



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Spencer and the Department of Defence [2025] DHAAT 6 (29 May 2025)**

File Number(s)	2024/011
Re	<b>Commander Royce John Spencer RAN (Retd)</b> Applicant
And	<b>The Department of Defence</b> Respondent
<b>Tribunal</b>	Rear Admiral Allan du Toit AM RAN (Retd) (Presiding Member) Ms Louise Hunt Brigadier Dianne Gallasch AM CSC (Retd)
<b>Hearing Date</b>	18 March 2025
<b>Appearances</b>	Commander Royce Spencer RAN (Retd) Applicant  Mrs Tiffany Dawes Directorate of Honours and Awards, Department of Defence For the Respondent  Mrs Catherine Morris Directorate of Honours and Awards, Department of Defence For the Respondent

#### **DECISION**

On 29 May 2025, the Tribunal decided to affirm the decision that Commander Royce Spencer RAN (Retd) not be recommended for the Australian Operational Service Medal - Border Protection.

## **CATCHWORDS**

*DEFENCE AWARD – Australian Operational Service Medal - Border Protection – eligibility criteria – Australian border protection activities - deployed or force assigned - declared operation – Operation CRANBERRY, Operation RELEX II and Operation RESOLUTE. HMAS Coonawarra - not less than aggregate of 30 days.*

## **LEGISLATION**

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

*Defence Regulation 2016, Regulation 36*

*Australian Operational Service Medal Regulation 2012, Commonwealth of Australia Gazette S67, Letter Patent and Regulations, dated 6 June 2012*

*Australian Operational Service Medal Regulations 2012 Border Protection Declaration of 18 July 2012, Commonwealth of Australia Gazette S126, dated 1 August 2012*

*Australian Operational Service Medal Regulation 2012, Amendment 2015, Commonwealth of Australia Gazette G00827, dated 1 June 2015*

*Australian Operational Service Medal Regulation 2012, Amendment 2019, Commonwealth of Australia Gazette G00489, dated 7 June 2019*

*Australian Operational Service Medal Regulations 2012 Amendment to Letters Patent 2020, Commonwealth of Australia Gazette G00629, dated 5 August 2020*

## Introduction

1. The Applicant, Commander Royce Spencer RAN (Retd), seeks review of a decision dated 22 May 2019 of the Department of Defence to refuse to recommend him for the Australian Operational Service Medal – Border Protection.

## Decision under review

2. On 9 August 2018, Commander Spencer applied to Defence for an assessment of his eligibility for the Australian Operational Service Medal – Border Protection. In his application, Commander Spencer stated that he was *a Reserve Seaman Officer (MWO) who served as a Watch Officer U/T, Bridge Watch keeper, Navigator and Executive Officer on a number of Attack-class (HMAS Adroit) and Fremantle-class Patrol boats (HMAS Geraldton and HMAS Bunbury) on various anti Indonesian Fisheries and North West patrols during the period 1997 through to 1999 from HMAS Stirling.*<sup>1</sup>

3. On 22 May 2019, in response to the application, Defence wrote to Commander Spencer stating that as a result of an assessment, it had been determined that he had not completed 30 days on a declared Border Protection Operation, and as such he could not be recommended for the award. Specifically, Defence stated that:

*The AOSM-BP may be awarded to a member of the Australian Defence Force who has been deployed or force assigned for duty to a declared operation for a period of not less than an aggregate of 30 days....*

*DH&A reviewed your service records, PMKeyS Operational Log, posting and job information to determine your qualifying service on a declared Border Protection operation. As a result of this review, DH&A was unable to locate any records in your Operational Log to show that you were force assigned to a Border Protection operation.*<sup>2</sup>

4. On 18 June 2024, Commander Spencer made application to the Tribunal seeking review of the decision. This application made reference to his service as the Executive Officer of the naval shore establishment HMAS *Coonawarra* from July 2004 to December 2006.<sup>3</sup>

## 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.

6. 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 Australian Operational Service Medal. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

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<sup>1</sup> Commander Spencer's application to Defence, dated 9 August 2018, as submitted with the Defence report

