



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

█  
Docket No. 6679-22

Ref: Signature Date



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 3 February 2023. 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.

You entered active duty with the Navy in December 1943 and served until your retirement in August 1963. In your application, you stated that you failed to receive the Distinguished Flying Cross (DFC) and Air Medal (AM) for your qualifying service during World War II and the Korean War. You also state that you should have received the Legion of Merit (LOM) instead of an Army Commendation Medal (ARCOM) while serving as a member of the U.S. Military Liaison Mission (USMLM) in █ in 1960-1962.

You argue that you flew 140 airship flights totaling 1371.1 hours, and 92 combat flights patrolling the shipping lanes and escorting merchant ships in Western Atlantic waters infested with German U-boats. During the Korean War, you proffer that you flew 50 wartime flights totaling 337.5 hours before being transferred to NAAS █ Training

Command as a flight instructor. You state that your total wartime flight record included 209 flights for 1778.9 hours. You also argue that you should have received the LOM for your USMLM service, in part, because that was the level of award the Department of the Army originally nominated you to receive.

Between 1981 and 2016, you have you sought the assistance of your elected Congressmen and Senators from Maryland multiple times to resolve your purported service record discrepancies. In April 1981, the Office of the Chief of Naval Operations (CNO) reviewed the circumstances regarding the issuance of your ARCOM and determined it was unlikely that an appeal to receive an LOM based on other than an administrative or factual error would be sustained. The CNO recommended that you contact the Department of the Army should you decide to pursue the ARCOM/LOM matter any further given that the Department of the Army issued the ARCOM to you.

Following another review of your service record, the CNO in March 2010 noted their previous LOM review in 1981 that determined at the time the ARCOM was the more appropriate award. In July 2014, CNO again revisited your claimed entitlement to an LOM. The CNO explained the awards vetting and approving process to you, and noted that the premature disclosure of information concerning any award recommendation can be a potential source of disappointment. The CNO noted that while you may have distinguished yourself by exceptionally meritorious conduct with your USMLM performance, award submissions are merely recommendations and the awarding authority has the final say in the level of award. The CNO also noted that reconsideration of a previously approved award required the presentation of new and relevant material evidence that was not available at the time of the original recommendation was considered. The CNO also advised what types of information did not meet the “new and relevant” standard. The CNO further advised that if such information was available to submit an award request through a Congressman to the CNO Awards Branch for consideration.

In December 2015, the CNO reviewed your DFC request and determined that the available records failed to reveal either your DFC, or AM eligibility. The CNO noted that they considered certain provided documentation that included a flight log book. The CNO determined that the majority of your flights occurred post-World War II and pre-Korean War and thus were not related to wartime operations.

In April 2016, the CNO reviewed your flight log book and determined the information you provided failed to meet the DFC or AM awarding criterion. The CNO noted that all of your flights between 2 September 1945 and 25 June 1950 were not related to wartime operations. The CNO also noted that only your final flight, on 26 June 1950, occurred during wartime and your flight log indicated it was a demonstration flight. The CNO advised you that if you wanted to pursue the matter further to petition the BCNR for relief. However, in May 2016, the CNO once again reviewed your DFC and AM eligibility. Another review of your flight log and war diaries maintained by the Naval History and Heritage Command determined that you did not fly missions that could be recognized by the AM. The CNO noted that the majority of your flight

were for training, patrol/scouting, or transportation of personnel, and thus could be used for credit towards an AM. The CNO determined that there was no record you flew any qualifying combat missions or flights for the purpose of obtaining negative enemy operational information, transport of hospital cases, antisubmarine patrol, and similar essential wartime operations. The CNO concluded that you were not qualified to receive either the DFC or AM, and again advised you to petition the BCNR for relief.

As part of the review process, the NDBDM provided an AO dated 20 December 2022. The AO expressly opined that you are not entitled to either the DFC, the AM, or the LOM. The AO primarily relied on SECNAVINST 1650.1 (Navy and Marine Corps Awards Manual of 18 December 1944)<sup>1</sup> and Department of Defense Instruction 1348.33 (DoD Military Decorations and Awards Program) to base its opinions and recommendations.

