



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

█  
Docket No: 2545-21  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER █  
USMC, XXX-XX-█

Ref: (a) 10 U.S.C. § 1552  
(b) SECNAV M-1650.1, Navy and Marine Corps Awards Manual, August 2019

Encl: (1) DD Form 149 w/attachments  
(2) DD Form 214  
(3) NAVMC 118(17), Sea and Air Travel – Embarkation Slips  
(4) NAVMC 118(9), Combat History – Expeditions – Awards Record  
(5) Petitioner’s Memo JCS:GJS:ofp 1330, subj: Hardship Discharge; request for, 29 January 1971  
(6) CMC Separation and Retirement Branch Msg, 23 February 1971  
(7) VA Form 21-4138, Statement in Support of Claim, 16 November 1982  
(8) MSDM Letter MSDM-2-geg 1650, 30 December 1982  
(9) Standard Form 513, Medical Record – Consultation Sheet, 23 July 1983  
(10) Department of Veterans Affairs Rating Decision, VA File Number █ 9 December 2014  
(11) Department of Veterans Affairs Rating Decision, VA File Number █ 26 March 2020  
(12) HQMC Letter 1650 MMMA-3A, 3 June 2020  
(13) CFAC Letter, 27 November 2000  
(14) CORB Memo 1650 NDBDM/077-21, subj: Advisory Opinion ICO [Petitioner], 18 August 2021

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his records be corrected to reflect receipt of the Purple Heart Medal for combat injuries he sustained in Vietnam.

2. The Board reviewed Petitioner's allegations of error or injustice on 4 October 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner’s naval record, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all of the facts of record pertaining to Petitioner’s allegations of error or injustice, finds as follows:

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a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and review Petitioner's application on its merits.

c. Petitioner enlisted in the Marine Corps (USMC) and began a period of active duty service on 1 May 1968. See enclosure (2).

d. Petitioner was deployed to Vietnam from 11 December 1968 to 14 July 1969. See enclosure (3).

e. Petitioner participated in several combat operations while deployed in Vietnam. He is currently entitled to wear the National Defense Service Medal, the Combat Action Ribbon, the Republic of Vietnam Campaign Medal (with device), the Vietnamese Cross of Gallantry (with palm device), and the Vietnam Service Medal (with three stars). See enclosure (4).

f. By memorandum dated 29 January 1971, Petitioner requested a hardship discharge from the Marine Corps in order to care for his mother, who he reported had been suffering from periodic blackout spells. See enclosure (5).

g. On 23 February 1971, Petitioner's request for a hardship discharge was disapproved because the facts presented did not meet the criteria for such a discharge. He was, however, alternatively granted a discharge for the convenience of the government. See enclosure (6).

h. On 16 March 1971, Petitioner was honorably discharged from the Marine Corps for the convenience of the government. See enclosure (2).

i. On 16 November 1982, Petitioner submitted a Statement in Support of Claim to the Department of Veterans Affairs (VA) in which he claimed to have been wounded by shrapnel when his convoy was attacked by mortars en route to an in-country rest and relaxation facility. He further stated that he went to the aid station to have the shrapnel removed. See enclosure (7).

j. By memorandum dated 30 December 1982, the USMC Awards and Decorations Branch (MSDM) responded to the Petitioner's request for award of the Navy Cross and the Purple Heart Medal, informing him that there was no evidence in his record of a recommendation for or corroboration of any act of heroism or service that would warrant either award. See enclosure (8).

k. During a physical exam conducted pursuant to his claim for VA compensation on or about 23 July 1983, the examining medical doctor noted evidence of shrapnel scars on Petitioner's hip and buttocks area, as well as the presence of a small metallic particle in the soft tissue near his groin area. See enclosure (9).

