

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01938
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His DD Form 214, *Report of Separation from Active Duty*, should include his Air Medal with Five Oak Leaf Clusters (AM w/5 OLC).

APPLICANT CONTENDS THAT:

He flew 177 combat support missions as a pilot in Vietnam, but has only the basic AM w/1 OLC for those missions.

He has enough missions to have been awarded an additional four oak leaf clusters to the AM. By the time he realized the error his unit had been disbanded. Three orders reflect the details of his squadron assignments and eight pages show the specifics of his 177 combat support sorties. One would receive an AM for each 35 missions that were flown. Not counting the AM he earned for missions over Vietnam, plus the 1 OLC he received for piloting a KC-135 aircraft in support of the war effort, he should have earned an additional 4 OLCs for the remaining 142 missions that he flew.

In support of his request, the applicant provides a personal statement, copies of special orders, and copies of his Frag Missions and Combat Support Sorties.

His complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is a former member of the Regular Air Force, who served on active duty from 5 May 1967 through 30 June 1978. The DD Form 214 issued in conjunction with his 30 June 1978 separation reflects that he was awarded the DFC and basic AM, with 1 OLC.

The AM is awarded to any person who, while serving in any capacity with the Armed Forces of the United States, subsequent to 8 September 1939, distinguishes himself or herself by heroic

or meritorious achievement while participating in an aerial flight.

AIR FORCE EVALUATION:

AFPC/DPSIDR does not provide a recommendation and states that the applicant has not exhausted administrative channels, and has not provided a written recommendation or a proposed citation as required by 10 USC 1130.

The complete DPSIDR evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 28 Jun 12 for review and comment within 30 days. As of this date, this office has received no response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations. We note the OPR's comments concerning the requirements of Title 10, United States Code, Section 1130 (10 USC § 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 USC § 1552. As previously noted by this Board in decisions concerning this issue, 10 USC § 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..." - it does not require that an applicant must do so prior to submitting a request under the provisions of 10 USC § 1552. Moreover, we find their interpretation of 10 USC § 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 affect 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. Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice to warrant correcting the applicant's DD Form 214 to reflect his entitlement to the AM w/5 OLCs. In this respect, we note the applicant has provided substantial evidence that indicates he flew 177 combat support missions while assigned to the 7th Air Force. Moreover,

a review of his flight records and the special orders awarding the AM (Basic) and AM, 1 OLC, indicate that he was awarded these AMs after completion of 35 combat missions. Further, we note that the applicant has not received recognition for the remaining combat missions. As such, based on the evidence of record and noting the AM criteria at the time, we believe his record should reflect his entitlement to four additional OLCs to the AM. Therefore, we recommend his records be corrected as indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that his DD Form 214, *Report of Separation from Active Duty*, issued in conjunction with his 30 June 1978 separation, be amended in Item 26, *Decorations*, to reflect his entitlement to the Air Medal, with Second, Third, Fourth, and Fifth Oak Leaf Clusters.

The following members of the Board considered AFBCMR Docket Number BC-2012-01938 in Executive Session on 13 Feb 13, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

All members voted to correct the records, as recommended. The following documentary evidence for Docket number BC-2012-01938 was considered:

Exhibit A. DD Form 149, dated 1 May 12, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPSIDR, dated 12 Jun 12.
Exhibit D. Letter, SAF/MRBR, dated 28 Jun 12.

Panel Chair