

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-01851

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel record be amended to reflect an upgrade of his Air Force Commendation Medal (AFCM) [dated 15 Jul 09] to an Airman's Medal (AmnM) with entitlement to 10 percent increase in retired pay.

APPLICANT'S CONTENTIONS

On 22 Apr 22, the Secretary of the Air Force Decorations Board (SAFDB) disapproved the upgrade request because his actions did not meet the criteria in accordance with Air Force Manual (AFMAN) 36-2806, *Awards and Memorialization Program*; however, new evidence and findings could be resubmitted for reconsideration. The packet with the new evidence clarifying the danger of the situation and letter of consideration was submitted on 13 Apr 23. On 12 Jul 23, the Air Force Personnel Center (AFPC) stated the submitted package contained the same documents previously submitted to SAFDB and if he believed this was an error or injustice, he could appeal to the Air Force Board for Correction of Military Records (AFBCMR).

He contends, on 15 Jul 09, he pulled one adult, five children, and one dog from a smoke-filled minivan leaking fuel in the middle of a congested six-lane highway. He was awarded the AFCM on 11 Dec 19 for the act. However, his actions during the incident were similar to the heroic actions of two AmnM recipients.

He further contends he believes AFPC unintentionally overlooked the new evidence. He hopes the AFBCMR sees similarities in his actions and the actions of the two airmen awarded the AmnM and considers his actions worthy of the same award.

His family, friends, and members of his chain of command have written letters of support for upgrading the award from an AFCM to an AmnM. His congressperson's office has been working with him for the past four years in support of the upgrade. The Director of Military and Veterans Affairs assisting him has left the congressperson's office.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired [State] Air National Guard technical sergeant (E-6) awaiting retired pay at age 60.

On 15 Jul 09, according to a XXXX Police Crash Investigation Report, Case Number XXXXX, provided by the applicant, a minivan was involved in a rollover accident on I-295. The vehicle came to rest on its roof. Minor injuries were reported, and all occupants of the vehicle were transported for further evaluation.

On 15 Jul 09, according to a XXXX State Police Operations Report, Case Number XXXXX, provided by the applicant, the applicant witnessed a motor vehicle accident involving an overturned vehicle. He stopped his vehicle to assist the passengers inside the car which was lying on its roof. While helping the passengers out of the vehicle, the applicant was bitten on his right hand by the passengers' dog, receiving a laceration on the palm. The applicant was medically evaluated on-scene, and he advised he would go to the hospital for further evaluation. The driver of the overturned vehicle advised the dog was up-to-date on his vaccinations.

On 15 Jul 09, according to XXXX Emergency Medical Service, Incident Number XXXXX, provided by the applicant, he witnessed a motor vehicle accident on Route 295 and stopped to assist people in the vehicle. While reaching into the car to assist the occupants, a dog in the vehicle bit the applicant on the hand.

On 15 Jul 09, according to an Emergency Department Record, XXXX Primary, provided by the applicant, he was seen and treated for a dog bite to his right hand.

On 15 Jul 09, according to a XXXX Fire Department Incident Report XXXXX, provided by the applicant, responders arrived to find one vehicle overturned with all victims out of the vehicle. The vehicle was leaking fuel, was secured and stabilized, and a handline was pulled off while the vehicle was overturned by towers due to fuel leaking.

On 9 Sep 19, the applicant was furnished an honorable discharge with Authority and Reason: AFI 36-3209, paragraph 3.12.6, Transfer to the USAF Reserve Retired List (ANG Only) SPD: RBD; and was credited with 20 years and 3 days total service for pay.

On 11 Dec 19, the applicant was awarded the AFCM for outstanding achievement on 15 Jul 09.

On 7 May 20, according to a letter from the applicant's congressional representative, provided by the applicant, his request for upgrade from an AFCM to an AmnM was fully supported.

On 14 Jun 21, according to an Allergy Skin Test Result Sheet, provided by the applicant, he tested for year-round allergens to dogs.

On 15 Sep 21, according to a letter from the applicant's congressional representative, provided by the applicant, his congressional representative endorsed the recommendation to award the applicant the AmnM for his actions on 15 Jul 09.

