



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

### RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01545

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Secretary of the Air Force (SecAF) consideration for a 10 percent increase in retirement pay for award of the Distinguished Flying Cross (DFC).

### APPLICANT'S CONTENTIONS

The increase should have taken place automatically at the time of his retirement, but, for whatever reason (human error on the part of personnel, technology, or because of the war in Southeast Asia), this increase did not take place.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force technical sergeant (E-6).

On 22 Jul 70, the applicant was awarded the DFC for extraordinary achievement while participating in aerial flight on 10 Jan 70.

On 1 Dec 71, according to Retirement Order, Special Order Number *Work-Product*, the applicant retired from the Regular Air Force per 10 USC § 8914, having served 20 years, 16 days of active service.

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

### AIR FORCE EVALUATION

SAF/MRBP recommends denying the application. Per AFI 36-3203, *Service Retirements*, active component enlisted members who had "Deeds of Extraordinary Heroism" may be entitled to receive 10 percent additional retired pay if member retires under 10 USC §8914 (10 USC §8991). Consideration for the additional 10 percent of retired pay has been automatic since 1969. Air Force Manual 900-3, 20 Nov 69, describes the procedure for forwarding recommendations for certain decorations, including the DFC, to the Secretary of the Air Force for consideration. The presumption of regularity dictates, that in the absence of evidence to the contrary, it should be presumed that the member's DFC was forwarded for consideration of the additional 10 percent of retired pay in accordance with the regulations in effect at the time. Other than his own

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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uncorroborated assertions, the applicant has provided no evidence whatsoever that due consideration of his actions was not afforded in accordance with these published procedures.

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 27 Oct 22 for comment (Exhibit D) but has received no response.

## **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 SAF/MRBP and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the available evidence does support the applicant, in accordance with AFI 36-3203, was not given due consideration to receive 10 percent additional retired pay when he was awarded the DFC for his extraordinary achievement while participating in aerial flight on 10 Jan 70. 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 Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

## **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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-01545 in Executive Session on 28 Mar 23:

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Panel Chair  
Member  
tt, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, date received 30 Jun 22.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

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Exhibit C: Advisory Opinion, SAF/MRBP, w/atchs, dated 26 Oct 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Oct 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings pertaining to Docket Number BC-2022-01545, as required by AFI 36-2603, paragraph 4.11.9.

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