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DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

FEB 14 2000

Office of the Assistant Secretary

AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Colonel Rex T. Barber, USAF, Retired
70460 NW Lower Bridge Way
Terrebonne, OR 97760

Dear Colonel Barber

The attached advisory opinion is provided for your review and comment. THIS IS NOT THE DECISION OF THE AFBCMR ON YOUR APPLICATION (AFBCMR Docket No. 91-02347).

You have 30 days from the date of this letter to respond and/or submit additional matters in support of your request. If no response is received during this period, we will assume you do not wish to provide further comments and your case will be scheduled for consideration by the AFBCMR. Your comments and/or submission of additional documentation should be addressed to:

AFBCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD 20762-7002

Please notify the AFBCMR as to whether or not you intend to submit additional matters as soon as possible.

Sincerely

John J. D'Orazio
JOHN J. D'ORAZIO
for Chief Examiner
Air Force Board for Correction
of Military Records

Attachment:
Advisory Opinion



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

1 Feb 2000

MEMORANDUM FOR AFBCMR

FROM: HQ USAF/JAG
1420 Air Force Pentagon
Washington D.C. 20330-1420

SUBJECT: Request for Reconsideration of Application for Correction of Military Records – Colonel
Rex T. Barber

You have requested we review and comment on applicant's request for reconsideration of his 1991 application for correction of military records. Applicant's request for sole credit for the 18 April 1943 shoot down of Admiral Yamamoto was denied by the Secretary after extensive review in 1993. Applicant now claims that "new and material evidence has come to light which warrants full reconsideration and a new hearing." You ask if applicant's new submission meets the criteria for reconsideration.

AFI 36-2603 provides that "The Board may reconsider an application if the applicant submits newly discovered relevant evidence that was not available when the application was previously considered."¹ In support of his request for reconsideration, applicant has provided: (1) A 1984 letter from Lt Col Lanphier to Gen Condon stating that he shot the wing off of the bomber he attacked; (2) Report of the Second Yamamoto Mission Association to the Confederate Air Force (CAF), 1 October 1998; (3) Findings of Fact and Conclusion by the Victory Confirmation Board of the American Fighter Aces Association, 27 March 1997; and (4) A Resolution adopted by the General Staff of the Confederate Air Force, 1 October 1998.

None of this evidence, however, qualifies as newly discovered evidence. While applicant points out that the 1984 letter was not discovered until after the previous application was decided, it presents no new information. Yes, the letter proves that Lanphier claimed to have shot the wing off of Yamamoto's bomber before it crashed, which is central to applicant's contention that Lanphier could not have shot down Yamamoto's bomber because the wing was severed after impact on the ground, not in mid-air as Lanphier claimed. But that is not new evidence. In his 1991 application, applicant supplied numerous documents showing conclusively that Lanphier remembered shooting the bomber's wing off before it crashed. Consequently, while the 1984 letter itself may be viewed as "newly discovered," it does not present any new evidence that was not considered by the Board in 1991.

¹ **AFI 36-2603, AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORD**

6. Reconsideration of Applications. The Board may reconsider an application if the applicant submits newly discovered relevant evidence that was not available when the application was previously considered. The Executive Director will screen each request for reconsideration to determine whether it contains new evidence.

6.1. If the request contains new evidence, the Executive Director will refer it to a panel of the Board for a decision. The Board will decide the relevance and weight of any new evidence, whether it was reasonably available to the applicant when the application was previously considered, and whether it was submitted in a timely manner. The Board may deny reconsideration if the request does not meet the criteria for reconsideration. Otherwise the Board will reconsider the application and decide the case either on timeliness or merit as appropriate.

6.2. If the request does not contain new evidence, the Executive Director will return it to the applicant without referral to the Board.

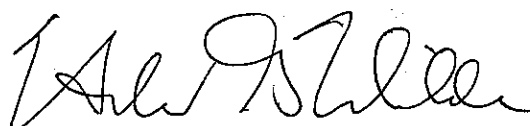
Likewise, the copy of the SYMA's presentation to the CAF, the CAF's General Staff's resolution and the Victory Confirmation Board of the American Fighter Aces Association's findings of fact and conclusion, while well-reasoned and well-supported, present no new evidence. What they demonstrate is that different individuals, reviewing the same evidence, may reach different conclusions. But the fact they looked at the same evidence the Board had considered in 1991 and reached different conclusions does not constitute new evidence.

Applicant also contends that the 1991 Board panel member Mr. Kaiser's minority opinion was "less than objective," deprived applicant of due process and may have unduly influenced the Secretary's final decision. That applicant discovered in 1999 that a Board member had very strong opinions in his case should not have surprised applicant. As the Board noted in its report, "The votes of the members of this Board are an accurate representation of the strongly held and conflicting views as to what really happened and the difficulty of even objective and reasoning people to agree almost 50 years later." (Emphasis added.) That the Board could not reach a majority decision and deadlocked at 2-2-1 demonstrates how different individuals can reach different conclusions in this case.

As a result of this deadlock, the Secretary personally reviewed the entire record, including each of the Board's recommendations, and concluded that applicant and Lanphier should share credit for the Yamamoto shoot down. In issuing his decision in 1993, the Secretary took the unusual step of detailing his rationale in a lengthy memorandum. Thus, there is no evidence that the Secretary gave undue weight to Mr. Kaiser's minority opinion, nor can we presume that the Secretary did anything except consider the entire record fairly and impartially.

In summary, applicant's "newly discovered" evidence does nothing more than add another example of Lanphier's claim to having shot Yamamoto's bomber's wing off before it crashed. But Lanphier claim to having shot the wing off is not in dispute and was well documented in the 1991 application. Accordingly, this 1984 letter does not constitute new evidence. What applicant has provided is exhaustive and compelling evidence of his heroic role in the Yamamoto shoot down, evidence that is part of official Air Force records and is now readily available over the Internet for interested individuals to review. From that evidence, interested individuals may reach their own conclusions and perhaps continue to disagree with each other as to the events of that day, just as the earlier Board members disagreed with each other.

But as far as the Air Force is concerned, the Secretary has decided the matter and the matter is closed. Applicant's request does not contain new evidence. Accordingly, we recommend the Executive Director return it to the applicant without referral to the Board.



HARLAN G. WILDER
Chief, General Law Division
Office of The Judge Advocate General