



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 7754-00
12 April 2002



This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Navy Records, sitting in executive session, considered your application on 10 April 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Awards and Special Projects Branch in the Office of the Chief of Naval Operations (OP09B13), dated 19 February 2002, a copy of which is attached

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. The archival files of OP09B13 indicate that the Secretary of the Navy convened a special board to review World War II awards for possible upgrade. However, in December 1946, that board did not recommend any change in your award. Further, an attempt was made in 1947 to have all awards of the Legion of Merit cases reviewed and new citations issued, but no secretarial action was taken. The Board finds no persuasive basis now, some 45 years later, to change what has already been reviewed and decided by competent authority

Your fitness report record indicates when your three Silver Star Medals were issued, but does not indicate when the Legion of Merit was awarded. It appeared that it must have been sometime after 19 September 1947 since it was signed by Secretary of the

Navy John L. Sullivan, whose term of office began on that date. This was more than a year after the Silver Star Medal moved ahead of the Legion of Merit in precedence. Accordingly, the Secretary of the Navy, could have awarded the Silver Star Medal in accordance with the new standards, but chose not to do so.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

Ser 09B13/A2U515481
19 February 2002

From: Chief of Naval Operations (N09B13)
To: Chairman, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF CAPT
[REDACTED] USN, RET [REDACTED]

Ref: (a) Your letter AEG;jdh Docket No; 7754-00 of 2 May 01
(b) 10 U.S.C.

Encl: (1) BCNR File
(2) Service Record

1. In response to reference (a), and pursuant to reference (b), enclosure (1) has been reviewed and the following comments and recommendation are provided.
2. Captain [REDACTED] is requesting an upgrade of his Legion of Merit "V" award to that of a Gold Star in lieu of the Fourth Silver Star Medal because, at the time awarded, the Legion of Merit was given higher precedence than the Silver Star Medal. Subsequently, ALNAV 29 of 22 January 1946 changed the order of precedence.
3. A similar request was previously reviewed on behalf of Captain [REDACTED] in 1987 with regard to the Legion of Merit being upgraded to the "V". At that time, as now, no action can be taken to change his award. All World War II awards were reviewed for possible upgrade and consistency by a Special Board (Horne Board) convened by the Secretary of the Navy. In its recommendation to the Secretary of the Navy in December 1946, a change to Captain [REDACTED] award was not recommended. In 1947, an attempt was made to have all Legion of Merit cases reviewed and new citations possibly issued. No secretarial action was taken. This request was also forwarded to the Secretary of the Navy's Awards section for review/comments and indicated support of 1987 response.
4. Based upon the above, there is no further action this office can take.
5. Enclosure (2) is returned as requested.

[REDACTED]

By direction