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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-01848

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be authorized a 10 percent increase in retirement pay for extraordinary heroism as evidenced by his award of the Airman's Medal.

APPLICANT'S CONTENTIONS

The applicant contends he experienced the loss of an increase in monetary retirement benefit due to an error and injustice by the now defunct, Secretary of the Air Force Personnel Council (SAFPC). On 12 Oct 98, the applicant was awarded the Airman's Medal for heroism that resulted in rescuing an occupant from a burning home. On 7 Jan 00, a request was sent to SAFPC to award the applicant with the 10 percent additional retirement pay for extraordinary heroism performed on 12 Oct 98. On 11 Jan 00, SAFPC denied the applicant's request for the 10 percent additional retirement pay.

The applicant contends there was an injustice on the part of the Air Force because federal regulations and Air Force sub-regulatory guidance fail to define heroism versus extraordinary heroism, leaving the discretion of a monetary benefit to a panel. Additionally, he contends the error on the part of the Air Force was SAFPC classifying his actions as courageous in the denial letter. He would not have been awarded the Airman's Medal for heroism if his actions were not considered courageous.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force master sergeant (E-7).

On 12 Oct 98, according to *Citation to Accompany the Award of The Airman's Medal*, the applicant was awarded the Airman's Medal for Heroism after he and another individual entered a house that was actively on fire and pulled the occupant out to safety.

On 7 Jan 00, Special Order *Work-Prod...*, submitted by the applicant, confirmed award of the Airman's Medal for Heroism involving voluntary risk of life under conditions other than those of conflict with an armed enemy of the United States with an effective date of 12 Oct 98.

On 11 Jan 00, according to a memorandum from the AFPC Recognition Programs Branch, provided by the applicant, states "the Secretary of the Air Force (SECAF) has considered this individual for an additional 10 percent retired pay in connection with the act of heroism that

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warranted this decoration. The determination was made that the act, while courageous, does not meet the criteria established for the additional retired pay.”

On 31 Jan 04, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant retired with 20 years and 6 days of active service.

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

APPLICABLE AUTHORITY/GUIDANCE

Air Force Instruction (AFI) 36-3203, *Service Retirements*, paragraph 8.11.2, the Secretary of the Air Force (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.

Title 10, U.S. Code 8991 paragraph (a)(2) states an additional 10 percent for certain enlisted members credited with extraordinary heroism. If a member who is retired under section 8914 of this title has been credited by the SECAF with extraordinary heroism in the line of duty, the member’s retired pay shall be increased by 10 percent of the amount determined under paragraph (1). The Secretary’s determination as to extraordinary heroism is conclusive for all purposes.

AIR FORCE EVALUATION

SAF/MRBP recommends denying the application. The applicant is requesting to be awarded the additional 10 percent retirement pay increase for an Airman’s Medal for “heroism” he received in 1998. The applicant contends his actions of entering a burning home to save a stranger constitutes “extraordinary” heroism. However, SAFPC determined his actions did not constitute “extraordinary” heroism. According to AFI 36-3203, paragraph 8.11.2 recipients of the Airman’s Medal are eligible to have their heroic actions to be reviewed by SAFPC who will determine if the actions rise to extraordinary and be awarded 10 percent additional retirement pay. According to Title 10, U.S. Code 8991, the SECAF is tasked to determine if the heroic actions performed by the Airman was extraordinary. On 11 Jan 00, AFPC/DPPRA forwarded the decoration elements and advised the SECAF considered the applicant for the additional 10 percent retired pay, but found the act, while courageous, did not meet the criteria for additional retired pay.

SAF/MRBP further addresses the applicant’s contention regarding AFBCMR docket number BC-2008-00417 as a precedent case where the AFBCMR granted relief to a presumably similarly situated applicant. However, the applicant is not similarly situated to the applicant described in the cited case. The SAFPC advisory in the cited case indicated the evidence was not sufficient to ascertain the applicant’s level of risk and heroism based on the case file and documentation. Because of this, it seems the AFBCMR chose to resolve doubt in the member’s favor and grant relief. However, in this case, the record paints a clear picture of the applicant’s level of risk when entering the building to save a stranger. His actions did constitute a risk of life warranting award of the Airman’s Medal, but did not constitute a repeated risk of life, which is consistent with many findings of extraordinary heroism.

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Finally, SAF/MRBP believes the applicant's application should be rejected as untimely. In this regard, the applicant retired almost 19 years ago and did not file within three years of his release from active duty. While the applicant argues the alleged error or injustice was discovered in 2021, SAF/MRBP is not convinced this is a reasonable date of discovery. The records pertaining to this issue have been in the applicant's military personnel record, or in his possession, since 2001 and the applicant has failed to demonstrate why it would be in the interest of justice to waive his failure to timely file.

