



Australian Government

Defence Honours and Awards Appeals Tribunal

McKenzie and the Department of Defence [2024] DHAAT 4 (26 March 2025)

File Number 2023/021

Re **Mr Colin McKenzie**
Applicant

And **The Department of Defence**
Respondent

Tribunal Ms Karen Fryar AM (Presiding Member)
Rear Admiral Allan du Toit AM RAN (Retd)

Hearing Date 9 October 2024

Appearances Mr Colin McKenzie
Applicant

Ms Jo Callaghan
Directorate of Honours and Awards, Department of Defence

Mr Brett Mitchell
Directorate of Honours and Awards, Department of Defence

DECISION

On 26 March 2025, the Tribunal decided to affirm the decision that Mr Colin McKenzie is not eligible for the award of the Republic of Vietnam Campaign Medal.

CATCHWORDS

FOREIGN AWARD – Republic of Vietnam Campaign Medal – eligibility criteria to be applied - exceptions for service less than the required period, HMAS Sydney

LEGISLATION

Defence Act 1903 – Part VIIIIC – Sections 110T, 110V(1), 110VB(2), 110VB(3), 110VB(6).

VIETNAMESE DIRECTIVES

Joint General Staff of the Republic of Vietnam, Armed Forces Directive Pertaining to Awarding of Campaign Medal HT 655-430, dated 1 September 1965 (as amended)

Chief of Joint General Staff Republic of Vietnam Armed Forces Directive No. 183, dated 31 August 1966

AUSTRALIAN INSTRUMENTS

Instrument of Delegation – Foreign Awards, dated 4 December 2013

Commonwealth of Australia Gazette S159, Guidelines Concerning the Acceptance and Wearing of Foreign Awards by Australians, dated 12 October 2012

Memorandum from the Secretary of the Department of Defence, Vietnamese Campaign Medal, dated 16 September 1966

Military Board Instruction 102-4 Medals – *The Vietnamese Campaign Medal, dated 23 December 1968*

Australian Navy Orders 493-505/67, dated 27 November 1967

Chief of the Defence Force Minute 54/1987 - Vietnamese Campaign Medal - Conditions Governing Award, dated 23 January 1987

Headquarters Australian Defence Force Minute - Extension of Eligibility Date for the RVCN to 28 March 1973, dated 11 March 1997

Introduction

1. The Applicant, Mr Colin James McKenzie, seeks review of a decision dated 3 February 2014 by the Department of Defence, to refuse to recommend him for the Republic of Vietnam Campaign Medal for his service in the operational area of Vietnam during the Vietnam War.

Decision under review

2. On 21 November 2013, Mr McKenzie applied to the Department of Defence requesting a review for medallic recognition for his service in the operational area of Vietnam during the Vietnam War. In this original application, Mr McKenzie stated that he was applying for the *medal issued by the South Vietnamese Government or Armed Forces for contributing 'Direct Combat Support' to the Republic of Vietnam National Armed Forces for a period of six months*.¹

3. On 3 February 2014, the Department of Defence wrote to Mr McKenzie advising that he had not met the qualifying service for the Republic of Vietnam Campaign Medal by completing the minimum 181 days service, nor was he deemed to be a 'battle casualty'.²

4. On 11 September 2023, Mr McKenzie made application to the Tribunal seeking review of the above decision.³

Tribunal jurisdiction

5. Pursuant to s110VB(2) of *the Defence Act 1903* (the Act) the Tribunal must review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V and includes a decision made by a person within the Defence Force to *refuse to recommend* a person for a *foreign award* in response to an application. Section 110T defines a *foreign award* as an honour or award given by a government of a foreign country, or by an international organisation.

6. Accordingly, the decision made by the Department of Defence on 3 February 2014 is a reviewable decision.

7. As required by s110VB(6) of the Act, in reviewing the reviewable decision, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision.

¹ Application to Defence, Mr Colin McKenzie, dated 21 November 2013

² Application for Review, Mr Colin McKenzie, dated 11 September 2023

³ Ibid

Conduct of the review

8. In accordance with its Procedural Rules, on 8 December 2023 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr McKenzie's application for review. The Tribunal requested a report regarding Mr McKenzie's service against the eligibility criteria for the Republic of Vietnam Campaign Medal, and a report on the material questions of fact and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents.⁴

9. On 1 February 2024, the Acting Director of Honours and Awards in the Department of Defence provided a submission on behalf of Defence.⁵ The Defence submission included several relevant documents, including a comprehensive report of Defence's assessment and the HMAS *Sydney* Report of Proceedings for the period of Mr McKenzie's service.⁶

10. The Defence submission was provided to Mr McKenzie for comment on 6 February 2024.⁷ Mr McKenzie responded with his comments on 22 March 2024.⁸ The Tribunal heard the matter on 9 October 2024.