<sup>2</sup> Application for review, Commander Royce Spencer RAN (Retd), 18 June 2024

<sup>3</sup> Ibid

## Commander Spencer's service

7. Commander Spencer enlisted as a Reserve Officer in the Royal Australian Navy on 18 August 1986 and discharged on 19 July 2014 on reaching compulsory retirement age.<sup>4</sup>

8. Commander Spencer has received the following for his service:

- Defence Long Service Medal (with First and Second Clasps)
- Australian Defence Medal
- Commander Australian Navy Systems Command Commendation<sup>5</sup>

9. Relevant to this review, as noted above, Commander Spencer served as the Executive Officer of *HMAS Coonawarra* from July 2004 to December 2006. Commander Spencer was awarded a Commander Australian Navy Systems Command Commendation for his efforts in this position. *HMAS Coonawarra* is a Royal Australian Navy establishment located at Larrakeyah near Darwin in the Northern Territory. It is home base and administrative headquarters for Darwin-based patrol boats and their personnel that conduct border protection operations.<sup>6</sup>

10. The Governor-General's Declaration dated 18 July 2012, under the *Australian Operational Service Medal Regulations 2012*<sup>7</sup>, lists three border patrol operations that took place during the period 2004 to 2006. These were *Operation CRANBERRY*, *Operation RELEX II* and *Operation RESOLUTE*.

## The Australian Operational Service Medal

11. The Australian Operational Service Medal was created by Letters Patent, dated 22 May 2012, and published in the *Commonwealth of Australia Gazette S67* of 6 June 2012.<sup>8</sup>

12. Regulations were originally established with the Letters Patent on 6 June 2012. These Regulations were updated in 2015 as per *Commonwealth of Australia Gazette G00827*<sup>9</sup>, and were further updated in 2019 as per *Commonwealth of Australia Gazette G00629* dated 5 August 2020.<sup>10</sup>

13. The updated Regulations state:

[...]

### **3 Declared operation**

(1) *The Governor-General may declare, in writing, on the recommendation of the Minister, that an operation is a declared operation.*

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<sup>4</sup> Commander Spencer's personnel records as submitted with the application for review, 18 June 2024, Folio 17

<sup>5</sup> Ibid

<sup>6</sup> [HMAS Coonawarra | The Sea Power Centre \(navy.gov.au\)](https://www.navy.gov.au/hmas-coonawarra)

<sup>7</sup> *Australian Operational Service Medal Regulations 2012 Border Protection Declaration of 18 July 2012*, *Commonwealth of Australia Gazette S126*, dated 1 August 2012

<sup>8</sup> *Australian Operational Service Medal Regulation 2012*, *Commonwealth of Australia Gazette S67*, Letters Patent and Regulations, dated 6 June 2012

<sup>9</sup> *Australian Operational Service Medal Regulation 2012, Amendment 2015*, *Commonwealth of Australia Gazette G00827*, dated 1 June 2015

<sup>10</sup> *Australian Operational Service Medal Regulations 2012 Amendment to Letters Patent 2020*, *Commonwealth of Australia Gazette G00629*, dated 5 August 2020

(2) *In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.*

(3) *The Governor-General must not make a declaration about an operation unless:*

- (a) *The operation is, or was, carried out in conditions that are, or were, hazardous; and*
- (b) *The operation is not an operation for which recognition for an award (other than an award under this regulation) already exists; and*
- (c) *The operation meets the conditions (if any) determined, in writing, by the Governor-General.*

(3A) *Without limiting subsection (1), the Chief of the Defence Force may declare, in writing, on the recommendation of the Commander Joint Operations, that a special operation is a declared operation.*

(3B) *The Chief of the Defence Force must not make a declaration about a special operation unless:*

- (a) *The operation is, or was, carried out in conditions that are, or were, hazardous; and*
- (b) *The operation is not an operation for which recognition for an award (other than an award under this regulation) already exists; and*
- (c) *The operation meets the conditions (if any) determined, in writing, by the Chief of the Defence Force.*

