



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: 4124-21
4788-11
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, sitting in executive session, considered your application on 19 January 2022. 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 the 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. The Board also considered an advisory opinion (AO) from the Navy Department Board of Decorations and Medals (NDBDM) dated 19 October 2020, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 27 April 1967. On 3 August 1968, you received non-judicial punishment (NJP) for failure to go to your appointed place of duty. On 17 July 1969, you were convicted by summary court-martial (SCM) of an unauthorized absence totaling 19 days and escaping lawful custody. On 15 October 1969, you were convicted by special court-martial (SPCM) of an unauthorized absence totaling 41 days. On 27 March 1970, you submitted a written request for separation for the good of the service in lieu of trial by court-martial for an unauthorized absence totaling 49 days. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be other than honorable (OTH). Your request

was granted, and on 17 April 1970, you were so separated. On 4 May 1972, after a review of your record the Navy Discharge Review Board (NDRB) upgraded your characterization of service to general (under honorable conditions).

In your current application, you request to be awarded the Purple Heart (PH) Medal. The Board considered your contention that you merit the PH Medal for a traumatic brain injury that you received in Vietnam.

As part of the Board's review, an AO was provided by NDBDM. The AO states in part, qualifying wounds must have been sustained in action with the enemy, or resulted from acts by the enemy, and must have been of a severity necessitating treatment by a medical officer. Medical officer is defined in statute and DoD regulations as a physician of officer rank; a basic corpsman is not a medical officer. No contemporary official records could be found that substantiate you were wounded in action, or sustained any injury in combat that necessitated treatment by a physician. Given the presumption of regularity in government affairs, we must presume that if you had sustained a PH Medal qualifying wound, it would have been documented accordingly in your records, and you would have been awarded the PH Medal. The fact that there is no such official evidence, and you never were awarded the PH Medal, must be presumed due to you never sustaining a PH Medal qualifying wound. You failed to present evidence to overcome this presumption. The AO concluded by opining that Based on a thorough review of evidence available and the pertinent regulations, you are not entitled to the PH Medal. There was no evidence of material error or injustice, and concluded the prior denials of the PH Medal by the Service headquarters between 2011 and 2014 were neither arbitrary nor capricious. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

2/3/2022

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Executive Director

Signed by: █