On 13 Apr 23, according to a letter from the applicant's congressional representative, provided by the applicant, his congressional representative endorsed the recommendation to award the applicant the AmnM for his actions on 15 Jul 09.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Manual (DAFMAN) 36-2806, *Military Awards: Criteria and Procedures*, dated 27 Oct 22, [Incorporating Change 2, 18 Jan 24], Attachment 2, *Decoration Criteria*:

A2.8. *AIRMAN'S MEDAL* (AmnM). The medal was established in 1960 and is currently awarded pursuant to 10 USC § 9280 [Title 10, United States Code § 9280]. The medal is awarded to any person who, while serving in any capacity with the Air Force, has distinguished himself or herself by heroism involving voluntary risk of life under conditions other than those of conflict with an armed enemy of the U.S.

A2.8.1. *Eligibility.*

A2.8.1.1. The saving of a life or the success of the voluntary heroic act is not essential.

A2.8.1.2. The performance must have involved personal hazard or danger and the voluntary risk of life under conditions not involving conflict with an armed enemy.

A2.8.1.3. The medal is not awarded for normal performance of duties (i.e., security forces, firefighter, medical, pararescue, etc.).

A2.8.1.4. In addition to the requirements in paragraph A3.4, recommendations are substantiated with one or more of the following documents: fire reports, police reports, newspaper articles, safety reports, and/or eyewitness statements (two or more). Additionally, newspaper articles, video footage, and photographs may be included in the nomination, but cannot replace the aforementioned documents.

Department of the Air Force Instruction (DAFI) 36-3203, *Service Retirements*, dated 29 Jan 21, [Incorporating Change 1, 13 Oct 23], Chapter 8, *Determining Retired Grade and Pay*:

8.11. *Retired Pay Increase Due to Extraordinary Heroism (Enlisted Only).* Active Component enlisted members who had deeds of extraordinary heroism may be entitled to receive 10 percent additional retired pay if a member retires under 10 USC § 9314 (10 USC § 9361). For Air Reserve Component enlisted members, payments for acts or deeds begin 1 October 2002, (10 USC § 12739, *Computation of Retired Pay*, 10 USC § 12741) although the act or deed may have occurred prior to this date.

8.11.1. Since regulations require extraordinary heroism as the criterion for award of the Medal of Honor, Air Force Cross, or equivalent Army or Navy decorations, these awards provide automatic entitlement to the additional 10 percent retirement pay (not to exceed 75 of the member's active duty basic pay at the time of retirement) for enlisted members. If heroism is involved in the award of any other medal to an enlisted member, the Secretary of the Air Force (SecAF) will determine, coincident to awarding the medal, whether or not the additional 10 percent retirement pay will be authorized.

8.11.2. Because the law is not restrictive with regard to the types of decorations that may qualify an individual for this increase in retired pay, the SecAF has the authority to evaluate the heroic actions that have earned the Silver Star, Distinguished Flying Cross (noncombat), and the Airman's Medal to determine if extraordinary heroism was involved, which would entitle the recipient to the increase in retired pay.

8.11.3. Since 1969, enlisted members who have been awarded the Silver Star, the Distinguished Flying Cross for heroism in a non-combat action, or the Airman's Medal have been automatically considered for the additional 10 percent retired pay increase. If a member was approved for the additional 10 percent increase in retirement pay, the member's special order approving the decoration will include a statement to that fact. If an enlisted member believes consideration was not made at the time the medal was awarded, the member may ask for a Secretarial decision through the AFBCMR process.

8.11.4. Even though the enlisted member qualifies for the 10 percent increase, finance regulations limit the total amount of retired pay to no more than 75 percent of the member's active duty basic pay at the time of retirement.

AIR FORCE EVALUATION

SAF/MRBP (Secretary of the Air Force Personnel Council) recommends denying the application. While the applicant provided additional new evidence, none rose to a level sufficiently compelling to alter the original decision of the SAFDB.

On 28 Apr 20, the applicant originally applied to the AFBCMR to have his record corrected to reflect he was awarded the AmnM, with a ten percent increase in retired pay, instead of the AFCM for his actions on 15 Jul 09.

On 2 Oct 20, the AFBCMR notified the applicant they were administratively closing his case due to his failure to exhaust administrative remedies. Specifically, the applicant needed to apply for consideration through a member of Congress under 10 USC § 1130.

