



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: 1138-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your late father's 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 13 April 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 and relevant portions of your naval record. The Board also considered a transmittal of entitlement to awards (NAVPERS 1650/65) and a letter from the Marine Corps Award Branch (MMMA-3). In addition, the Board considered all applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The letter from MMMA-3 dated 25 August 2021, reviewed your request regarding your father's entitlement to the Silver Star. The letter stated, in part, that the Navy and Marine Corps award regulations stipulate that once an award recommendation has been considered and approved by the awarding authority, the decision becomes final. A request to change the level of a previously approved award is warranted only when the officer who originated the recommendation or another officer who has personal, first hand, knowledge of your father's actions, submits new, substantive, and materially relevant evidence that was not presented or was not available when the original award was considered. New information that merely adds details to what was previously provided in the original award recommendation or justification solely due to a belief that the recipient should have been originally approved for a higher level award does not meet the "new and relevant" requirement. Dissatisfaction with the level of an approved award is not a basis for reconsideration.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for your father to be awarded the Silver Star and contention that the citations for your father and your father's squad member are exactly the same, the squad member received the Silver Star and your father received the Bronze Star, and the Marine Corps told you that the fact that the other squad member was killed had no bearing on his award.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your lack of evidence to support your father's entitlement to the Silver Star outweighed these mitigating factors. In making this finding, the Board considered the fact that no new evidence exists to support your claim that an error or injustice exists with your father's award. 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,

4/25/2022

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Executive Director

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