



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490



Docket No: 6232-20

Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 September 2021. The names and votes of the panel members will be furnished upon request. 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, relevant portions of your naval record, and applicable statutes, regulations, and policies, and the relevant Advisory Opinion.

You enlisted in the Navy and began a period of active duty on 25 February 2009. You stated that on 10 July 2012, you sustained a traumatic brain injury (TBI) from a blast from an enemy improvised explosive device which impacted the EOD's team JERRV that you were driving. You provide three witness statements in support of your contention of suffering a TBI on 10 July 2012. On 5 August 2020, Navy Personnel Command (NPC) notified you that it had reviewed your request for a Purple Heart. NPC found that based on the available documentation and Department of Navy Policies, you did not meet eligibility for the Purple Heart as you had not received a medical officer's disposition of "not fit for full duty" for 48 hours or greater within seven days of the concussive event.

In your application to the Board, you ask that your record be corrected to reflect your entitlement to a Purple Heart based on the TBI that you contend you sustained on 10 July 2012. You assert that you were denied a Purple Heart due to a technicality. Specifically, you assert that: (a) when

you sustained the TBI, you were in a remote area; (b) you remained with your team, and following the blast, your team had four days of rest. Your in-service medical records reflect that you were assessed on 18 July 2012; the record states that your chief complaint was a Military Acute Concussive Evaluation (MACE) exam. In your application, you claim that the enlisted medical personnel were incorrect in documenting your complaint. In support of your request, in part you provide medical records, witness statements and proof of a 30% disability rating for TBI from Veterans Affairs.

As part of the review process, the Navy Department Board of Decorations and Medals reviewed your request and issued an Advisory Opinion dated 17 August 2021. The Advisory Opinion reviewed that you allege that you receive the TBI on 10 July 2012. The Advisory Opinion noted that your in-service medical records indicate that you were not assessed or treated until 18 July 2012. The medical assessment from 18 July 2012 records that you reported being in two explosions. The assessment does not indicate that your injuries were of severity requiring treatment by a medical officer. The Advisory Opinion further noted that you were released to full duty on 19 July 2012. The Advisory Opinion applied the presumption of regularity, reviewed the available evidence and concluded that there is no evidence that you ever received injuries that qualify for entitlement to a Purple Heart. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

The Board carefully considered all factors to determine whether the interests of justice warrant relief in your case, including your claim that you were denied entitlement to the Purple Heart on the basis of a technicality and that your injury from 10 July 2012 merits your receipt of the award. Like the Advisory Opinion, the Board noted that Executive Order 11016 and ALNAV 079/11 of 9 December 2011 provide guidance on the issuance of the Purple Heart and state that the Purple Heart shall be issued to any service member wounded as a result of an enemy act for which the wound required treatment by a medical officer. Furthermore, the guidance provides that Sailors and Marines may be awarded the Purple Heart for certain TBIs that were caused by enemy action if the Sailor or Marine suffers a loss of consciousness, or is given the disposition of not fit for full duty by a medical officer for a period greater than 48 hours within seven days of the concussive event. The Board reviewed the information you provided, taking particular note of the 20 June 2014 statement from █. █ stated that he was the 68W (Healthcare Specialist) attached to █ conducting route clearance on 10 July 2012. █ said that he examined you following the IED explosion and noted that you showed physical signs of trauma to your head, right periorbital edema, and right Templar edema. He reported your initiate MACE results as 20/30, with a drop in score to 17/30 and then an increase in score to 25/30 about 24 hours after the incident. The Board also took into consideration the 18 July 2012 medical records, your disability rating from Veterans Affairs, and your personal statement in which you detail the 10 July 2012 explosion, your immediate symptoms following the explosion, and the ongoing health issues you currently experience. After careful consideration and review, the Board substantively concurred with the findings and recommendation of the Advisory Opinion, and like NPC, determined that even in consideration of the information you provided with your application, there is not enough evidence to establish that you were found “not fit for full duty” for 48 hours or greater within seven days of the

explosion 10 July 2012, and therefore do not meet the requirements for entitlement to a Purple Heart.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or 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,

10/31/2021

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Executive Director

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