On 21 Mar 22, the applicant's member of Congress forwarded a recommendation for award of the AmnM for the applicant to SAF/LL [Secretary of the Air Force, Legislative Liaison]. On 21 Apr 22, the SAFDB considered the recommendation, but found the evidence presented was not sufficient to conclude the applicant's actions met the criteria for the AmnM.

On 3 Oct 24, the applicant submitted DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*, to the AFBCMR seeking correction of his records to reflect he was awarded the AmnM, with a ten percent increase in retired pay, instead of the AFCM for his actions on 15 Jul 09.

While the applicant disagrees with the previous determination, he has not provided any pertinent evidence that was unavailable to the SAFDB during its initial consideration in 2022. The applicant submitted the following documents: his letter to the AFBCMR outlining a timeline; multiple letters of support from his congressional representative; a command support letter and character reference; an email chain; notification letters from AFPC and Air Reserve Personnel Center; sample case letters regarding two AmnM recipients; various character reference letters; a tow and firefighter report (which indicates fuel was leaking from an overturned van but does not state a fire was present at any time or required extinguishing); the applicant's patient and allergy report; and a citation from the U.S. House of Representatives and City Council. Although these documents offer context regarding the circumstances, they do not demonstrate the applicant acted with voluntary risk of life, a key requirement for the award. A comprehensive review was conducted of all evidence presented by the applicant to both the AFBCMR and the SAFDB. While certain documents provided contextual information, no compelling evidence was discovered that had not already been considered by the SAFDB in its original decision. In addition to this new information, the applicant submitted copies of news articles describing how others were awarded the AmnM under purportedly similar conditions. The applicant argues he is similarly situated to these individuals and his actions also warrant the AmnM. However, a thorough review of the documentation revealed these individuals were not similarly situated to the applicant. The documentation associated with the first comparison case (dated 2016) is incomplete. The file lacks sufficient documentation to determine the circumstances surrounding the award, the evidence submitted, or the rationale for the original adjudicator's decision. The citation for this individual is a general statement and does not provide the level of detail necessary for a comparative analysis. Therefore, this case cannot be used to support the applicant's claim. While documentation is available for the second comparison case, the circumstances differ significantly. In this case, the evidence clearly indicates the member's actions constituted a risk of life, meeting the criteria for the AmnM. This member repeatedly entered a vehicle engulfed in flames to rescue occupants, one of whom was covered in flames. In contrast, the applicant's case involves a vehicle emitting smoke and a smell of gasoline, but there is no indication of fire. The circumstances described and available evidence do not indicate the applicant's actions represented a risk to his life.

Therefore, because the comparison cases cited by the applicant either lack sufficient documentation or relate to someone who is not similarly situated, we do not find these comparisons sufficient to conclude the applicant is the victim of an error or injustice. While the applicant's actions are commendable, the risk of life was not readily apparent. Therefore, there is no basis to recommend granting the requested relief.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 2 Jul 25 for comment (Exhibit D), and the applicant replied on 15 Jul 25. In his response, the applicant contends he submitted a formal upgrade request through his congressional representative in accordance with AFMAN 36-2806. He listed the documents submitted with his request and states the documents were submitted in good faith under the established guidelines for veterans seeking award reconsideration.

He contends the advisory opinion incorrectly asserts no new evidence was provided since the 21 Apr 22 decision by SAFDB. Months after the SAFDB's decision, his congressional representative's Director of Military and Veterans Affairs created a letter on 15 Nov 22 to help retrieve additional information regarding the incident from various sources. As a result of that letter, the following was submitted as new evidence: XXXX Rescue Fire Department Incident Report (XXXXX); Emergency Medical Services Patient Record; XXXX Towing Invoice; House of Representatives of XXXX Citation; and City of XXXX Council Citation. This new submission accompanied an updated endorsement letter from his congressional representative, dated 13 Apr 23, separate from the 15 Sep 21 version cited in earlier evaluations. The AFPC letter, dated 12 Jul 23, states his package contained the same documentation previously reviewed by SAFDB. This information is incorrect because the new evidence was submitted after the 21 Apr 22 board.