Mr McKenzie's service

11. As per the Defence report, Mr McKenzie enlisted in the Royal Australian Navy on 6 May 1963 and served as a Musician prior to being discharged on 19 April 1970.

12. Relevant to this review, Mr McKenzie served in HMAS *Sydney* from 21 January 1965 to 22 July 1966, which in accordance with the Ship Movement Sheets,⁹ made four voyages to Vietnam during this period, aggregating a period of 13 days in the operational area during the Vietnam War.

13. Mr McKenzie has been issued the Returned from Active Service Badge and the following awards for his service with the Royal Australian Navy:

- a. Australian Active Service Medal 1945-75 with Clasp 'VIETNAM'
- b. Vietnam Logistic and Support Medal
- c. Australian Service Medal 1945-75 with Clasp 'FESR'
- d. Australian Defence Medal¹⁰

⁴ Letter, Mr Stephen Skehill to Mr Greg Moriarty, dated 8 December 2023

⁵ Letter, Ms Allison Augustine to Mr Stephen Skehill, dated 1 February 2024

⁶ Defence report, dated 1 February 2024

⁷ Letter, Tribunal to Mr Colin McKenzie, dated 6 February 2024

⁸ Email, Mr Colin McKenzie to the Tribunal, dated 22 March 2024

⁹ Defence report, dated 1 February 2024

¹⁰ Ibid

The Republic of Vietnam Campaign Medal

14. In May 1964, the Government of the Republic of Vietnam established its campaign medal, known in Australia as the Republic of Vietnam Campaign Medal. On 1 September 1965, the Joint General Staff of the Republic of Vietnam issued the Directive HT 655-430, which set out the eligibility for the medal. Relevantly, the Articles in the Directive reads as follows:

Article 1: All military personnel of the Republic of Vietnam Armed Forces (RVNAF) who have 12 months service in the field during war time, may claim for Campaign Medal award.

Article 2: The RVNAF personnel who don't possess the eligibilities prescribed in Art.1, but happen to be under one of the following circumstances, are qualified for Campaign Medal award:

- *WIA (wounded in action);*
- *captured in action by enemies or missing while performing his missions, but released later, or an escape has taken place.*
- *KIA or die while performing a mission entrusted.*

The above anticipated cases must take place during the war.

Article 3: Allied soldiers assigned to the Republic of Vietnam after 6 months in war time with the mission to assisting the Vietnamese Government and the RVNAF to fight against armed enemies, are eligible for Campaign Medal decorations; they would be awarded with campaign medal under conditions anticipated in Article 2 of this Directive.¹¹

15. In May 1966, the Government of the Republic of Vietnam raised the possibility of awarding the Republic of Vietnam Campaign Medal to Australian servicemen. On 24 June 1966, Her Majesty Queen Elizabeth granted unrestricted approval for members of the Australian armed forces to accept and wear the Medal.¹²

16. A Vietnamese Order, dated 31 August 1966, laid out final Vietnamese Authority for the award of the Republic of Vietnam Campaign Medal to Australian forces. This order cited the Vietnamese Directive of 1 September 1965, and amendments dated 22 March 1966 and 8 October 1965 as eligibility criteria for the award. The Order stated:

Article 1: The Vietnam Campaign Medal with device [1960-] is awarded to all Royal Australian military personnel as prescribed in Directive Nr HT-655-430 dated 1 September 1965 as changed by amendment dated 22 March 1966 and

¹¹ Government of the Republic of Vietnam Directive Nr HT.655-430, 1 September 1965

¹² Cable, London to Canberra, 24 June 1966, NAA: A3111, 1966/3374

Memorandum Nr 2655-TT/VP/PCP/3 dated 8 October 1965, Joint General Staff Republic of Vietnam Armed Forces.

Article 2: Eligibility of individuals for the award will be determined by Royal Australian authorities and will be recorded in the personnel record of eligible personnel in accordance with procedures currently being applied by Royal Australian Forces. No decision is required by RVNAF authorities other than that outlines in Article 4 of this order.

Article 3: The precedence and manner of wearing the Vietnam Campaign Medal by Royal Australian military personnel will be determined by Royal Australian authorities.

