



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No: 0406-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 May 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error or injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies. The Board also considered an advisory opinion (AO), dated 29 March 2022, from the Navy Department Board of Decorations and Medals and your response to the AO.

You began a period of service with the Marine Corps Reserve in August 1957. A review of your Combat History – Expeditions – Awards Record and Chronological Record of Duty Assignments indicates that you served in the Republic of █ area of operations from 31 June 1965 to 27 May 1966 and were assigned to Marine Medium Helicopter Squadron █. On 1 February 1967, you were released from active duty and transferred to the Marine Corps Reserve with an Honorable characterization of service. On 20 August 2021, Military Awards Branch (MMMA-3) denied your request to upgrade the Distinguished Flying Cross (DFC), awarded for actions on 19 March 1966, to the Silver Star Medal (SSM).

In your petition to the Board, you requested an upgrade of your DFC to SSM or Navy Cross (NX). You assert that your DFC citation read the same as another member of your squadron who eventually received the NX, you completed the same mission, and your award was downgraded to a DFC.

As part of the Board's review, the Navy Department Board of Decorations and Medals reviewed your request to upgrade your DFC to the NX or SSM and provided the Board with an AO on 8 April 2022. The AO stated in pertinent part:

There is evidence in the official records that the Petitioner had been initially nominated for the SSM by his squadron commander. In his 20 Jul 1966 endorsement of the Petitioner's DFC nomination, Commander, Marine Air Group 36 states the squadron had previously forwarded a SSM nomination, but it was returned for resubmission as a DFC because he (CO, MAG █) did not believe the actions merited the SSM. There was nothing untoward about that, which is evident by the group commander's openly notifying his own superiors of what he had done. The group commander had a broader perspective on decorations for various types of actions, and was in better position than was the squadron commander to properly assess which decoration was most appropriate for the actions of the Petitioner and his fellow aircraft commanders.

The Petitioner and his advocates assert the mission or flight commander... was unjustly awarded a higher decoration (i.e., the NX) than was the Petitioner. They claim the Petitioner's actions were as heroic, if not more so, than (flight commander's). Of course, they are entitled to hold their own opinions about that. However, references (b) - (d) do not recognize the opinion of the awardee, or the opinion of any third party, about the sufficiency of the decoration presented to be a legitimate basis for upgrade. Those references prohibit mere substitution of judgment by a later official for the judgment of those in the chain of command at the time, and rather permit upgrade only if new, substantive, and relevant material evidence is presented that was not reasonably available when the original award was made. Upgrade may also be considered if there is evidence of material error or impropriety in the processing of the original nomination. The Petitioner presented no such evidence.

Under the presumption of regularity in government affairs, we must presume the official records to be accurate and complete, and that the actions of those in the chain of command were in good faith compliance with prevailing policy and standards, unless preponderant evidence is presented to the contrary. In this specific case, the official records, particularly the Petitioner's DFC nomination, appear to have been meticulously prepared and very detailed. The Petitioner presented no evidence to overcome the presumption.

The AO concluded, "[b]ased on the foregoing, we determined the Petitioner is not entitled to the NX or the SSM. We found no evidence of material error or injustice, and therefore recommend BCNR deny relief. Were BCNR to grant relief in this case, such action would be inconsistent with the criteria and standards applied to all other Service members.

The Board carefully weighed all of the factors you presented to support your award upgrade request, including your response to the AO. The Board noted your honorable and faithful service

in the Marine Corps, unfortunately, upon review of the evidence provided, the Board concurred with NDBDM's AO. Specifically, for the reasons outlined in the AO, the Board did not find any evidence of an error or injustice that warrants the upgrade of your DFC. Accordingly, the Board found insufficient evidence of error or injustice to merit a change to your record.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

6/27/2022

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Executive Director

Signed by: █