



identified symptoms of headache, nausea, tinnitus, and light sensitivity with no loss of consciousness and diagnosed a Grade 2 concussion. Then, on 4 July 2010, while serving in the lead vehicle with a mine roller, your vehicle hit an IED. This third IED blast did not cause loss of consciousness but your symptoms of headache, nausea, tinnitus, and light sensitivity continued. Following your third diagnosed concussion, you were returned to Patrol Base [REDACTED] and held in a restricted duty status for 2 weeks.

On 29 January 2015, your former Battalion Surgeon (i.e., medical officer) (MO) provided a letter stating that you met the newly published criteria for award of the Purple Heart Medal (PHM) resulting from concussive TBI under MarAdmin 245/11 with respect to the severity of the injury, requirement of treatment by an independent duty corpsman (IDC) in his absence as the medical officer, and a medically restricted duty status of greater than 48-hours. Your in-service medical records printed on 29 April 2015 indicate diagnoses of: memory lapse and sleep disturbance on 10 July 2014; TBI and late effect of intracranial injury on 23 July 2014; disturbance of gait on 19 August 2014; insomnia and anxiety on 4 September 2014; and, headache syndromes on 29 April 2015. On 3 June 2015, the HM2 who served as your immediate unit corpsman provided a witness statement of having observed the origin and initial severity of your concussive injuries. A second witness statement was made, on 17 October 2015, by a former Corporal who served in your unit and observed the initial IED blast which resulted in your shrapnel injuries. He observed you laying down on the ground, facing the sky, appearing very confused and unable to understand him. He described that, later after returning to your base, you remained dazed and appeared ready to pass out. He further related that you served together in the lead vehicle during this period and encountered a total of nine IEDs prior to the corpsman informing leadership you could no longer continue in the lead vehicle due to having experienced too many concussions.

In support of your request for consideration of eligibility for award of the PHM under reclama, you obtained statements from your former chain of command. Your company commander provided a favorable endorsement, on 18 December 2015, outlining your experience of the three IED blasts and favorably endorsing your request on the basis that they had not originally submitted you for consideration but would have under the revised criteria published in 2011. Likewise, your battalion commander favorably endorsed you request, on 29 December 2015, asserting that you either did not meet the criteria prior to the 2011 revision or were initially not submitted due to administrative oversight, but that he believed you met the requirements of the revised criteria. You forwarded your request for consideration to Headquarters Marine Corps (Military Awards Branch) (MMMA) which reviewed your request on 17 May 2016 and disapproved your eligibility on the basis that the available records did not contain evidence that a medical officer made a disposition that you were not fit for full duty for a period greater than 48 hours within 7 days of your first concussive injury.

Noting that Department of Defense guidance precludes reconsideration of previously reviewed nominations for the PHM unless new, substantive, and relevant material evidence is presented, the Board carefully weighed all of the evidence you presented in support of your award request, to include the documents previously considered by MMMA. The Board also considered the AO provided by NDBDM, which reiterated the requirement of a diagnosis by a medical officer with a determination that your injury meets the severity threshold of requiring restriction from full duty with 7 days of the concussive event. The AO did not consider the "claims" of the Battalion Medical Officer, alone, sufficient to substantiate your injuries absent some medical evidence of treatment by the IDC, independent of the initial diagnosis of the HM2, especially given that no

personnel casualty report (PCR) was submitted by your command even after you were placed into a restricted duty status. As a result, the AO found insufficient evidence to substantiate that you met the criteria of the severity threshold for award of the PHM.

While the Board concurred with the AO that you did not provide immediate treatment records from your injuries, the Board acknowledged that a number of factors might have interfered with the documentation of those medical records. However, to this extent, the Board noted that either the HM2, IDC, or MO could provide a statement to enlighten the Board as to the reason for the lack of such medical documentation. Likewise, the Board concurred with the AO regarding the problematic absence of a PCR. While the Board observed that your then-Battalion Commanding Officer referenced the potential for administrative oversight regarding your submission for the PHM, he did not specify that this administrative oversight might have also extended to not submitting a PCR for injuries which were severe enough to place you into a restricted duty status for 7 days. The Board questioned the absence of a PCR and believed that an explanation for this absence might have enlightened its consideration of your eligibility. The Board would have preferred to review a statement from a responsible member of your former chain of command speaking to this lack of evidence.

With respect to the AO's issue regarding the MO's statement, the Board did not concur with the view of the official statement of an active duty medical profession as amounting to a "claim" of your eligibility. Rather, the Board considered the guidance that "sometimes a wound that would normally require treatment by a MO must be treated by a physician extender because evacuation to a facility with a MO is not tactically feasible ... but there must be a substantiating written statement from a MO." In light of this guidance, the Board found that the letter from your MO constituted a substantiating written statement, consistent with applicable guidance, confirming that your diagnosis was made by the IDC physician extender at the PB. Alternatively, however, the Board noted that this written statement does not adequately address the distinction between treatment and observation. The Board observed that, under applicable guidance, the severity threshold requirement of restriction from full duty for a 48-hour period does not include a period of administrative light duty solely for a mandatory period of observation required by medical protocols, regardless of the observation of signs, symptoms, or findings of impaired brain function. The Board concluded that favorable consideration of the MO's written statement would require clarification of the precise reason you were placed into a restriction duty status – specifically, was it merely for a policy-directed mandatory period of observation or because the severity of your *final* TBI necessitated medical treatment which would normally be performed by a medical officer.

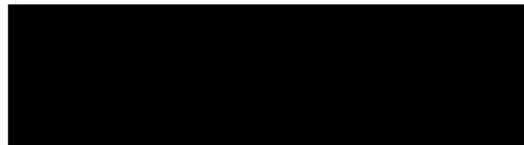
Regarding the three concussive events you experienced from May to July of 2010, the Board noted that the AO limited its consideration of your claim to the first injury which, given the time lapse from May through July, de facto fails to meet the criteria that your injury would have required disposition by a medical officer within 7 days of the injury. However, although the Board found your third concussive injury significant, given that you had already suffered two recent concussions and MarAdmin guidance elaborates that a single minor TBI without LOC could result in findings of impaired brain function lasting significantly longer than those resulting from LOC, the Board lacked the necessary factual information to identify how much time elapsed following your third TBI on 4 July 2010 and your medically assigned restricted duty status. Absent this information, the Board concluded that it lacked sufficient evidence of

the severity of your injury to determine your eligibility to the PHM. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

To the extent that your service record does not reflect entitlement to award of the PHM, due to the highly specific criteria that apply to ensure fairness, the Board would like to emphasize that its analysis and findings are not intended in any way to diminish the value of your honorable and faithful service to our nation. The Board sincerely appreciates the sacrifice you made in volunteering to serve during a prolonged period of combat operations. Moreover, the Board recognizes the true import of that sacrifice in your efforts to successfully balance ongoing medical care for the long-term impacts of your multiple TBIs against the unquestionable demands of your active duty service while continuing to serve honorably.

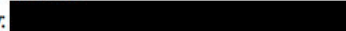
You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption 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,

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Executive Director

Signed by:

A black rectangular redaction box covering the name of the Executive Director.