He further contends the advisory opinion downplays the hazards present during the incident. However, the fire department report clearly indicates suppression measures were initiated, a handline was pulled due to leaking fuel from the overturned vehicle, and the incident was classified as a hazardous condition on a divided highway. A general affidavit with an eyewitness statement, dated 3 Jul 21, confirms the XXXX State Troopers extinguished smoke from the minivan prior to the fire department's arrival, further substantiating the credible risk of fire or explosion. He cites an excerpt from the witness statement in support. It is critical to emphasize the AmnM has been awarded in multiple instances where there was no confirmed fire, only the presence of hazardous conditions such as smoke, gasoline, and the credible threat of explosion. Also, AFMAN 36-2806 does not specifically state a vehicle must catch fire for acts of heroism to be considered the voluntary risk of life. The precedents listed validate the award does not require visible flames, only voluntary risk of life in a non-combat environment:

- Staff Sergeant XXXX: rescued four people from a smoke-engulfed vehicle. There is no documentation of flames. Recognized for heroic action under life-threatening conditions.
- Lieutenant XXXX: rescued a woman from a gasoline and smoke-filled car. There was no fire, yet she was awarded the AmnM for voluntarily placing herself in danger to save another.
- Technical Sergeant XXXX: responded to a smoking tractor trailer that flipped and posed an explosion risk. He entered the vehicle to free the trapped driver, despite the imminent danger of explosion. No active flames were reported.

These precedents, (two that pre-date his actions and another which took place afterward) confirm that actions involving substantial risk, such as those caused by smoke, gasoline fumes, and overturned vehicles, have warranted the AmnM in the past. His actions on 15 Jul 09 are consistent with these recognized standards of voluntary risk of life in a non-combat emergency. Additionally, his actions on 15 Jul 09 have been recognized by multiple credible sources. The EANGUS [Enlisted Association of the National Guard of the United States] Heroism Medal, which he was awarded, confirms his actions met recognized standards of military heroism comparable to those of the AmnM. Furthermore, the XXXX State Police Operations Report XXXXX notes that the dog involved in the rescue was a pit bull, a breed widely recognized for its strength, tenacity, and propensity to inflict serious injury when agitated or stressed. In this case, the dog was involved in a violent vehicle rollover, which would have further heightened its

agitation and unpredictability. Despite this, he entered the vehicle and attempted the rescue. While performing the rescue, he was bitten by the pit bull, sustaining a laceration to his hand. He was aware at the time that he is medically allergic to dog bites, yet he continued the rescue undeterred until every occupant, including the dog, was safely removed from the overturned vehicle. This additional layer of voluntary exposure to a credible and medically dangerous threat strengthens the case that his actions met the criteria for the AmnM.

Finally, he recognizes the advisory opinion recommends denying his case; however, he respectfully disagrees and requests the AFBCMR exercise its independent authority to grant relief under 10 USC § 1552. The AFBCMR is not bound by prior advisory opinions and may render a favorable decision based on the totality of the evidence, particularly when newly submitted material, such as previously unconsidered medical risk, overlooked official reports, and validated precedents, merit consideration. He hopes the endorsement letters, eyewitness statements, congressional recommendations, variety of medical and safety reports, and relevant precedents submitted in accordance with 10 USC § 1130 and AFMAN 36-2806 over the five-year existence of his case, along with the fact that five young children survived, move the AFBCMR to render a decision in his favor.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of SAF/MRBP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The new evidence provided, and cited by the advisory opinion in its evaluation, provided context to the incident; however, was not sufficiently compelling to support overturning the decision made by SAFDB. There was no evidence the applicant's actions demonstrated a voluntary risk of life as required by criteria outlined in DAFMAN 36-2806. Further, while the applicant presented cases of the award of the AmnM to two other airmen as similarly situated, a review of the documentation found there was insufficient detail to make a comparison for one case, and the other case, having sufficient information, found the applicant was not similarly situated. In this last case example, it was clear the member repeatedly entered a vehicle engulfed in flames to rescue the occupants, one of whom was covered in flames. In contrast, the applicant's case involved a vehicle emitting smoke and the smell of gasoline, but there was no indication of fire. A third precedent, provided in rebuttal to the advisory opinion, did not provide sufficient detail to make a complete analysis. Finally, without award of the AmnM to support it in accordance with DAFI 36-3203, there is no entitlement to a 10 percent increase in the applicant's retired pay. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2020-01851 in Executive Session on 15 Aug 25:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 29 Sep 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, SAF/MRBP, dated 2 Jul 25.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 2 Jul 25.
Exhibit E: Applicant's Response, w/atchs, dated 15 Jul 25.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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Board Operations Manager, AFBCMR