(3C) *Without limiting subsection (1), the Chief of the Defence Force may declare, in writing, on the recommendation of the Commander Joint Operations or the Special Operations Commander Australia, that a counter terrorism activity or a special recovery activity is a declared operation.*

(3D) *The Chief of the Defence Force must not make a declaration about a counter terrorism activity or a special recovery activity unless all of the following apply.*

- (a) *The activity is, or was, carried out in hazardous conditions.*
- (b) *The activity is not an activity for which recognition for an award (other than an award under this regulation) already exists.*
- (c) *The activity meets the conditions (if any) determined, in writing, by the Chief of the Defence Force.*

(4) *A declaration under this section must include the following matters:*

- (a) *the name by which the operation is known or a description of the operation; and*
- (b) *the area in which the operation occurs or occurred; and*
- (c) *either:*
  - (i) *the dates or period during which the operation occurred or*
  - (ii) *if the operation is continuing – the date on which the operation commenced.*

#### **4            *Eligible service***

(1)            *The Governor-General may declare, in writing, on the recommendation of the Minister, that service is:*

- (a)    Eligible service; or*
- (b)    Eligible service that is an additional period of qualifying service for the purposes of paragraph 6(2) (c).*

(2)            *In making a recommendation to the Governor-General, the Minister must have regard to the recommendation of the Chief of the Defence Force.*

(3)            *The Governor-General must not make a declaration about service under subsection (1) unless the eligible service is given as part of, and with the period of, a declared operation.*

(3A)           *Eligible service declared under subsection (1) must meet the conditions (if any) determined, in writing, by the Governor-General.*

(4)            *Without limiting subsection (1), the Chief of the Defence Force may declare, in writing, on the recommendation of the Commander Joint Operations, that service is:*

- (a)    Eligible service; or*
- (b)    Eligible service that is an additional period of qualifying service for the purposes of paragraph 6(2)(c).*

(5)            *The Chief of the Defence Force must not make a declaration about service unless:*

- (a)    The service is given in the operational area, and within the period, of a special operation, counter terrorism activity or special recovery activity that is a declared operation; and*
- (b)    The service meets the conditions (if any) determined, in writing, by the Chief of the Defence Force*

#### **The Australian Operational Service Medal – Border Protection**

14.        The eligibility criteria for awarding the Australian Operational Service Medal – Border Protection is contained in the Governor-General’s Declaration dated 18 July 2012, under the *Australian Operational Service Medal Regulations 2012*, published in the *Commonwealth of Australia Gazette S126* dated 1 August 2012.<sup>11</sup> The criteria was updated in 2019 as per *Commonwealth of Australia Gazette G00489* dated 07 June 2019.<sup>12</sup>

15.        The criteria in the Declaration relevant to Commander Spencer’s application is as follows:

- (a)            **declare** under regulation 3 (1) of the Regulations, the following*

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<sup>11</sup> *Commonwealth of Australia Gazette S126* dated 1 August 2012, *Australian Operational Service Medal Regulations 2012 Declaration*, dated 18 July 2012

<sup>12</sup> *Australian Operational Service Medal Regulation 2012, Amendment 2019, Commonwealth of Australia Gazette G00489*, dated 7 June 2019

*operations in which members of the Australian Defence Force, or allied foreign Defence Force members, are or were engaged in connection with Australian border protection activities, to be a declared operation for the purposes of the Regulations:*

*(i) Operation CRANBERRY – that commenced on 1 August 1997 and ended on 16 July 2006;*

*[...]*

*(ix) Operation RELEX II– that commenced on 14 March 2002 and ended on 16 July 2006;*

*[...]*

*(xi) Operation RESOLUTE – that commenced on 17 July 2006*

*in the area defined by the seas and Australian land areas, superjacent airspaces, but not foreign areas encompassed within the coordinates:*

*15°00' North Latitude, 60°00' East Longitude*

*15°00' North Latitude, 180°00' East Longitude*

*60°00' South Latitude, 60°00' East Longitude*

*60°00' South Latitude, 180°00' East Longitude And the areas of Nauru and Manus Island;*

*a. **declare**, under regulation 4 (1) of the Regulations, that the conditions for award of the Australian Operational Service Medal - Border Protection (“the Medal”) for that declared operation are that:*

