



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: 4234-22

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 22 December 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and 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, and applicable statutes, regulations, and policies. Additionally, the Board also considered an advisory opinion (AO) furnished by the Navy Department Board of Decorations and Medals (NDBDM) and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

Your last period of active commissioned service in the Marine Corps began on 13 May 1964. At the completion of your required active service on 6 December 1968, you were honorably discharged. While on active duty, you were attached to █ operating inside and around the █ theater of operations.

While attached to █, you flew multiple flights to and from █. On or about 30 January 1968, during the █, you flew a resupply mission in support of

the ██████████. As the aircraft landed, the runway came under fire by ██████████ forces. Your ██████████ was able to offload its cargo while taxiing across the airfield. While facing hostile anti-aircraft fire on the exposed runway, the aircraft quickly became airborne and departed the base. For your heroic achievement in aerial flight, you were awarded the Air Medal (Bronze Star for the First Award) on or about 22 November 1968.

In short, you stated that your award citation incorrectly described you as the co-pilot of the 30 January 1968 flight when you were the pilot in control of the ██████████ during the contested takeoff and landing. Moreover, you contended that the Aircraft Commander (AC) received a Distinguished Flying Cross (DFC) for actions that were actually performed by you, as the pilot actually in control of the aircraft at all relevant times, and you argue that it was an error for your chain of command to submit the respective award packages separately for you and the AC for consideration.

In January 2021, Headquarters, Marine Corps (HQMC) informed you that the Secretary of the Navy approved the awarding of the Air Medal ██████████ ██████████ for your meritorious achievement while participating in aerial flight from 27 April 1968 to 23 October 1968. However, in regards to the request to upgrade your previously approved Air Medal (single mission), the Secretary of the Navy determined that the totality of the evidence did not support an upgrade to the DFC. In 2022, you sought the assistance of U.S. Congressman ██████████ office with a DFC nomination package.

As part of the review process, the NDBDM provided an AO dated 12 September 2022. The AO opined that you are not entitled to the DFC.

The AO relied on SECNAVINST 1650.1C (Navy and Marine Corps Awards Manual of 16 August 1963) to base its opinions and recommendations.¹ The AO noted that the DFC was awarded to an individual who served in any capacity with the Navy or Marine Corps who distinguished himself by heroism or extraordinary achievement while participating in aerial flight.

The AO noted that in support of your award nomination, you submitted, in part, your flight log books of both you and the AC, and eyewitness statements from the AC who received the DFC, and also from a senior member of your chain of command.

Following a review of your record, the NDBDM specifically opined:

The claim is without merit. The AF (Air Medal – Individual Action) awarded the Petitioner by ██████████ – the same

¹ The BCNR in forming its decisions relies on the relevant instructions and policy guidance in effect at the time of the actions/achievements being considered for an award. The BCNR noted that Petitioner erroneously cited to the current version of the awards manual (SECNAVINST 1650.1H) as partial support of his arguments to receive a DFC.

awarding authority for all DFCs in ██████████ - was the appropriate recognition. Although eyewitness testimony substantiates the Petitioner was physically in control of the aircraft during the touch and go at ██████████, this does not contradict the fact that ██████████ was the aircraft commander, who is ultimately responsible of the aircraft during all phases of flight.

Per reference (c),² *“the senior pilot, as commanding officer in the responsible control of fighting and flying the aircraft, is generally eligible for a higher award than other members of the flight crew.”* Since WWII, it has been an explicit Department of the Navy policy that the commander of an aircraft may be considered for a higher decoration than the other members of his aircrew if so warranted. Therefore, there is nothing untoward about ██████████ receiving the DFC and the rest of his crew receiving a lesser award. In fact, this has been a quite common occurrence during and since WWII.

Based on the foregoing, we concluded the Petitioner is not entitled to the DFC. We found no evidence of material error or injustice, and therefore recommend BCNR deny relief in this case. Were BCNR to grant relief in this case, such action would be inconsistent with the criteria and standards applied to all other Marines.

The Board, in its review of the entire record and petition carefully considered your contentions as specifically outlined in your petition and in your AO rebuttal. However, the Board unanimously determined, even after reviewing the evidence in the light most favorable to you, that at this time you do not merit consideration for the DFC.

The Board concurred with the AOs conclusions and recommendations. Additionally, the Board concluded that you did not present sufficient evidence to overcome the presumption of regularity. The Board determined that when your award recommendation was submitted in August 1968, if your individual actions had merited a DFC, your chain of command would have submitted a DFC package for consideration at such time. Accordingly, the Board concluded that you did not receive the DFC recommendation because your chain of command determined your actions merited a Single Mission Air Medal and no higher.

The BCNR sincerely appreciates, respects, and commends you for your honorable and faithful service during your entire Marine Corps career. Unfortunately, it is regretted that the circumstances of your case are such that favorable action cannot be taken at this time.

You are entitled to have the Board reconsider its decision upon 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

² See *supra*, footnote 1 for the version of the awards manual cited as authority by NDBDM and BCNR, i.e., SECNAVINST 1650.1C (Navy and Marine Corps Awards Manual of 16 August 1963) .



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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,

1/15/2023

