RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2008-01721

 INDEX CODE: 107.00, 128.14

 XXXXXXXXXXXXXXXXX COUNSEL: NONE

 HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

He be entitled to an additional 10 percent retired pay due to his having been awarded the Soldier’s Medal.

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APPLICANT CONTENDS THAT:

His request for award of the additional 10 percent retired pay was disapproved when he retired in 1975. He did not know that he was entitled to this until his records were checked and he was informed that he was authorized the 10 percent increase in his retired pay.

In support of his appeal, he has provided copies of his DD Form 214; Citation to Accompany the Award of the Soldier’s Medal; and General Orders Number 34, dated 31 August 1953, awarding him the Soldier’s Medal.

Applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

The applicant was awarded the Soldier’s Medal on 31 August 1953, for his heroic actions after a B-29 aircraft crashed near Lowry AFB, CO, on 3 December 1951. He retired from the Regular Air Force in the grade of chief master sergeant (CMSgt – E-9) on 1 September 1975.

The Soldier’s Medal was awarded to members of the Armed Forces of the United States who, while serving in any capacity with the U.S. Army, distinguished themselves by heroism not involving actual conflict with an enemy. It was replaced by the Airman’s Medal for Air Force personnel on 6 July 1960, and is the highest award given for non-combat heroism. Enlisted personnel shall be entitled to a 10 percent increase in their retired pay (but not to exceed 75 percent of the retired pay base upon which the computation of such retired pay is based) if the Secretary of the Air Force credits the member with extraordinary heroism in the line of duty.

On 23 January 1975, the Secretary of the Air Force Personnel Council (SAF/MRBP) determined that the applicant’s heroic act did not rise to the level of extraordinary heroism necessary for him to be entitled to a 10 percent increase in his retired pay. The applicant was notified of the SAF/MRBP determination on 28 January 1975.

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AIR FORCE EVALUATION:

AFPC/DPSIDR recommends denial of the requested relief based on the 23 January 1975, SAF/MRBP decision.

The AFPC/DPSIDR evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Since he does not have a copy of any correspondence pertaining to a decision ever being made by the Secretary of the Air Force, it is not clear to him that the Secretary, or an authority designated by the Secretary, ever made the determination as to whether the acts for which he was awarded the Soldier’s Medal met the criteria for extraordinary heroism.

He requests that the Secretary of the Air Force make the determination that the acts for which he was awarded the Soldier’s Medal meet the criteria for extraordinary heroism. The citation set forth in the General Order indicates that he disregarded “severe head and leg injuries accompanied by shock” as well as “the imminent danger of an explosion of the burning wreckage” to rescue the pilot and co-pilot from a crushed nose section of the aircraft. He believes that a fair reading of the facts suggests that the “heroism” for which he was decorated nearly 55 years ago was about as extraordinary as “heroism not involving actual conflict with an enemy” can be.

Complete copies of an SAF/MRB Legal Advisory memorandum, *Perspective on Extraordinary Heroism (EH) Requirement for Increased Retirement Pay*, dated 13 May 2005,; SAF/MRBR 23 January 1975, determination; and USAFMPC/DPMARD 28 January 1975, notification letter of the SAF/MRBR determination were forwarded to the applicant on 14 August 2008, for review and comment, within 30 days. However, as of this date, no response has been received by this office.

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THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3.  Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We note that in 1975, the Secretary of the Air Force Personnel Council determined the applicant’s heroic act did not rise to the level of extraordinary heroism necessary to entitle him to a 10 percent increase in his retired pay. However, after reviewing the SAF/MRB Legal Advisor’s 13 May 2005 memorandum and considering the applicant’s actions on 31 August 1953, we feel the applicant’s heroic act rose to the level of extraordinary heroism necessary to entitle him to a 10 percent increase in his retired pay. Therefore, we recommend his records be corrected to the extent indicated below.

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THE BOARD RECOMMENDSTHAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that competent authority determined he was entitled to a 10 percent increase in his retired pay pursuant to Section 8991 (a)(2), Title 10, United States Code, effective 1 September 1975.

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The following members of the Board considered Docket Number BC-2008-01721 in Executive Session on 7 October 2008, under the provisions of AFI 36-2603:

 Mr. Joseph D. Yount, Panel Chair

 Ms. Barbara J. Barger, Member

 Ms. Mary Jane Mitchell, Member

 BC-2008-01721

The following documentary evidence was considered:

 Exhibit A. DD Form 149, dated 1 May 08, w/atchs.

 Exhibit B. Applicant's Available Master Personnel Records.

 Exhibit C. Letter, AFPC/DPSIDR, dated 3 Jun 08.

 Exhibit D. Letter, SAF/MRBR, dated 20 Jun 08.

 Exhibit E. Letter, Applicant, dated 10 Jul 08, w/atchs.

 Exhibit F. Letter, AFBCMR, dated 14 Aug 08, w/atchs.

 JOSEPH D. YOUNT

 Panel Chair

AFBCMR 2008-01721

MEMORANDUM FOR THE CHIEF OF STAFF

 Under the authority of Section 1552, Title 10, United States Code and Air Force Instruction 36-2603, and having assured compliance with the provisions of the above regulation, the decision of the Air Force Board for Correction of Military Records is announced, and it is directed that:

 The pertinent military records of the Department of the Air Force relating to XXXXXXXXXXXXXXXXXX, be corrected to show that competent authority determined he was entitled to a 10 percent increase in his retired pay pursuant to Section 8991 (a)(2), Title 10, United States Code**,** effective 1 September 1975.

 JOE G. LINEBERGER

 Director

 Air Force Review Boards Agency