



DEPARTMENT OF THE AIR FORCE
WASHINGTON, D. C.

OCT 21 1998

Office of the Assistant Secretary

AFBCMR 92-00109

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that he was awarded the Distinguished Flying Cross for heroism while participating in aerial flight on 22 March 1944, over Berlin, Germany.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

OCT 21 1998

IN THE MATTER OF:

DOCKET NUMBER: 92-00109

COUNSEL: NONE

HEARING DESIRED: YES

RESUME OF CASE:

On 16 April 1992, the Board considered applicant's requests that he be awarded the Distinguished Flying Cross (DFC). The Board found the application untimely filed and was not persuaded that the record raised issues of error or injustice which required resolution on the merits. A complete copy of the Record of Proceedings is attached at Exhibit G.

In a letter, dated 18 March 1998, the applicant provided additional documentation and requested reconsideration of the application. Applicant's complete submission is attached at Exhibit H.

The application has been reopened for reconsideration on the merits of the case.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
 2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
 3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After thoroughly reviewing the additional documentation, we believe the applicant has been the victim of an error or injustice. The applicant contends that he should be awarded the DFC for saving the life of a fellow crew member on 22 March 1944 while on a bombing mission over Berlin, Germany. In support of his request, the applicant has provided a statement from the individual whose life he saved. In view of this statement, and given the applicant's heroic actions on 22 March 1944, we believe he should be awarded the DFC for heroism. Therefore, we recommend his records be corrected to the extent indicated below.
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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he was awarded the Distinguished Flying Cross for heroism while participating in aerial flight on 22 March 1944, over Berlin, Germany.

The following members of the Board considered this application in Executive Session on 18 August 1998, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chair
Mr. Dana J. Gilmour, Member
Ms. Ann. L. Heidig, Member
Mr. Phillip E. Horton, Examiner (without vote)

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit G. Record of Proceedings, dated 27 Apr 92, w/atchs.
Exhibit H. Letter, Applicant, dated 18 Mar 98, w/atchs.



HENRY C. SAUNDERS
Panel Chair

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE ,MATTER OF:

DOCKET NUMBER: 92-00109

COUNSEL: None

HEARING DESIRED: Yes

217 APR 1992

APPLICANT REQUESTS THAT:

He be awarded the Distinguished Flying Cross (DFC).

APPLICANT CONTENDS THAT:

Due to his heroism on 22 March 1944, he should be awarded the DFC.

The applicant has provided a statement from [REDACTED] the bombardier of his former crew. [REDACTED] recommends the applicant for award of the DFC based on the heroic act of saving his life. [REDACTED] states that on 22 March 1944, while on a bombing mission over Berlin, Germany, in a B-24, they were shot down, Their aircraft was hit by several direct flak bursts thereby causing them to have a mid-air collision with another B-24. A propeller struck the nose turret of the plane and left him (the bombardier) trapped inside with a paralyzed left leg and a frozen hand. The electrical and manual controls to the turret would not work, therefore, he was unable to get out. The applicant pried the turret door open, and then grasping him by the shoulders pulled him from the wreckage. The applicant then helped him put on his parachute and crawl to the bomb bay to escape the aircraft. Mr. Smith believes that without the applicant's assistance, he would not be alive today.

applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant was commissioned a second lieutenant in the Army Air Corps and entered active duty on 13 November 1943.

He was assigned to the 466th Bombardment Group as a navigator aboard a B-24.

On 22 March 1944, while on a bombing mission over Berlin, the aircraft was shot down. Prior to bailing out, the applicant pulled the bombardier from his damaged turret, helped him put on his parachute and crawl to the bomb bay to exit the aircraft.

He was captured by the Germans and interned in POW camps until 29 April 1945.

The DFC is awarded for heroism or extraordinary achievement during aerial flight. A written recommendation is required to allow for consideration of a decoration. The recommendation may be submitted by anyone, except the member being recommended, with firsthand knowledge of the member's accomplishments. Also, it must be submitted within two years of the member's accomplishments. Acts or achievements performed between 7 December 1941 and 2 September 1945 were allowed to be recognized beyond the two year limit until 2 May 1951. The only other provision for awards to be submitted beyond the two year time limit is in the event the award is lost or not acted on due to an error. In this case, the individual making the recommendation must certify the award was placed in channels within the time limit but was lost or not acted upon due to error.

AIR STAFF EVALUATION:

The Chief, Recognition Programs Branch (AFMPC/DPMASA) reviewed the application and states that while they can understand the applicant's desire to receive the DFC, they are bound by the law which clearly defines the procedures required for its award. They note that the applicant admits he was never recommended for the DFC. Therefore, they feel he is not entitled to the award. In addition, the time limitations established by law exist because memories fade with time and it is hard to reconstruct events accurately. In view of the above, they recommend denial of the application. They also note that if the Board decides to ignore the statutory requirements pertaining to a written recommendation and the time limits pertinent to awards, the applicant should only be awarded the DFC. A complete copy of the Air Staff evaluation is attached at Exhibit C.

APPLICANT'S REVIEW OF AIR STAFF EVALUATION:

The applicant reviewed the Air Staff evaluation and states that the reason in the delay in the decoration recommendation is that none of his crew were debriefed after they were repatriated from German POW camps. Therefore, no one had any knowledge of decorations. [REDACTED], a navigator who completed his tour of duty with the 466th Bomb Group, has stated under oath, that "If

the act of heroism had taken place over England and the crew properly debriefed, I am sure [REDACTED] would have been awarded a decoration right then. Prior to the event, they had no briefings concerning the protocol to be followed for eligibility for decorations. None had been recommended since it was their first mission.

Applicant's complete response is attached at Exhibit E.

FINDINGS AND CONCLUSIONS OF THE BOARD

1. The application was not filed within three years after the alleged error or injustice was discovered, or reasonably could have been discovered, as required by Section 1552, Title 10, United States Code (10 USC 1552), and Air Force Regulation 31-3.

2. Paragraph b of 10 USC 1552 permits us, in our discretion, to excuse untimely filing in the interest of justice. We have carefully reviewed applicant's submission and the entire record, and we do not find a sufficient basis to excuse the untimely filing of this application. The applicant has not shown a plausible reason for delay in filing, and we are not persuaded that the record raises issues of error or injustice which require resolution on the merits at this time. Accordingly, we conclude that it would not be in the interest of justice to excuse the untimely filing of the application.

DECISION OF THE BOARD:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

The following members of the Board considered this application in Executive Session on 16 April 1992, under the provisions of paragraph 9, AFR 31-3, dated 31 May 1985:

Mr. G. Hammond Myers, III, Panel Chairman
Mr. C. Ronald Hovell, Member
Mr. Abner C. Young, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 24 Jun 91, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFMPC/DPMASA, dated 3 Jan 92, w/atch.
- Exhibit D. Letter, AFBCMR, dated 14 Jan 92.
- Exhibit E. Letter, Congressman Panetta, dated 6 Feb 92, w/atchs.
- Exhibit F. Letter, Mr. Smith, dated 2 Mar 92.



G. HAMMOND MYERS, III
Panel Chairman