Should the Board decide to waive the applicant's failure to timely file, SAF/MRBP recommends denial on the merits. As such, the Air Force has the discretionary authority to determine which actions are heroic and which rise to the level of extraordinary heroism in determining who qualifies for the entitlement to additional retired pay. While grateful for the applicant's actions, he has provided no evidence whatsoever he has been treated unfairly or he was not given due consideration when this matter was decided in real time over 20 years ago. Therefore, based on the documentation provided by the applicant, he has not met his burden to demonstrate through a preponderance of the evidence he is the victim of an error or injustice.

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 4 Jan 23 for comment (Exhibit D) and the applicant replied on 5 Sep 23. In his response, the applicant contended there was an injustice because the SAF/MRBP advisory opinion rejected his application as untimely, while there was evidence of other applications for the Airman's Medal were routed to the Board with the same notation. Furthermore, the advisory contradicts itself by asserting other than argument and conjecture, he presented no evidence, while also stating most of the evidence presented did not fulfill his burden of proving error or injustice.

The applicant contends the advisory opinion agrees the determination of whether an act is heroic or extremely heroic is subjective. However, Air Force instructions do not contain the criteria for comparing or evaluating the distinction between heroism and extraordinary heroism when considering Airmen for the additional 10 percent retirement pay benefit with the Airman's Medal. Furthermore, paragraph 3.8.1.2, "The Secretary recognizes there could be broad variances in individual opinions as to what constitutes "extraordinary heroism" and relies on the recommendation of SAFPC in this regard" and paragraph 3.8.1.3, "SAFPC is composed of senior officers having broad staff and command experience who are well-qualified to evaluate these cases by comparing the heroism involved for award of the Medal of Honor and Air Force Cross" were deleted from AFI 36-3203, dated 8 Sep 06, because they defended the arbitrary subjective decision-making process that can appear unfair and inequitable to enlisted members. The two paragraphs presented a conflict of interest, because they solely reference senior officers imposing subjective opinions on enlisted members.

The applicant further argues docket number BC-2008-00417 provided precedence for approval in that SAF/MRBP was unable to ascertain the applicant's level of risk and heroism and yet the Board did in fact choose to resolve doubt in the member's favor and grant relief. The applicant goes onto state the advisory opinion was flawed and made erroneous assumptions because there is no regulatory guidance establishing "repeated risk of life" as the criteria for "extraordinary heroism." Additionally, there is evidence where applications (BC-2012-04457 and BC-2021-03381) for the

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additional 10 percent retired pay benefit for receipt of the Airman's Medal have been denied even though the applicants had repeated risk of life by saving the lives of more than one person.

Finally, the applicant contends the use of the mandatory opening sentence, required by DAFMAN 36-2806, paragraph A5.2.4.1 places a burden on the enlisted member to prove the actions are worthy of the additional 10 percent retirement pay benefit before they are submitted for consideration of the Airman's Medal.

The applicant believes he sufficiently met the burden of demonstrating there was an error made and that reasonable doubt has established enough to grant his request.

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, 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. While the applicant argues he is similarly situated to a former AFBCMR applicant (BC-2008-00417) who was approved for the 10 percent increase, the Board disagrees. In the cited case, the Air Force offices of primary responsibility were unable to make a determination based on the limited evidence provided, but in the applicant's case, the Air Force Decorations Board, as part of SAFPC and on behalf of the SECAF found sufficient evidence to make a deliberate decision. As such, based on the evidence, they concluded the applicant's actions did not constitute award of a 10 percent increase in retirement pay. Furthermore, under the presumption of regularity, it is assumed that responsible officials carried out these tasks in accordance with the provisions of the prescribing directives and the applicant has not provided any additional evidence to show that he was not given due consideration when the decision was made over 20 years ago. As such, based on the merits of the case, the Board finds no reason other than the applicant's conjecture that would warrant overturning the decision previously made by the Air Force Decorations Board. While the Board recognizes the heroic act of the applicant that earned him such a distinguished award and is also thankful for his exemplary service, we do not find the heroism meets the "extraordinary" criteria to justify granting his request. 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

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The following quorum of the Board, as defined in the 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-2022-01848 in Executive Session on 11 Apr 23 and 9 Jan 24:

Work-Product [Redacted] Panel Chair
Work-Product [Redacted] Panel Member
Work-Product [Redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 20 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, SAF/MRBP, w/atchs, dated 29 Dec 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Jan 23.
- Exhibit E: Applicant Response, w/atchs, dated 5 Sep 23.
- Exhibit F: AFBCMR Docket Numbers BC-2008-00417, BC-2012-04457, and BC-2021-03381, Redacted.

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.

4/17/2024

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