



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: 4707-22

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.

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 14 November 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 service record, and applicable statutes, regulations, and policies, and an advisory opinion (AO) provided by the Navy Department Board of Decorations and Medals (NDBDM), dated 16 September 2022.

You enlisted in the Marine Corps and began a period of active duty on 18 November 1965 . On 17 November 1970, you were honorably discharged at the end of your period of enlistment. On or about 24 June 1968, you fractures toes on your right foot while moving to your bunker during a mortar attack in Vietnam. On 22 November 2001, Headquarters United States Marine Corps (HQUSMC), Military Awards Branch (MMMA-3) reviewed your service record and determined that you are not entitled to the Purple Heart for the injury you sustained on 24 June 1968 while serving in Vietnam.

As part of the Board's review, it considered the aforementioned AO. The AO stated in pertinent part:

The presumption of regularity in government affairs requires we presume that, had the Petitioner suffered injuries meeting the established PH criteria, the circumstances of the injuries and their treatment would have been documented in his records, and his command would have taken the steps necessary to award him

the PH, just as they had in awarding his first PH in 1967. We cannot presume the Petitioner's command neglected to follow proper procedures, or the medical personnel neglected to follow established protocols and treatment regimens. Rather, we are required to presume the reason no casualty report was submitted and further treatment was not given is that the Petitioner's injury was not assessed as severe enough to warrant such further action. If so, it also makes sense why the PH was not recommended or approved at that time. Without official evidence that the Petitioner sustained wounds meeting established PH circumstantial and severity thresholds, we must presume that the Petitioner did not receive wounds qualifying of the PH. The Petitioner failed to present sufficient evidence to overcome that presumption.

The AO concluded, "the Petitioner is not entitled to the PH, and therefore recommend the BCNR deny relief in this case. We found no evidence of material error or injustice. Were BCNR to grant relief in this case, such action would be inconsistent with the criteria and standards applied to all other Marines."

The Board carefully weighed all of the factors and evidence you presented to support your request to be awarded the Purple Heart for the injury you sustained on 24 June 1968. The Board noted your honorable and faithful service in the Marine Corps, unfortunately, upon review of the evidence provided the Board concurred with the NDBDM AO. Specifically, the Board noted that the circumstances under which you sustained an injury, on 24 June 1968, do not qualify for a Purple Heart under the governing regulations. 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,

11/30/2022

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Executive Director
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