*(ii) the Medal may be awarded to a member of the Australian Defence Force, or allied foreign Defence Force members, who was deployed or force assigned for duty as such a member of the declared operation for a period of not less than an aggregate of 30 days;*

*(iii) the Medal may be awarded to a member of the Australian Defence Force, or allied foreign Defence Force members, who was deployed or force assigned for duty as such a member of the declared operation and who completed 30 sorties from a unit assigned to the declared operation, provided that those sorties were conducted over a period of not less than an aggregate of 30 days at a rate of one sortie per day with the duration of the declared operation;*

*PROVIDED THAT the member is a person:*

*(A) deployed at sea providing direct support to a declared operation;*

*(B) deployed on land or in the air, dedicated to cuing support to a declared operation; or*

*(C) deployed forward to exclusively support a declared operation;*

*AND PROVIDED THAT where a member does not complete the prescribed period or prescribed number of sorties for the award of the Medal required by subparagraphs b(i) or b(ii) owing to his or her death, evacuation due to illness, injury or other disability due to service, the member will be deemed to have completed that prescribed*

*period or prescribed number of sorties;*

*[...]*

***declare***, for the purposes of this declaration that a member is not eligible for an award of the Medal where the member was part of:

- (iv) *Headquarters staff at Joint Operations Command;*
- (v) *Headquarters staff at Northern Command;*
- (vi) *Headquarters staff at Military Strategic Commitments;*
- (vii) *Headquarters staff at Regional Force Surveillance Unit;*
- (viii) *Australian Defence Force staff at Border Protection Command;*  
*or*
- (ix) *Base maintainers and support personnel other than those described at paragraph (b).*

### **Commander Spencer's application to the Tribunal**

16. In his application to the Tribunal, Commander Spencer stated that he had been denied eligibility for the Australian Operational Service Medal – Border Protection as Defence had deemed he *was not qualified for this decoration as there was no evidence to confirm I had completed 30 days on a declared Border Protection Operation.*<sup>13</sup>

17. Commander Spencer stated that his personnel records did not accurately reflect his service and that he met the criteria for the award for his postings to *HMAS Coonawarra* and Headquarters Northern Command.

- 1: I was posted to HMAS COONAWARRA as Executive Officer from July 2004 through to Dec 2006*
- 2: HMAS COONAWARRA was, and still is, the primary naval base in support of Border Protection operations for the Northern Australian approaches*
- 3: I was therefore deployed 'on land in dedicated support to a declared operation' (IAW the required qualification requirements)*
- 4: In 1999, I was posted on CFTS to HQ Northern Command as the NCS (Naval Control of Shipping) Officer, in support of Operation Astute for a period. I'm sorry, but I can't recall the length of my posting, but believe it was over 30 days, before I was posted back to MARITIME HEADQUARTERS, SYDNEY as an Operations Officer.*<sup>14</sup>

### **The Defence Report**

18. As set out in the Defence Report, following Commander Spencer's application to the Tribunal, Defence conducted an assessment of his eligibility for the Australian Operational Service Medal – Border Protection. Defence affirmed its decision to not recommend Commander Spencer for the Australian Operational Service Medal – Border Protection.

19. In particular, Defence advised that it had requested Maritime Border Command conduct a full review of Commander Spencer's records and confirmed that service identified by Commander Spencer in his 2018 application to Defence and his 2024 application to the

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<sup>13</sup> Application for Review, Commander Royce Spencer RAN (Retd), 18 June 2024

<sup>14</sup> Ibid



Tribunal was not qualifying service for the Australian Operational Service Medal – Border Protection.

[...]

