

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00496  
COUNSEL: NONE  
HEARING DESIRED: YES

---

APPLICANT REQUESTS THAT:

He be awarded the Silver Star (SS).

---

APPLICANT CONTENDS THAT:

No actions were taken to award him the Silver Star.

He was a prisoner-of-war (POW) in solitary confinement for one and one-half years and has trouble dealing with his military service because it was so traumatizing.

In support of his request, the applicant provides a copy of a letter from his brother requesting administrative relief for the SS and PH, dated 15 Feb 94.

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

---

STATEMENT OF FACTS:

The applicant is a former member of the Regular Air Force, who served on active duty from 1 Jul 49 to 18 Dec 54.

On 6 Jul 12, the applicant's request for award of the Purple Heart (PH) was approved by the Purple Heart Review Board (PHRB) and his record is being administratively corrected.

---

AIR FORCE EVALUATION:

AFPC/DPSI recommends denial, noting that all avenues have not been exhausted for retroactive request of the award and the request for consideration is incomplete. In addition, they noted when submitting a completed package the following information should be included: 1) Eyewitness statements attesting to the act(s) of valor or service performed, sworn affidavits, certificates, and any other related documentation; 2) a referral by a Member of Congress and 3) a proposed citation.

The SS may be awarded to any individual while serving in any capacity with the United States Armed Forces, who distinguishes himself or herself by gallantry in action under any of the following circumstances: While engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or, while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which is not a belligerent party. The required gallantry, while of a lesser degree than that required for award of the Air Force Cross, must nevertheless have been performed with marked distinction.

The complete DPSI evaluation, with attachments, is at Exhibit C.

---

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 26 Feb 13 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

---

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations. We note the OPR advisory comments concerning the requirements of Title 10, United States Code, Section 1130 (10 U.S.C. § 1130), enacted as part of the Fiscal Year 1996 National Defense Authorization Act. However, we do not agree that such avenues must be first exhausted prior to seeking relief under the provisions of 10 U.S.C. § 1552. The relief offered under 10 U.S.C. § 1130 is a statutory remedy, not administrative relief. Therefore, principles of administrative law requiring exhaustion of administrative remedies are inapplicable here. Moreover, as previously noted by this Board in decisions concerning this issue, 10 U.S.C. § 1130 clearly states that, "Upon request of a Member of Congress...the Secretary shall make a determination as to the merits of approving the award..." - however, it does not require that an applicant must do so prior to submitting a request under the provisions of 10 U.S.C. § 1552. Finally, we find the OPR's interpretation of 10 U.S.C. § 1130 contradicts the very intent of Congress in establishing service correction boards 65 years ago, i.e., to remove their required involvement and avoid the continued use of private relief bills, in order to effect such corrections to military records.
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 warranting award of the SS. We note the OPR has verified the applicant's

entitlement to the Purple Heart and will administratively correct his records accordingly. As such, the only issue before us is his request for the SS. In this regard, we note the 1994 letter from the applicant's brother requesting recognition for his brother's air combat service in Korea; however, it provides no narrative explanation or detailed account of his gallantry in action to warrant awarding this prestigious award - the second highest decoration in the Armed Forces, just below the Medal of Honor. Therefore, based on the documentation before us, we find no basis to favorably consider his request for the SS.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue involved. Therefore, the request for a hearing is not favorably considered.

---

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-2012-00496 in Executive Session on 28 Mar 13, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 25 Jan 12, w/atc.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSI, dated 13 Aug 12, w/atchs.
- Exhibit D. Letter, SAF/MRBR, dated 26 Feb 13.

Panel Chair