RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-00147

 INDEX CODE: 107.00

 XXXXXXXXXX COUNSEL: NONE

 HEARING DESIRED: NOT INDICATED

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APPLICANT REQUESTS THAT:

She be awarded the Legion of Merit (LOM) for the period 11 October 2006 to 31 January 2008.

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APPLICANT CONTENDS THAT:

Her recommendation for the LOM was originally submitted to the Commander, Air Force District of Washington (AFDW) in April 2008, after her assignment to the Retired Reserve. The Commander, XXXXX denied the nomination due to her Retired Reserve status, and she believes her nomination warrants further review due to her distinctive accomplishments throughout her Air Force career.

In support of her appeal, the applicant provides copies of her 29 August 2007 Retirement Order; 16 January 2009 Request for Consideration of the LOM from the Commander, XXth Medical Wing, with attachments; and her original LOM submission, including e-mail traffic, working copies, and other supporting material (Officer Performance Reports (OPRs) and Promotion Recommendation Forms (PRF) related to the recommendation.

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

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STATEMENT OF FACTS:

On 1 Feb 08, the applicant was retired under the provisions of 10 USC 12731 and was assigned to the Retired Reserve.

Sometime thereafter, the applicant’s commander submitted the recommendation for decoration to the Secretary of the Air Force Personnel Council (SAFPC) via an undated letter.

On 1 May 08, XXXX/A1DPM advised the applicant’s unit the recommendation must be submitted through the Air Force Board for Correction of Military Records (AFBCMR) due to the fact the applicant was already retired. The notification incorrectly indicated the AFBCMR conducted a board and downgraded the recommendation to a Meritorious Service Medal (MSM). The record does not indicate the LOM recommendation was ever officially considered by SAFPC or downgraded to an MSM before it was returned without action due to the applicant’s status as a member of the Retired Reserve.

The LOM is awarded for exceptionally meritorious conduct in the performance of outstanding service to the United States. In peacetime, awards to U.S. military personnel are limited to service in an extremely difficult duty that is performed in a clearly exceptional manner if such service is of marked national or international significance to the Air Force or the Department of Defense, or service that has aided the U.S. in furthering its national policies, or service which has furthered the interest or the security of the U.S. or any nation allied or associated with the U.S. during a period of national emergency declared by the President or Congress. The LOM may be awarded for combat or noncombat services and superior performance of normal duties will not alone justify award of this decoration.

Upon retirement, after a long and distinguished career, liberal interpretation of the award criteria is appropriate, provided the officer’s most recent performance warrants such consideration. Current Air Force policy for award of the LOM for retirement requires service in a qualifying position, in the grade of colonel or above, for at least 18 months. Qualifying positions include, but are not limited to, wing/vice wing commanders, group commanders of all types, Major Command directors, Air Staff division chiefs, and Air Force Material Command and Air Force Space Command designated material wing and group leader equivalents. A request for an Exception to Policy (ETP) is required for officers who have not held a qualifying position for at least 18 months.

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AIR FORCE EVALUATION:

SAF/MRBP recommends denial due to the applicant not holding a qualifying position and not meeting the 18-month time-in-position requirement at the time of her transfer to the Retired Reserve. The documentation provided by the applicant does not indicate an error or injustice.

SAF/MRBP notes that in accordance with the *Delegation of Approval Authority for Award of the Legion of Merit (LOM) to USAF Members* 132236Z January 05 Message, Air Force members must serve a minimum of 18 months in a qualifying position. Nominations for the LOM which do not meet these criteria must be submitted as an ETP. The applicant was nominated for her assignment as a Mobilization Assistant, which is not a qualifying position, for the period 11 October 2006 to 31 January 2008, four months short of the 18 months time-in-position requirement. Although an ETP letter was submitted, it only addresses the time-in-position requirement, but does not address the fact the applicant did not occupy a qualifying position.

A complete copy of the SAF/MRBP evaluation is at Exhibit B.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 11 September 2009 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit C).

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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 timely filed.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. The Board took notice of the applicant's complete submission in judging the merits of the case; however, a majority of the Board agrees with the opinion and recommendation of SAF/MRBP and adopts their rationale as the basis for its conclusion the applicant has not been the victim of an error or injustice. It is noted, at the time of the applicant’s retirement, the established criteria required at least 18 months service in an extremely responsible position to qualify for the LOM without significant additional justification, typically in the form of an Exception to Policy (ETP). The evidence of record indicates the applicant did not serve in a qualifying position. Additionally, the recommendation for decoration does not contain any additional justification, in the narrative or in the form of an ETP, which would compel the majority to overlook this requirement. Therefore, in the absence of evidence to the contrary, the majority of the Board finds no basis to recommend granting the relief sought in this application.

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RECOMMENDATION OF THE BOARD:

A majority of the panel finds insufficient evidence of error or injustice and recommends the application be denied.

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The following members of the Board considered AFBCMR Docket Number BC-2009-00147 in Executive Session on 10 Nov 09, under the provisions of AFI 36-2603:

 Mr. XXXXXXXXXX, Vice Chair

 Ms. XXXXXXXXXX, Member

 Mr. XXXXXXXXXX, Member

By a majority vote, the Board voted to deny the application. Mr. XXXXXXXXXX voted to correct the records but does not desire to submit a Minority Report. The following documentary evidence was considered:

 Exhibit A. DD Form 149, dated 9 Feb 09, w/atchs.

 Exhibit B. Letter, SAF/MRBP, dated 8 Sep 09.

 Exhibit C. Letter, AFBCMR, dated 11 Sep 09.

 XXXXXXXXXX

 Vice Chair

**DEPARTMENT OF THE AIR FORCE
WASHINGTON DC**



**Office Of The Assistant Secretary**

AFBCMR BC-2009-00147

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS (AFBCMR)

FROM: SAF/MRB

SUBJECT: AFBCMR Application of XXXXXXXXXX, BC-2009-00147

I have carefully considered the rationale of the Board majority; however, I adopt the minority recommendation to grant the requested remedy in this case.

In reaching this decision, I note the strong command support for the awarding of this medal and the fact the applicable guidance clearly provides for a liberal interpretation of the criteria for officers retiring in the grade of colonel and above. Here, the length and quality of the applicant’s service makes awarding a Legion of Merit at the time of her retirement more appropriate than a Meritorious Service Medal.

In view of the above, I direct the applicant’s records be corrected to reflect award of the Legion of Merit for the period 11 October 2006 to 31 January 2008.

 JOE G. LINEBERGER

 Director,

 Air Force Review Boards Agency

**DEPARTMENT OF THE AIR FORCE
WASHINGTON DC**



**Office Of The Assistant Secretary**

AFBCMR BC-2009-00147

MEMORANDUM FOR THE CHIEF OF STAFF

 Having received and considered the recommendation of the Air force3 Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

 The pertinent military records of the Department of the Air Force relating to XXXXXX, XXX-XX-XXXX, be corrected to show that she was awarded the Legion of Merit for her exceptionally meritorious conduct in the performance of outstanding services to the United States as the XXXXXXXXXXXXXXXXXX, XXXXXXXXXXXX, from 11 October 2006 to 31 January 2008.

 JOE G. LINEBERGER

 Director

 Air Force Review Boards Agency

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