15. *CMDR Spencer's service records show that he served in HMAS Adroit in 1989 and HMAS Bunbury during 1991. CMDR Spencer's service record shows he was posted to HMAS Geraldton (II) 1993 to 1994. Reports of Proceedings for HMAS Geraldton (Attachments C - 1 to C-08) show that a range of tasks were conducted through Australian Fishing Zones and with Australian Customs agencies, however, these tasks pre-date the declared Border Protection Operations as detailed in the Declaration and cannot be included as qualifying service.*

16. *Paragraph four of CMDR Spencer's appeal mentions a posting in 1999 to Headquarters Northern Command, as Naval Control of Shipping Officer in support of Operation ASTUTE. In accordance with the Declaration for the AOSM BP service with Headquarters Northern Command, cannot be considered eligible service. Further, Operation ASTUTE is not a declared Border Protection operation, therefore any service associated with that operation is not qualifying service for the AOSM BP.*

17. *In his submission CMDR Spencer states he was "deployed on land in dedicated support to a declared operation" while posted to HMAS Coonawarra. Findings provided by MBC via email (Attachment D) for CMDR Spencer indicate he was posted to HMAS Coonawarra from 2004 -2006 as Executive Officer (XO). His role as XO was a posting to a Navy billet and did not include force assignment as part of an operational construct supporting Border Protection Operations.*

[...]

19. *No evidence was located to support CMDR Spencer's assertion that his posting to HMAS Coonawarra was a position that was force assigned to a Border Protection Operation.*

20. *The review found no evidence that CMDR Spencer was deployed or force assigned to a declared Border Protection Operation nor deployed on land in dedicated support to a declared Border Protection operation. As such, CMDR Spencer cannot be recommended for the AOSM BP.*

21. *Defence recommends that the decision to not recommend CMDR Spencer for the AOSM BP be affirmed.*<sup>15</sup>

### **Commander Spencer's comments on the Defence report**

20. On 30 July 2024, Commander Spencer was provided with a copy of the Defence report and asked to provide his comments on that report. His response dated 31 July 2024 reconfirmed that he believed his posting to HMAS Coonawarra qualified him for the award of the Australian Operational Service Medal – Border Protection.

*My only comment is, that whilst I was not directly posted to one of the many Border Force Ops, my naval posting to HMAS COONAWARRA as the base XO, was a*

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<sup>15</sup> Defence report, dated 29 July 2024

*DIRECT posting in support of all the Border Protection operations operated out of that base. Without the 100% direct support of my base, neither Naval nor Customs vessels would have been able to successfully complete their tasking.*

*Therefore, I argue that my service at HMAS COONAWARRA WAS in direct support of Border Protection operations and therefore, I should qualify for this decoration.*

### **Tribunal hearing**

21. While acknowledging that his service in patrol boats predated the institution of the award, Commander Spencer believed in particular that his posting to HMAS *Coonawarra* as Executive Officer of a base whose primary role was to support patrol boats and personnel deployed on Operation RELEX, was in direct support of border protection operations and therefore qualified him for the award of the Australian Operational Service Medal – Border Protection. Commander Spencer said that he made his application to Defence based on the advice of his former commanding officer who suggested that he was eligible. He had also sought the advice of an ex-Navy lawyer who had raised questions about the eligibility criteria for the award, in particular the meaning of direct support of Border Protection operations.

22. The Defence respondent, Mrs Tiffany Dawes, had nothing further to add to the formal Defence submission provided to the Tribunal and to the applicant, which argued that the decision to not recommend Commander Spencer for the Australian Operational Service Medal – Border Protection be affirmed.

23. The issue of eligibility and force assignment was discussed with Commander Spencer, in particular the requirements for being deployed at sea providing direct support to a declared operation, the meaning of direct cuing support to a declared operation while deployed on land or in the air, and what was meant by forward deployment to exclusively support a declared operation, citing as an example, a small detachment force assigned and deployed to Christmas Island to support a declared operation. There was particular discussion regarding the term ‘dedicated’, which in terms of the rules specifically appertains to the provision of cuing support to a declared operation while deployed on land or in the air. More broadly, there was agreement that while HMAS *Coonawarra*’s primary role was support to patrol boats and personnel deployed on Operation RELEX, it was not HMAS *Coonawarra*’s sole role. As such, HMAS *Coonawarra* was not dedicated solely to supporting Operation RELEX. Members specifically ineligible for an award of the medal, including staff at Headquarters Northern Command and base maintainers and support personnel, were then discussed. The Tribunal reminded Commander Spencer that neither the Tribunal or Defence has the discretion to recommend an award if the terms and conditions laid down in the applicable Regulations and other legal determinations were not met.

