

Work-Product

CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00905

Work-Product

COUNSEL: NONE

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HEARING REQUESTED: NO

APPLICANT'S REQUEST

His deceased father be posthumously awarded the Silver Star (SS) for his actions during Operation MARKET GARDEN.

APPLICANT'S CONTENTIONS

He became aware of an injustice for his father for his heroic action during a German Army ambush of an evacuation convoy. As the family historian, it has been his quest to have accurate and referenced family history and to ensure that history is complete for future generations.

In support of his request, the applicant provides copies of documents from his deceased fathers personal official file and other documents related to his request.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the next of kin (NOK) of a retired Air Force Reserve major (O-4).

The applicant provided Reserve Order **Work-Product**, dated 6 May 76, indicating his deceased father was authorized retired pay effective 8 Aug 76 in the grade of major (O-4) and was credited with 25 years, 10 months, and 13 days of service.

On 2 Jun 22, according to a letter provided by the applicant, a congressional request was sent to the Director of Legislative Liaison for consideration of the applicant's request for posthumous award of the Silver Star for his deceased father.

AIR FORCE EVALUATION

AFPC/DPS (Policy) recommends denying the application. Based on the documentation provided by the applicant, there does not appear to be "firsthand knowledge" and therefore, the Department of the Air Force Decorations Board (on behalf of the SecAF) is unable to consider the request under the provisions of 10 U.S.C., Section 1130. While there appeared to have been a myriad of research as well as quotes of others (unsigned), there is not any direct recommendation for an upgrade of the Bronze Star or a statement from someone which had first-hand knowledge of the act/achievement or period of service of the deceased service member's act/achievement during the incident described to warrant an upgrade consideration from the Bronze Star.

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POC: SAF.MRBC.Workflow@us.af.mil

The rationale regarding the inability to process the request is listed under 10 U.S.C. Section 1130 which states: “determinations under this section regarding the award or presentation of a decoration shall be made in accordance with the same procedures that apply to the approval or disapproval of the award or presentation of a decoration when a recommendation for such award or presentation is submitted in a timely manner as prescribed by law or regulation.” In addition, DoDI 1348.33, *DoD Military Decorations and Awards Program*, Section 19 states: “To maintain the integrity and prestige of DoD’s Military Decorations and Awards Program, substantiating evidence (official or unofficial) must show that the service member’s service, actions, or condition met the applicable military decoration’s associated award criteria. Determinations regarding decoration eligibility will be based on verifiable facts and not on subjective opinions or hearsay. Affidavits from individuals, other than the award nominee, who personally witnessed (i.e., were with the service member during the event and saw what the service member did), or have first-hand knowledge of (e.g., were communicating with the service member over the radio during the event) the service member’s service, actions, or condition. The intended recipients of a posthumous military decoration or unit decoration may not officially nominate themselves for such decorations. Nominations may only be originated according to the policies and procedures published by the military department concerned.”

The applicant provided an abundance of information and documentation; however, the criteria has not been met. There is no documentation from eyewitnesses at the time of the event, a recommendation from someone within the deceased service member’s chain of command at the time of the act, nor is there mention of an upgrade from the Bronze Star to the Silver Star. Also, the proposed citation does not meet the criteria as established in Department of the Air Force Manual (DAFMAN) 36-2806, *Military Awards Criteria and Procedures*, 23 May 23 Table A12.2. Based on the documentation presented there is no error or injustice. Unfortunately, as the applicant indicated, there are no living witnesses. It is reasonable to conclude the applicant will not be able to mount a viable appeal under the provisions outlined as there are no members with “first-hand knowledge” or in the chain of command who can write a recommendation for an upgrade or attest to the actions described.

The complete advisory opinion is at Exhibit B.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 Oct 23 for comment (Exhibit C), and the applicant replied on 4 Nov 23. In a 22-page response, the applicant contended he was following information and instructions from everyone, but it appears the instructions were not accurate. He outlined the sequence of events since initiating the request for posthumous award of the Silver Star for his deceased father. He believes the wrong decision is based upon the wrong DD Form 149 package. Package #1 which included 120 pages was mailed via United States Postal Service to Joint Base Andrews on 29 Sep 20. Package #2 which included DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*, pages were mailed via United Parcel Service (UPS) to AFPC/DPSIRP (Recognition’s) on 18 Dec 21. Package #3 which included 194 pages was mailed via UPS to AFPC/DPSIRP on 1 Feb 22. He researched the definition of “first-hand knowledge” and his witnesses were present and active in the events of 24 Sep 44, possessing “first-hand knowledge.” He asserts a very unfortunate set of circumstances occurred and caused an unintentional error to have occurred.

The applicant’s complete response is at Exhibit D.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Therefore, the board recommends against correcting the applicant's records. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00905 in Executive Session on 23 Apr 24:

Work-Product		Panel Chair
Work-Product		Panel Member
Work-Product		Panel Member

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

- Exhibit A: Application, DD Form 149, dated 28 Jan 22.
- Exhibit B: Advisory Opinion, AFPC/DPS, dated 23 Oct 23.
- Exhibit C: Notification of Advisory, SAF/MRBC to Applicant, dated 26 Oct 23.
- Exhibit D: Applicant's Response, dated 4 Nov 23.

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.

7/10/2024	
X	Work-Product
Work-Product	
Board Operations Manager, AFBCMR	
Signed by:	Work-Product