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l. On 9 December 2014, the VA awarded Petitioner a 60 percent service-connected disability rating for mechanical low back pain/strain with secondary degenerative disc disease associated with a residual shrapnel wound and a metallic foreign body.<sup>1</sup> See enclosure (10).

m. On 26 March 2020, the VA awarded Petitioner a 10 percent service-connected disability rating for a residual shrapnel wound evidenced by a metallic foreign body. See enclosure (11).

n. By letter dated 3 June 2020, the HQMC Military Awards Branch (MMMA-3) denied Petitioner's request for the Purple Heart Medal, informing him that the documentation in his records was insufficient to substantiate the claim that he received a qualifying wound. See enclosure (12).

o. Petitioner asserts that he should be awarded the Purple Heart Medal for injuries suffered during the incident described in his statement to the VA discussed in paragraph 3i above. He claims that he was "in the jungle when this injury occurred and was not able to ensure that his medical records were annotated with these injuries." See enclosure (1). Petitioner's description of the incident and his injuries are corroborated by a notarized statement signed by one of his fellow Marines. See enclosure (13).

p. By memorandum dated 18 August 2021, the President, Navy Department Board of Decorations and Medals, provided an advisory opinion (AO) for the Board's consideration which found that Petitioner was not entitled to the Purple Heart Medal. The AO noted that its originating office could find no evidence in Petitioner's official records or in any other official records to corroborate or substantiate Petitioner's claim. It also asserted that enclosure (13) did not establish that Petitioner sustained injuries of a severity that required treatment by a medical officer (which is a criterion for award of the Purple Heart), and that the VA medical records were generated decades after the injuries allegedly occurred and therefore cannot possibly establish either the antecedent cause of the injury or its severity at the time received.<sup>2</sup>

q. Per reference (b), the Purple Heart Medal may be awarded to "members of the Armed Forces of the United States who, while serving under competent authority in any capacity with an Armed Force of the United States were wounded, killed, or died of wounds received ... as the result of an act of any hostile foreign force." The wound must have resulted from enemy action, and it must have been "of such severity that it necessitated treatment, not merely examination, by a medical officer."

#### MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that relief is warranted in in the interests of justice.

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<sup>1</sup> The VA also awarded Petitioner a 100 percent service-connected disability rating for post-traumatic stress disorder and various other disability ratings for diabetes-related conditions which were presumed to be related to Petitioner's exposure to Agent Orange.

<sup>2</sup> Petitioner was provided a copy of this AO and the opportunity to respond to it, but no response was received within the 30 days allotted.

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Based upon its review of the evidence and consideration of reference (b), the Majority was convinced that the evidence of record supported the award of the Purple Heart Medal to the Petitioner. Petitioner's claimed shrapnel wounds are evidenced by the shrapnel scars noted in his VA medical records, and by the remaining presence of a small metallic particle in his soft tissue even today. Further, his description of the event which produced the injury clearly met the criteria for enemy action, and was corroborated in detailed by the statement in enclosure (13). Finally, although Petitioner was apparently not actually treated at the scene by a "medical officer," it seems apparent that his wounds were of such severity that they should have been so treated. Petitioner continues to suffer the effects of this injury today because the expedient medical treatment that he received at the time failed to remove all of the shrapnel that had entered his body. The Majority was convinced that this indicated that Petitioner's wounds were of such severity that they should have been treated by a medical officer. The Majority did not believe that Petitioner should be deprived proper recognition for a qualifying combat wound simply because adequate medical treatment was not provided, or properly recorded, at the time.

#### MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued the Purple Heart Medal, with a certificate reflecting the award.

That Petitioner be issued a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) indicating his entitlement to the Purple Heart Medal.

That Petitioner's naval record be updated accordingly to reflect his entitlement to wear the Purple Heart Medal.

That a copy of this record of proceedings be filed in Petitioner's naval record.

#### MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority simply did not believe that the evidence supported the Majority finding that Petitioner met the criteria for award of the Purple Heart Medal. The Minority did not doubt that Petitioner was wounded by enemy action, but found insufficient evidence to conclude that his wound was of such severity that it necessitated treatment by a medical officer. By his own statement, Petitioner's wounds were minor and only required treatment by a Corpsman on scene and then later at an aid station. There is no indication that he received or that his wound was of such severity to require treatment by a medical officer, or that the command submitted any documentation or request for award of the Purple Heart. The Minority also noted that Petitioner continued to serve for approximately two years after his injury, but there is no evidence that he or his command ever sought the award during this period. This omission made corroboration of his claims very difficult.

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MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.
5. The foregoing action of the Board is submitted for your review and action.

11/16/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

**MAJORITY Recommendation Approved (Grant Relief – Award Purple Heart Medal)**

MINORITY Recommendation Approved (Deny Relief)

12/8/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]