RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-02773

 INDEX CODE: 107.00

 XXXXXXX COUNSEL: NONE

 HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

He be awarded the Distinguished Flying Cross (DFC) for his actions during an in-flight emergency on 5 Dec 70.

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APPLICANT CONTENDS THAT:

His actions as the co-pilot during an in-flight emergency on a transatlantic flight were instrumental in saving his aircraft and the 12 lives aboard. When all traditional efforts to save the aircraft failed, he convinced the primary crew to employ non-traditional solutions he helped devise to arrest their precipitous loss of altitude and avoid ditching the aircraft in the icy waters of the North Atlantic. As a direct result of his efforts, the crew was able to maintain a perilous altitude of only 1,500 feet for over two and one-half hours to execute a safe landing. Both the pilot and the flight engineer were awarded the DFC for their actions and he believes his participation merits the same recognition.

In support of his appeal, the applicant provides an expanded statement and copies of two supporting statements and his MAC Form 41, *Flight Order.*

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

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STATEMENT OF FACTS:

The applicant’s military personnel records indicate he served in the Air National Guard (ANG) as a C-130 pilot during the period in question. He was progressively promoted to the grade of lieutenant colonel (O-5), effective and with a date of rank of 1 Oct 85. On 17 Jan 92, he was transferred to the Retired Reserve and was credited with 28 years, 3 months, and 29 days of satisfactory reserve service.

The DFC may be awarded to any persons who, after 16 Apr 17, while serving in any capacity with the United States Armed Forces, distinguish themselves by heroism or extraordinary achievement while participating in aerial flight.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit C.

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AIR FORCE EVALUATION:

AFPC/DPSIDRA recommends denial, indicating the applicant’s submission lacks the documentation required for consideration under the provisions of the Fiscal Year 1996 National Defense Authorization Act (FY96 NDAA). According to the FY96 NDAA, an original or reconstructed recommendation is required to be submitted by someone, other than the member himself, with firsthand knowledge of the member’s accomplishments, and must include the name of the decoration (i.e. DFC), reason for recognition (heroism, achievement, or meritorious service), inclusive dates of the act, a narrative description of the act, and a proposed citation. The recommending official must sign the recommendation and any chain of command endorsements are desirable. Any statements or affidavits from fellow comrades or eyewitnesses and other substantiating documentation should be included in the recommendation as well.

A complete copy of the AFPC/DPSIDRA evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A recommendation for award of the DFC to the applicant was submitted in response to the Air Force Evaluation. The recommendation was initiated by someone other than the applicant with firsthand knowledge of the event and included supporting affidavits, a proposed citation, and other substantiating documentation.

The complete response, including attachments, is at Exhibit E.

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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 an error or injustice. After a thorough review of the available evidence and the applicant’s complete submission, we are persuaded of the applicant’s entitlement to the DFC. While we note the applicant provides a recommendation by someone not in his chain of command as required under the provisions of the FY96 NDAA, we find this places a higher evidentiary standard than intended by Congress under Title 10, United States Code, Section 1552, to simply meet the burden of establishing the existence of an error or injustice in the records. In view of the testimony of the applicant’s former comrades, the former navigator’s recommendation, and the applicant’s selfless sacrifice and extraordinary achievement, we are convinced of the applicant’s entitlement to the requested award. Therefore, to preclude any further injustice to the applicant, we recommend his records be corrected as indicated below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that he was awarded the Distinguished Flying Cross (DFC) for extraordinary achievement while participating in aerial flight over the North Atlantic Ocean on 5 December 1970.

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The following members of the Board considered AFBCMR Docket Number BC-2009-02773 in Executive Session on 7 Dec 10, under the provisions of AFI 36-2603:

 Ms. XXXXXXXXXX, Panel Chair

 Mr. XXXXXXXXXX, Member

 Ms. XXXXXXXXXX, Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

 Exhibit A.  DD Form 149, dated 22 Jun 09, w/atchs.

 Exhibit B.  Applicant's Master Personnel Records.

 Exhibit C.  Letter, AFPC/DPSIDRA, dated 14 Jun 10.

 Exhibit D.  Letter, SAF/MRBR, dated 2 Jul 09.

 Exhibit E.  Letter, Recommending Official, dated 30 Jul 10,

 w/atchs.

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 Panel Chair