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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00039

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be authorized a ten (10) percent increase in retirement pay for extraordinary heroism as evidenced by his award of the Distinguished Flying Cross (DFC) for extraordinary achievement.

APPLICANT'S CONTENTIONS

On 12 Oct 16, the applicant was awarded the DFC for actions performed on 21 Dec 13. The applicant was not awarded the additional ten percent retirement pay increase when he was approved for the DFC. He contends that he is entitled to a review in accordance with AFI 36-3203, *Service Requirements*, paragraph 8.11.2, "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 Air Force Board for Correction of Military Records process." Furthermore, the applicant contends due to the actions not being in a "declared hostile environment", the medal was downgraded from heroism in accordance with AFI 36-2806, *Military Awards: Criteria and Procedures*, paragraph A17.16.1, "Eligibility for the "V" device for a contingency deployment operation is dependent upon the area being declared a hostile environment by the Chairman, Joint Chiefs of Staff, or hostile acts identified by the unified commander or higher authority." This resulted in the DFC not being automatically reviewed for the additional ten percent retirement pay increase. The applicant believes his actions should not have been downgraded because he received the 2013 Mackay Trophy that is awarded by the Chief Master Sergeant of the Air Force for the most meritorious flight of the year.

The applicant's commander submitted a letter of recommendation supporting the applicant's request to receive the additional ten percent retirement pay. The commander, who on 21 Dec 13, was the aircraft commander of the second aircraft witnessed first-hand, the professionalism and heroism exuded by the applicant. He acknowledges the applicants heroic actions were not under a named operation; however, there was no denying the hostile fire the flight crews received that day.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

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On 6 Oct 16, according to *Results of the 6 October 2016 Air Force Decorations Board*, the applicant met the criteria outlined in AFI 36-2803, Table 3.6, and was approved to be awarded the DFC.

According to Special Order *Work-Prod...* dated 12 Oct 16, provided by the applicant, the applicant was awarded the DFC for extraordinary achievement while participating in aerial flight on 21 Dec 13.

According to the *Citation to Accompany the Award of The Distinguished Flying Cross*, the applicant distinguished himself by “extraordinary achievement” for actions performed on 21 Dec 13. His actions resulted in the safe recovery of four crewmembers, nine passengers and his aircraft, and contributed to saving the lives of the four critically wounded service-members on the lead CV-22 aircraft.

According to a decoration report from MilPDS, the applicant’s record reflects a DFC, dated 21 Dec 13, for achievement.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-3203, *Service Retirements*:

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 member retires under 10 USC §8914 (10 USC §8991). For Reserve Component enlisted members, payments for acts or deeds begin October 1, 2002 (10 USC §12739) 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 AD 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, 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.

AFI 36-2806, *Military Awards: Criteria and Procedures*:

A16.16. Valor "V" Device. The "V" device is worn to denote valor, an act or acts of heroism by an individual above what is normally expected while engaged in direct combat with an enemy of the U.S, or an opposing foreign or armed force, with exposure to enemy hostilities and personal risk.

A16.16.1. Eligibility for the "V" device for a contingency deployment operation is dependent upon the area being declared a hostile environment by the Chairman, Joint Chiefs of Staff, or hostile acts identified by the unified commander or higher authority.

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 Secretary of the Air Force 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 applicants request to receive an additional ten percent retirement pay increase for the Distinguished Flying Cross (DFC) for "extraordinary achievement" he received in 2015. While AFI 36-3203 authorizes the SecAF to consider the additional 10 percent in retired pay for certain decorations, when it comes to the DFC, the review is limited to a DFC awarded for heroism in a non-combat action. However, a review of the applicant's military personnel record revealed that he was awarded the Air Force Combat Action Medal (AFCAM) for the mission in question. Because the DFC he was awarded was for a combat action, it does not meet the criteria for the additional 10 percent in retired pay. The applicant's contentions regarding the "V" device are noted; however, whether the DFC is awarded with or without the "V" device is not relevant to this determination as the records before us clearly indicate the DFC was awarded for a combat action.

The applicant has presented no evidence of an error or injustice, nor has he presented any evidence he has been treated differently than other similarly situated airmen (those who were awarded the DFC for a combat related event who did not earn the additional 10 percent in retired pay).

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 5 Jul 23 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.

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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. The Board notes, that in accordance with AFI 36-3203, *Service Retirements*, Paragraph 8.11.3. the DFC issued for heroism in a noncombat action, is eligible for automatic consideration of the 10 percent increase in retirement pay; however, the applicant was awarded the DFC for extraordinary achievement for combat action. While the Board commends the applicant's extraordinary achievement, the Board does not find that the award meets the eligibility criteria for the increase in pay. Therefore, the Board recommends against correcting the applicant's records.

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 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-2023-00039 in Executive Session on 12 Sep 23:

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, w/atchs, dated 3 Oct 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, SAF/MRBP, w/atchs, dated 3 Jul 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Jul 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.

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