



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

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Docket No: 2847-21

Ref: Signature Date

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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 you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 12 November 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, to include the Kurta Memo, and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by the Navy Department Board of Decorations and Medals (NDBDM), which was previously furnished to you. You were provided an opportunity to submit an AO rebuttal, and you did do so.

You served in Afghanistan during Operation Enduring Freedom and claim you are entitled to the Purple Heart Medal (PH) for a mild traumatic brain injury (mTBI) you allegedly sustained in Afghanistan during a 5 August 2011 patrol. You claim that while dismounted to assist in repairing a vehicle, an enemy mortar round impacted nearby and the explosion threw you against a vehicle causing a loss of consciousness (LOC). The petition further asserts a medical officer, █ MC, USNR, examined you at the scene, assessed you as having an acute concussion, and restricted you from full duty for 96 hours. You also claim you sustained an mTBI in April 2011 when riding in the turret of an MRAP. You stated the vehicle in front of

you hit an IED and the blast rattled you and caused you to fall and hit your head and resulted in a LOC and being kept behind the wire for about 3-5 days.

Within the Department of the Navy, to qualify for the PH, the wound received has to be the direct or indirect result of enemy action, and such wound also required treatment by a medical officer at the time of injury. Both criteria must be met to be awarded the PH. The latter term is defined by statute and Department of Defense regulations as a physician of officer rank, i.e. a military medical doctor. MARADMIN 245/11 of 15 April 2011 published amplifying guidance for award of the PH involving mTBI incidents. The MARADMIN authorizes award of the PH only in those cases where the mTBI resulted from enemy action and was severe enough to cause either LOC or a disposition by a medical officer of "not fit for full duty" due to persistent signs, symptoms, or findings of functional impairment for a period greater than 48 hours from the time of the concussive incident. The greater than 48 hour disposition of "not fit for full duty" does not include assignment to administrative light duty by a medical provider or medical officer in the absence of persistent signs, symptoms, or findings of functional impairment for the sole reason of compliance with administrative screening protocols for concussive events.

On 16 November 2020, Headquarters United States Marine Corps (HQMC) denied your entitlement to a PH. HQMC noted that a review of all of your available records failed to reveal any documentation to substantiate your entitlement to the PH. HQMC determined that your injuries did not meet the severity threshold for the PH.

In a lengthy AO dated 27 August 2021, the NDBDM also opined, in part, that you were not entitled to the PH for the following reasons:

In preparing this advisory opinion, we painstakingly reviewed hundreds of pages of documentation looking for any evidence that the Petitioner had met the PH criteria. We could find no contemporary (circa 2011) evidence that corroborates the story, and no evidence that he met the PH criteria for mTBI published in reference (d). However, we did find evidence that tends to contradict his claim.

We found no evidence the Petitioner was ever reported as wounded in action or as a casualty at all. We found no entries in the Petitioner's medical record while he was deployed in 2011 substantiating any TBI, or the medical treatment thereof. On 20 Aug 2011, the Petitioner's company commander nominated a group of Marines, including the Petitioner, for the Combat Action Ribbon for their actions during the 5 Aug 2011 patrol...and it makes no mention of the Petitioner being injured in any way. Further, on 6 Oct 2011, only two months after the alleged injury, the Petitioner completed a post deployment health assessment form in which he answered "no" to the question, "During this deployment, did you experience any blast or explosion (IED, RPG, land mine, grenade, etc)." If the Petitioner had received a TBI during the 5 Aug 2011 patrol of the severity he now claims it was, it isn't clear why only two months later he denied having such an injury, but yet admitted to receiving head trauma due to an industrial accident unrelated to combat.

The Petitioner's various later statements recorded as patient history in his medical record create further uncertainty as to what really occurred...[the] 2013 story is considerably different from the one the Petitioner submitted to HQMC in 2020 when requesting the PH, and now in his current petition to BCNR. Other variations occur in other patient history entries...

We also noted significant contradictions between the statement from the medical officer, ██████████ included with the current BCNR petition and the statement from ██████████ submitted to HQMC in 2020...Both statements are dated 24 Dec 2019, but the wording is different. Of particular concern, ██████████ medical findings are different.

Regardless of the variations and contradictions in these later statements, the fact remains that there is no contemporary evidence upon which to base an award of the PH...Evaluation and treatment of TBI was at the forefront of medical concerns throughout the DoD and had matured considerably by 2011. No reasonable explanation has been provided as to why, if the Petitioner had indeed sustained a TBI during this combat engagement, the evaluation and treatment protocols were not followed, or at least not documented. His command should also have been well aware of the requirements for the PH.

We are required to presume the official records are accurate and complete, and that the commanders in the field exercised command responsibilities appropriately, unless presented with preponderant evidence to the contrary. The Petitioner has failed to present such evidence.

The later statements about this incident made seven or more years after the fact are not consistent, nor are they consistent with the Petitioner earlier accounts of what happened to him during the deployment. Some of the statements are not even signed, and none is notarized a fundamental evidentiary requirement...None of the statement[s] testifies to having actually witnessed the Petitioner sustain any period of loss of consciousness, which seems to be the primary basis of his claim. Taken together these statements should not be accepted as the factual basis for approving an award so prestigious as the PH.

The Board, in its review of the entire record and petition, considered your contentions and your materials submitted in rebuttal to the AO. However, the Board unanimously determined, even after reviewing the evidence in the light most favorable to you, that you do not meet the qualifying criteria to receive the PH. The Board concurred with the AO and concluded that there was no evidence in the record you were injured under conditions for which the PH can be authorized, namely, that you received an mTBI resulting from enemy action severe enough either to cause LOC, or result in a disposition by a medical officer of "not fit for full duty" due to persistent signs, symptoms, or findings of functional impairment for a period greater than 48 hours. Moreover, the Board found the conflicting statements from the Medical Officer very

problematic and was also troubled by the inconsistencies between the description of your injuries over time and your medical records. Additionally, the Board was also perplexed why you denied experiencing any blast or explosion events following your Afghanistan deployment on your 6 October 2011 Post-Deployment Health Assessment (PDHA), as well as note on the PDHA that the only LOC you experienced was from a non-combat related incident.

The BCNR sincerely appreciates, respects, and commends you for your honorable and faithful service in █ and your entire military career. 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,

12/1/2021

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Executive Director

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