



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. 278-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 22 July 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, an advisory opinion (AO) provided by Navy Department Board of Decorations and Medals (NDBDM) dated 6 June 2022, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not do so. The Board also considered applicable statutes, regulations, and policies, to include Secretary of the Navy Manual 1650.1 and Department of Defense Manual 1348.33. The Board emphasizes that the below findings are not intended in any way to diminish the value of your service to the Nation.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in Marine Corps on 10 May 2010 and are currently serving on active duty. On 20 December 2011, while deployed in support of Operation ENDURING FREEDOM, the vehicle you commanded was immobilized by an intermittent explosive device (IED) which struck mid-axle on the passenger side directly underneath your seat. The vehicle driver, a direct witness, observed you leaned over unresponsive against the passenger side door. He testified that he grabbed onto you until he was able to communicate clearly with you and confirm that you were ok. His statement states that you responded that you felt dizzy and your head was hurting. You subsequently radioed your convoy commander to provide status. Hazardous air conditions rendered any airborne medical evacuation or support unavailable until the 4th day after the incident, at which time your platoon corpsman, serving under the remote supervision of the battalion medical officer (MO), assessed your injury using a

Military Acute Concussion Evaluation (MACE), and placed you on a mandatory sick-in-quarters (SIQ) for 48 hours due to positive symptoms of traumatic brain injury (TBI) including slurred speech and “foggy” memory of the event. Medical records note that you were not treated by the MO.

Your vehicle driver provided a witness statement of the incident in 2016 that was considered as part of an administrative action request (AAR) seeking review of your entitlement to the Purple Heart (PH) Medal. A favorable command endorsement on your request identified the unit corpsman as a “physician extender” operating under the purview of the MO. Your request, however, was denied due to lack of record that your injury required treatment from the MO within the first 7 days after it was incurred. Following this denial, you obtained a witness statement from your convoy commander confirming the extended delay in receipt of medical care following the IED blast. You submitted a second AAR, in which you included the statement from your convoy commander and your own statement, dated 12 April 2018, with a notary seal, and notarized by your battalion adjutant on a separate page. Therein, you state that you communicated to your convoy commander after the debris from the blast had settled and that you began having headaches and constant dizzy spells. Upon review of this additional information, on 28 August 2018, Commander, Marine Forces Central Command, again determined that you did not meet the criteria for the PH due to lack of disposition of your TBI or concussion within 7 days by a MO. The decision noted that your injury required evidence either of a loss of consciousness or a 48-hour restriction from full duty to qualify under award criteria.

In June of 2019, you obtained a supplemental statement from your unit corpsman outlining his MACE assessment of your TBI and his determination that your symptoms merited a 48-hour SIQ. You initiated an third AAR after receiving this statement; however, the 13 August 2020 command endorsement of your request which references you having suffered a loss of consciousness, indicates that you delayed submitting this third request. The AAR form, which you provided with your application to the Board, includes a legend of documents referencing an 11 April 2018 statement in which you assert that you were told by your vehicle driver that he had to shake you because you were unresponsive and had suffered a loss of consciousness for a short time before being able to communicate status to the convoy commander. This 11 April 2018 statement purports to be notarized by the same battalion adjutant under the same separate notary page but without a same-page notary seal. Headquarters Marine Corps (MMMA) disapproved further review of your AAR, on 10 March 2021, on the basis that you had not provided any new, relevant information to consider. Following that final denial and prior to applying to this Board, you obtained a letter from your treating neurologist confirming your diagnosis of TBI / post-concussive syndrome attributed to the 2011 IED blast exposure and outlining your symptoms. Additionally, he described that you had initially been symptomatic for over 48-hours.

The Board carefully weighed relevant the factors you presented to support your award request. Because you specifically seek a review of potential entitlement to the PH medal, the Board also considered the AO from the NDBDM. The AO outlined the criteria to qualify for the PH following a TBI as requiring (1) either a loss of consciousness or disposition by a medical officer that persistent symptoms rendered you unfit for full duty for a period over 48-hours; (2) that the MO determination must occur within 7 days of the incident; (3) that the MO must be an actual physician of officer rank or a physician extender, which is defined to include a physician assistant, nurse practitioner, or independent duty corpsman; and (4) that reconsideration of previously reviewed award nominations is precluded by regulation unless new, substantive, and relevant material is presented that was not originally available. With respect to the available evidence, the AO reiterated that your unit corpsman does not qualify as either a medical officer or physician extender under controlling

definitions. With respect to the subsequent letter you provided from your current physician, the AO noted that it does not meet the criteria of disposition within 7 days of the incident. With respect to the witness statement from your vehicle driver, which you later cite in your second statement as evidence of loss of consciousness, the nature and phrasing of his statement indicates only that he observed you leaning over the door and that you did not initially respond to him in the confusion and debris of the blast until he grabbed onto you, as a result, the AO advised that the driver's witness statement, upon which your own statement relies, does not itself establish a loss of consciousness.

Upon thorough review of all available evidence of record, the Board concurred with the AO that previous denials correctly applied existing policy and criteria and were neither arbitrary nor capricious. The Board found that the established criteria require an injury of sufficient severity to require disposition by a medical officer or, at a minimum, an independent duty corpsman acting as a physician extender. Unfortunately, the Board determined that your diagnosis and treatment from the unit corpsman, operating under the supervision of the battalion MO, did not meet the required threshold. The Board also determined your initial injuries were not of such severity as to require relocating you to receive care from your MO, to spur the MO to come to your unit for further evaluation, or even to result in coordination between your corpsman and MO to ensure that he or she made the requisite disposition of your injury. Additionally, the Board concurred with the AO regarding its assessment of your vehicle driver's witness statement as insufficient to establish a loss of consciousness simply because your own statement subsequently described his account in that light. Although the Board acknowledges the regrettable hurdle which resulted from the differing locations of your unit and your battalion's MO, the Board determined that a grant of relief based simply on your difficulty in procuring the requisite MO disposition within the requisite time would be inconsistent with the standards applied to all other Marines and service members for the PH medal. 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,

7/29/2022

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Deputy Director

Signed by: 