### **Tribunal consideration**

24. There was no dispute that Commander Spencer had rendered service in both Attack class and Fremantle class patrol boats engaged in a range of border protection operations. His service records show that he served in HMAS *Adroit* in 1989, HMAS *Bunbury* during 1991, and was posted to HMAS *Geraldton* (II) from 1993 to 1994. Reports of Proceedings for HMAS *Geraldton* showed that a range of tasks were conducted through Australian Fishing Zones and with Australian Customs during his posting, however, as his postings to patrol boats pre-dated the declared Border Protection Operations detailed in the Declaration, they could not be considered as qualifying service for the award of the Australian Operational Service Medal – Border Protection. The issue for Tribunal consideration therefore turned on

whether the period that Commander Spencer spent posted to Headquarters Northern Command and subsequently to HMAS *Coonawarra* in Darwin qualified him to receive the award.

25. Commander Spencer was posted, whilst on continuous full-time service (CFTS), to Headquarters Northern Command for a short-term posting in 1999 as the Naval Control of Shipping Officer in support of Operation ASTUTE, before being posted back to Maritime Headquarters in Sydney. In respect of this posting, Section 9d)(ii) of the relevant Declaration specifically states that service where the member was part of Headquarters Staff at Northern Command is not considered as eligible service towards the award. Moreover, as Operation ASTUTE is not a declared Border Protection operation, any service associated with that operation is not considered as qualifying service for the Australian Operational Service Medal – Border Protection. Additionally, there was no evidence that Commander Spencer had been forward deployed or force assigned in support of any declared border protection operations during his posting to Headquarters Northern Command.

26. Turning to his posting to HMAS *Coonawarra* from 12 July 2004 to 18 December 2006, Commander Spencer contended that while he was not directly force assigned to one of the many Border Force operations, his naval posting to HMAS *Coonawarra* as the base Executive Officer was in direct support of Border Protection operations operated out of that base and that he should qualify for the award. He argued that without the 100 per cent direct support of the base, neither naval nor customs vessels would have been able to successfully complete their tasking. Defence in turn argued that this posting was a Navy specific billet and did not include force assignment as part of an operational construct supporting Border Protection Operations.

27. In respect of Commander Spencer's posting to HMAS *Coonawarra*, Section 9d)(iv) of the relevant Declaration specifically states that a member is not eligible for the award of the Medal where that member was a base maintainer or support personnel. The Tribunal considered this provision to include personnel posted to joint and single service support bases and facilities such as HMAS *Coonawarra*. The only exception within the Declaration was for those members forward deployed or force assigned to exclusively support a declared operation. There was no evidence that Commander Spencer, who was posted to a Navy specific billet, had been forward deployed or force assigned in support of any declared border protection operations during his posting as Executive Officer of HMAS *Coonawarra*.

### **Tribunal findings**

28. The Tribunal found that Commander Spencer's service in patrol boats engaged in a range of border protection operations between 1989 and 1994 could not be considered as qualifying service for the award of the Australian Operational Service Medal – Border Protection as this service was rendered prior to the institution of the award. Based on the material before the Tribunal, it found that Commander Spencer was posted to Headquarters Northern Command in 1999 and as Executive Officer of HMAS *Coonawarra* between 2004 and 2006, but found that both postings were ineligible for the award of the medal. Moreover, the Tribunal found no evidence that Commander Spencer was forward deployed or force assigned in support of any declared Border Protection Operation whilst posted to either Headquarters Northern Command or HMAS *Coonawarra*. The Tribunal consequently found that Commander Spencer did not fulfil the qualifying requirements of 30 days' service on a declared Border Protection Operation for the award of the Australian Operational Service Medal – Border Protection.

## **TRIBUNAL DECISION**

29. The Tribunal decided to affirm the decision of the Department of Defence that Commander Royce Spencer RAN (Retd) not be recommended for the Australian Operational Service Medal - Border Protection.