[...] ¹³

Australian conditions for the award of the Republic of Vietnam Campaign Medal

17. Following receipt of the Vietnamese order of 31 August 1966, the Department of Defence and the three Services promulgated further conditions for the awarding of the Republic of Vietnam Campaign Medal. On 16 September 1966, the Secretary of the Department of Defence forwarded a memorandum to the secretaries of the departments of the Navy, Army and Air setting out the criteria for the award.

18. These criteria were based on, but were not identical to, those specified by the Government of the Republic of Vietnam. Referring to the amended Article 3¹⁴, the Secretary stated that Australia's *interpretation is the same as that of the United States* and that *conditions for the grant of the award (of the RVCM) to Australian servicemen, which are in line with those laid down by the United States authorities, were as follows:*

(a) Special service - as defined by the Repatriation (Special Overseas Service) Act 1962 - for a minimum of 6 months duration, either continuous or aggregated, in Vietnam with retrospective effect to 31st July 1962.

(b) 'Special service' in Vietnam of less than six months' duration since 31st July 1962 if

- (1) killed on active service or wounded in action and evacuated,*
- (2) captured and later released or escaped.¹⁵*

19. As per the Defence report, the eligibility criteria for awarding the Republic of Vietnam Campaign Medal, were later promulgated by each of the Services in their respective service instructions. For Navy, the qualifying conditions for awarding the

¹³ Chief of Joint General Staff Republic of Vietnam Armed Forces Directive No. 183, dated 31 August 1966

¹⁴ Memorandum from the Secretary of the Department of Defence, Vietnamese Campaign Medal, dated 16 September 1966

¹⁵ Ibid

Republic of Vietnam Campaign Medal were specified in *Australian Navy Orders 500/67*, dated 27 November 1967 which stated:

500—Vietnamese Campaign Medal—Award for Service in South Vietnam

Approval has been given for members of the Australian Forces, who comply with the conditions laid down by the Vietnamese Authorities, to qualify for the campaign medal issued by the Vietnamese Government for service in the Vietnam war.

[...]

3. The approved conditions for the grant of the award of the Medal to Australian Servicemen are as follows—

(a) Allotment for special service in Vietnam (as defined by the Repatriation (Special Overseas Service) Act—see Navy Order 362 of 1966) of a minimum of six months duration, either continuous or aggregated, with retrospective effect to 31st July 1962.

(b) Allotment for special service in Vietnam of less than six months duration since 1962 if—

- (i) killed on active service or wounded in action and evacuated;*
- (ii) captured and later released or escaped.*

[...]¹⁶

20. In 1987, the Chief of the Defence Force advised Navy Office that Navy's original interpretation of eligibility for the Republic of Vietnam Campaign Medal was incorrect and that personnel should only be awarded the medal after six months service rendered in the operational area of Vietnam. No period on transit should be included in the calculation.¹⁷

21. As per the Defence report, Navy Office acknowledged this advice in April 1987, and advised that in future, award of the Republic of Vietnam Campaign Medal would occur only on the basis of service rendered in Vietnam during a period of allotment.

22. The Republic of Vietnam Campaign Medal is a foreign medal. Due to the unique history and nature of the Medal it has been the consistent advice of the Australian Government Solicitor that the Australian Government does not have the power to amend the eligibility criteria or substitute different eligibility criteria. To the extent the various

¹⁶ Australian Navy Orders 493-505/67, 27 November 1967, Folio 32

¹⁷ Chief of the Defence Force (CDF) Minute 54/1987, dated 23 January 1987, Folio 35

Australian Instruments adopt different requirements from the Vietnamese Directives, the Tribunal disregards those requirements.

Mr McKenzie's application to the Tribunal

23. Mr McKenzie's application to the Tribunal centred on his belief that all Royal Australian Navy personnel who had been in the operational area in Vietnam during the Vietnam War were entitled to receive the Republic of Vietnam Campaign Medal regardless of duration, as were, he believed, United States Navy personnel who similarly served had received the medal after only one day of service. Mr McKenzie believed it was due to political reasons that Australian Navy personnel were denied the medal.

.... I feel as a returned sailor I was disappointed all those years ago when we were denied war service, and it took 30 years to finally receive this.

With regards to the Vietnamese Star Medal, I feel we should be entitled to receive this, as to the best of my knowledge, the US Navy were awarding this after serving only one day in foreign waters.