The AO noted the Navy's position regarding your more recent requests for the DFC was that the missions you completed during and after WWII do not meet the regulatory definitions of strike or flight, and therefore cannot be counted toward award of either the AM or the DFC on a permission or point basis. The AO noted that you served in Blimp Squadron ██████████ from December 1943 to September 1946 and in Airship Squadron ██████████ from July 1949 to June 1951. The AO noted that a review of your flight logs and war diaries maintained by the Naval History and Heritage Command confirmed that none of your missions qualified for either the DFC or AM under the strike/flight (or point) formula. The AO observed that during WWII your squadron operated from an airbase in ██████████, and noted the coastal waters in which your squadron operated were not subject to enemy aircraft patrols or effective enemy anti-aircraft fire. The AO noted that during the period you served there, records indicate no attacks by German U-boats in that area, nor any U-boat sunk by U.S. aircraft. The AO concluded that it was not credible to contend that you operated aircraft in an *active combat area where anti-aircraft fire is expected to be effective or where enemy aircraft patrols usually occur*, as required by the DFC regulations at the time. The AO also concluded that any of your missions flown after WWII ended did not count toward either the AM or DFC. The AO further noted that the strike/flight or point system was terminated in 1948 and no missions flown during the Korean conflict would have qualified. The AO observed that you only flew one flight during the Korean conflict that was recorded as a demonstration flight and not a combat-related strike or flight. The AO noted that even if such mission had counted as a strike or flight it would be insufficient to merit a single AM or DFC.

Regarding your entitlement to an LOM, the Board noted that you were originally nominated for an LOM, on 25 April 1962, through Army channels given that the head of the USMLM was an Army officer. The Army forwarded the LOM nomination to the Navy for concurrence, and the Navy did not object to the Army's proposed LOM award. However, the then Secretary of the Army decided to award you the ARCOM and not an LOM, which was well within the Army

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<sup>1</sup> 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.

Secretary's discretion because the nomination was only a recommendation as to the appropriate level of award. The AO concluded that pursuant to longstanding customs, regulations, and practices, the Navy has no authority to revoke, rescind, or upgrade any military decoration approved by the Secretary of the Army, and that such authority rests entirely with the Secretary of the Army.

Lastly, the AO presumed that you did not receive the AM or DFC because your missions did not qualify under relevant guidance. The AO concluded that you did not present any evidence to rebut such presumption of regularity in government affairs. The AO observed that you remained in the Navy until your retirement in 1963 and therefore had ample opportunity to request redress if you thought some error or injustice had occurred in you not receiving such medals. The AO noted that there was no documentary evidence that you requested any redress or review of your flight-related awards or your LOM prior to your retirement.

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, AM, and/or the LOM.

The Board concurred with the AO's conclusions and recommendations. Additionally, the Board concluded that you did not present sufficient evidence to overcome the presumption of regularity in governmental affairs. Accordingly, the Board determined that you did not receive either the DFC or AM because your flights as documented in your service record did not qualify you for such awards under applicable guidance, policy, and directives. The Board also concurred with the AO regarding your LOM request. The Board concluded that it was entirely within the Secretary of the Army's discretion as to the level of award you were to ultimately receive for your USMLM duty regardless of the award originally recommended.

Notwithstanding the denial, the Board advises that should you still wish to pursue the LOM/ARCOM matter further, that you are recommended to direct any request for relief to the Army Board for Correction of Military Records (ABCMR), as the Department of the Army has cognizance over the ARCOM issued to you in 1962. Please reference Army Regulation 15-185 for general information concerning the ABCMR, and/or visit the following website "<https://arba.army.pentagon.mil/abcmr-overview.html>" on the Internet.

The BCNR sincerely appreciates, respects, and commends you for your honorable and faithful service during your entire Navy career. You are part of America's "greatest generation" and this country will forever be grateful to you for your service. 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,

2/6/2023



Executive Director

Signed by: █