

34. The Tribunal decided to affirm the decision of the Department of Defence that Mr Giovanni Corica not be recommended for a clasp of the Defence Long Service Medal.