



**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: 5528-22

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 12 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.

You enlisted in the Marine Corps and entered active duty on 29 January 1960. At the completion of your required active service on 28 January 1964 you were honorably discharged. While on active duty, on or about 20 February 1962, you reported for duty with █, based in █ n. You remained with █ until your transfer on or about 1 February 1963.

While attached to █ you contend that you flew multiple flights to and from Vietnam. You stated that such flights were recorded as temporary additional duty flights to undisclosed

locations and not recorded as flights into and out of Vietnam. You stated you were a regularly assigned flight crew member on KC-130 aircraft as an airborne radio operator/loadmaster on flights flying missions almost exclusively into ██████████ and ██████████ transporting Marines and equipment into both countries. You contend that the Marine Corps failed to record such missions as into and out of ██████████. You provided two eyewitness statements from fellow squadron members attesting to the destination of certain ██████████ flights.

All previous reviews of your entitlement to either the Armed Forces Expeditionary Medal (AFEM) or the Vietnam Service Medal (VSM) in lieu of the AFEM by Headquarters, Marine Corps (HQMC) have denied you relief. This Board denied you relief in both August 2014 and again in July 2015. In 2021 you sought the assistance of U.S. Congressman ██████████ office with a VSM nomination package.

As part of the review process, the NDBDM provided an AO dated 1 November 2022. The AO expressly opined that you are not entitled to the AFEM or VSM.

The AO noted that Executive Order 11231 authorized the VSM for qualifying ██████████-era service on or after 3 July 1965. It also authorized those Service Members who had qualified for the AFEM for service in ██████████ from 1 July 1958 and 2 July 1965 to, upon their request, receive the VSM in lieu of the AFEM. The AO noted that no person may be awarded both the AFEM and the VSM by reason of service in ██████████.

The AO further noted that SECNAVINST P1650.1C (Navy and Marine Corps Awards Manual) of 16 August 1963 spelled out the criteria for AFEM eligibility. To qualify for the AFEM a service member must have either been a bona fide member of a unit awarded the AFEM, or qualified individually by meeting certain baseline criteria. The AO noted that in support of your award nomination, you submitted eyewitness statements from two fellow Marines attached to ██████████.

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

The Petitioner's record contains no evidence that he satisfied these AFEM criteria, or was a member of ██████████ crews recognized with the AFEM. Without evidence substantiating the Petitioner regularly supported operations authorized the AFEM, we must conclude he is not entitled to the AFEM, and therefore not entitled to receive the VSM in lieu of the AFEM.

The presumption of regularity in government affairs requires we presume that, had the Petitioner met the established AFEM criteria, this would have been documented in his records, and his command would have taken the steps necessary to award him the AFEM. We must presume the reason the Petitioner was not awarded the AFEM is that he did not meet the criteria. The Petitioner failed to present sufficient evidence to overcome the presumption.

In summary, we concluded the Petitioner is not entitled to the VSM, found no evidence of material error or injustice, and 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 AO partially relied on the presumption of regularity. The AO presumed that had you met the established AFEM criteria, this would have been documented in your records, and your command would have taken the steps necessary to award you the AFEM. The AO presumed the reason you were not awarded the AFEM is because you did not meet the criteria, and the AO concluded that you failed to present sufficient evidence to overcome the presumption.

In response to the AO, you provided a personal statement with additional arguments in support of your case.

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 meet the qualifying criteria for consideration to receive either the AFEM, or the VSM in lieu of the AFEM. The Board concurred with the AO that you did not present sufficient evidence to overcome the presumption of regularity. The Board was not willing to “fill the evidentiary gap” based on your eyewitness statements alone without corroborating evidence from your service record, such as flight logs or definitive unit diary entries. Accordingly, the Board concluded that you did not meet the baseline eligibility criteria for AFEM/VSM consideration.

The Board is not an investigatory agency and does not do its own independent fact finding to adjudicate applications. The Board did note, however, back in December 1999 that HQMC stated in their denial letter to you that the substantiating information you seek may be contained in “command chronologies,” and HQMC advised you to resubmit your award request with a copy of such chronologies. The HQMC letter specifically advised:

There is no record that you served in Vietnam. Your Individual Record Card indicates that as an Airborne Radio Operator you participated in temporary Additional Duty flights as an aircraft crew member on many occasions to locations not annotated in your records.

Since there is no indication in your record that you flew in and out of Vietnam, Awards Branch was unable to determine your Vietnam service without additional information. **The information you are seeking maybe contained in the command chronologies. You may obtain a copy by writing the Director, Marine Corps History and Museums, Historical Branch, ██████████ ██████████ ██████████.** You will need to furnish the complete address of the unit concerned and approximate dates.

On[c]e received you should resubmit your request with a copy of the command chronologies...

The Board noted that in any of your current and previous award requests to this Board, you did not submit any command chronologies for consideration. The Board encourages you to obtain such chronologies and resubmit your petition with additional supporting evidence. The Board sincerely appreciates, respects, and commends you for your honorable and faithful service during your entire Navy 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 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,

12/27/2022

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Executive Director

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