To the best of my knowledge it was for political reasons Australia sailors weren't awarded this medal. It would be a proud moment to finally receive the recognition in the form of this medal. I am sure I am not the only returned sailor who feels they have been cheated by not receiving the medal. I thank you once again for the chance to appeal and hope there is a positive outcome.¹⁸

The Defence report

24. The Defence report was provided under copy of a letter to the Tribunal from the Acting Director of Honours and Awards, Ms Allison Augustine, signed on 1 February 2024. In response to Mr McKenzie's application, Defence undertook a review of material questions of fact, including Mr McKenzie's service records sourced from the National Archives of Australia, the Regulations and eligibility criteria, and its own assessment working papers. Defence also utilised information sourced from the Naval History Section at the Sea Power Centre.

25. In undertaking this research, Defence compared the information in Mr McKenzie's service record and the material listed above, including the HMAS *Sydney* Report of Proceedings during the period 1964-1966. The report confirmed that during the period 21 January 1965 to 22 July 1966, HMAS *Sydney* made four voyages to Vietnam and aggregated 13 days service in the operational area of Vietnam.¹⁹

26. Defence confirmed that Mr McKenzie's service in Vietnam directly correlated with that of HMAS *Sydney*, and that he therefore aggregated a total of 13 days service in

¹⁸ Application for review, Mr Colin McKenzie, dated 8 September 2024

¹⁹ Defence report, dated 28 November 2023

the operational area of Vietnam. Mr McKenzie did not render any prior or subsequent service in the Vietnam area of operations.²⁰

27. Further, Defence addressed Mr McKenzie's claims that United States Navy personnel had received the award after only one day of service in the operational area in Vietnam. Defence confirmed that it could not find any evidence to substantiate Mr McKenzie's belief that the United States Navy were awarded the Republic of Vietnam Campaign Medal for service of one day in Vietnam.²¹

28. Accordingly, the report confirmed that having considered Mr McKenzie's application and the other information, Defence found that Mr McKenzie did not meet the eligibility criteria to qualify for the Republic of Vietnam Campaign Medal. Defence recommended that the decision not to recommend Mr McKenzie for the Republic of Vietnam Campaign Medal be affirmed.²²

Mr McKenzie's comments on the Defence report

29. On 6 February 2024, Mr McKenzie was provided with a copy of the Defence report and asked to provide his comments on that report. Mr McKenzie replied via email on 22 March 2024 reiterating his belief that all Navy personnel who served in the operational area of Vietnam during the Vietnam War should be awarded the medal regardless of the duration of their service.

*Thank you for your response in regards to the report sent out from DHA. I am very disappointed in their result to not award this medal as I believe all sailors involved and served in this area, be it for one day or six months, should be not only eligible but should receive this medal as a testament to their involvement and service to their country in a foreign war. I believe I should not have to go to war with the DHA in order to receive this medal. Thank you for your help with this matter.*²³

Tribunal Consideration

30. Mr McKenzie participated in the Tribunal hearing through videoconferencing on 9 October 2024, as did the representatives of Defence. He articulated his reasons for asking the Tribunal to review the decision of Defence, confirming the reasons stated in his application and his reply to the Defence report, being that he believed it unfair that he had not received the Campaign medal given his service, and his belief that United States Navy sailors received it after only one day in the Vietnam operational area. Mr McKenzie agreed that his service records were correct and that altogether he was in the Vietnam operational area for a total of 13 days.

²⁰ Ibid

²¹ Defence report, dated 28 November 2023

²² Ibid

²³ Mr McKenzie's response to the Defence report, dated 22 March 2024

31. It was confirmed by the representatives from Defence that it was not correct that United States servicemen received the medal after only one day of service in the operational area. The same 181 day service requirement applied to all United States Armed Forces personnel.

32. The Tribunal explained to Mr McKenzie that it had no discretion and was bound by the eligibility criteria covering the Republic of Vietnam Campaign Medal, which were originally set by the Republic of Vietnam government of the day. The Australian Navy orders set the requirement of 181 days service based on the relevant Vietnamese order. Accordingly, the Tribunal explained to Mr McKenzie that it had no power to recommend that he receive the medal as he had not fulfilled the eligibility criteria set out in the orders, nor did he fit into any of the regulated exemptions.

33. At the conclusion of the hearing Mr McKenzie accepted the Tribunal's explanation and conceded its findings. He thanked the Tribunal for hearing his application and its determinations.

Tribunal Decision

34. The Tribunal decided to affirm the decision that Mr Colin McKenzie is not eligible for the award of the Republic of Vietnam Campaign Medal.