

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00690

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to reflect he received a 10 percent increase in his retirement pay due to receiving the Airman's Medal (AmnM).

APPLICANT CONTENDS THAT:

His act constituted extraordinary heroism because it involved a "voluntary risk of life." He received the AmnM for bringing a wheel-well fire under control in a transient C-130 aircraft, but he is missing the special order authorizing the additional 10 percent retirement pay.

In support of his appeal, the applicant provides an expanded statement (position paper), copies of his AmnM certificate, citation, and special order, and information on his personal awards and decorations.

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

STATEMENT OF FACTS:

The applicant served in the Air National Guard in the grade of staff sergeant (E-5) during the matter under review.

On 30 Apr 89, the applicant received the AmnM for heroism for his actions on 17 Mar 88 related to bringing a wheel-well fire under control on a transient C-130H aircraft.

Section 8991, Title 10, United States Code (U.S.C.), provides for the 10 percent increase in retired pay for extraordinary heroism. The law gives the Secretary of the Air Force the responsibility for determining what constitutes "extraordinary heroism" in individual cases. Accordingly, the Secretary has determined that an enlisted member who received the Medal of Honor, the Air Force Cross or an equivalent Army or Navy

decoration, will automatically be credited with additional retired pay. Individuals awarded the Silver Star, the Distinguished Flying Cross (DFC) in a noncombat action, and the Airman's Medal for heroism will receive Secretarial review for award of the increase in retired pay.

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of responsibility which are included at Exhibits C, D, and F.

AIR FORCE EVALUATION:

NGB/A1PS does not make a recommendation, but cites AFI 36-2803, *The Air Force Awards and Decorations Program*, which states The Secretary of the Air Force Personnel Council (SAFPC) determines entitlement to the ten percent increase in retirement upon approval when the AmnM is awarded to enlisted members for extraordinary heroism. On the member's citation it does not state "extraordinary" heroism, it just states "heroism."

A complete copy of the NGB/A1PS advisory is at Exhibit C.

SAF/MRBP recommends denial indicating that there is no evidence of an error or injustice. At the time the applicant was awarded the AmnM, the U.S.C. and Air Force policy did not include the provision of extraordinary heroism and the additional 10 percent in retirement pay for Reserve Component personnel. Air Force Regulation 900-48, dated 25 Mar 82, Section 3-23a states "Any Regular enlisted member of the Air Force retired under 10 U.S.C. 8914 credited with extraordinary heroism in the line of duty, is entitled to 10 percent increase in retired pay, provided the total retired pay does not exceed 75 percent. A determination that extraordinary heroism was or was not involved is made by the Secretary of the Air Force at the time the award is processed." Since the applicant was a member of the ANG at the time of his act, his AmnM was not evaluated for extraordinary heroism, or for the additional 10 percent. The only information provided by the applicant regarding the act for which he received the AmnM is the official citation and certificate. No supporting documentation that the Air Force Awards and Decorations Board would have had available to them at the time of the Decorations Board was provided. Based on the lack of supporting evidence there is not enough information to determine if the applicant's act on 17 March 1988 should be credited with extraordinary heroism. On 2 Dec 02, the 2003 National Defense Authorization Act (NDAA) added the provisions for the additional 10 percent in retirement pay for members of the Reserve Components who later qualify for retired pay for non-regular service. However, it did not clarify if the act for which the member is credited with extraordinary heroism must occur on or after this date. If the AFBCMR determines the act should be credited with extraordinary heroism, the board must also consider if the intent of the effective date to 10 U.S.C. 12739

was to include those retired reserve component members who were later determined to be credited with extraordinary heroism, but the act occurred prior to 1 Oct 02.

A copy of SAF/MRBP's complete advisory is at Exhibit D.

The SAF/MRB Legal Advisor recommends the case be evaluated on the merits, indicating that while the relevant statute carefully defines an effective date for pay, it omits any restriction in time on the precedent heroic act itself. Indeed, nothing in the plain language of the law would prevent a reservist from qualifying for the heroism bonus by virtue of an act he or she had accomplished before passage of the legislation. The entitlement thus arises for three necessary conditions, namely (1) entitlement to retired pay, (2) Secretarial credit for extraordinary heroism in the line of duty, and (3) enlisted status. Once all of these are met, then a retiree is entitled to the 10% bonus. Therefore, the Board should resolve the current case on the merits, irrespective of the date of the heroic act.

A copy of SAF/MRB Legal Advisor's complete advisory is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant submits an expanded statement in which he states he does not have any additional evidence to support his request other than his citation and orders for his AmnM. However, he believes he meets the requirements for the additional 10% bonus. He provides a brief overview of his career, and submits copies of his awards and decorations (Exhibit H).

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. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. The applicant contends that his actions for which he was awarded the Airman's Medal (AmnM) constituted "extraordinary" heroism and he should therefore be awarded an additional 10 percent in retired pay. After a thorough review of the evidence of record and the applicant's complete submission, we do not find the evidence provided by the applicant sufficient to conclude that his actions rose to the level of extraordinary heroism as required

by 10 USC 8991. In this respect, we note the comments by SAF/MRBP indicating the citation and certificate, in and of themselves, are not sufficient to make such a determination and neither the record, nor the applicant's submission contain the supporting documentation that the Air Force Awards and Decorations Board would have had available to them in making such a determination when the award was processed. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-00690 in Executive Session on 4 Dec 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 8 Feb 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, NGB/A1PS, dated 22 Mar 12.
- Exhibit D. Letter, SAF/MRBP, dated 13 Sep 12.
- Exhibit E. Letter, SAF/MRBR, dated 17 Sep 12.
- Exhibit F. Letter, SAF/MRB Legal Advisor, dated 15 Oct 12.
- Exhibit G. Letter, SAF/MRBC, dated 22 Oct 12.
- Exhibit H. Letter, Applicant, undated.

Panel Chair