



**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. 8274-22  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 June 2023. 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. As part of the Board's review, it considered an advisory opinion (AO) from the Navy Department Board of Decorations and Medals. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 the U.S. Marine Corps (USMC) and began a period of active duty on 15 August 1968. During your service, you participated in combat operations in the Republic of Vietnam. On 3 June 1970, you were discharged after completing an Honorable period of military service.

Per Headquarters Marine Corps Manpower Management Division, Military Awards Branch (HQMC MMMA-3A) correspondence dated 31 March 2021, you requested an inquiry

concerning your eligibility for the Purple Heart Medal (PH) for wounds for your service in the USMC. In your statement to HQMC MMMA-3A, you asserted that you suffered a leg injury after jumping into a bunker and landing on a metal stake. You claimed that a corpsman treated your injury and returned you to duty. HQMC MMMA-3A concluded you were not eligible for the PH since you were treated by a Corpsman and not a Medical Officer. On 15 September 2022, HQMC MMMA-3A again determined you were not eligible for the PH based on the evidence.

The Board, in its review of the entire record and petition carefully considered your contentions as specifically outlined in your petition. However, the Board unanimously determined, even after reviewing the evidence in the light most favorable to you, that at this time you do not merit consideration for the PH. In making its finding, the Board considered the AO. The AO stated in pertinent part:

It's a common misperception in the military and the general public that any injury sustained in a combat zone qualifies for the PH. Since inception of the PH for the Navy and Marine Corps in 1942, it has always been reserved for acute wounds sustained at the hands of the enemy. The Executive Order requires unambiguous linkage between the qualifying injury and enemy action. Further, the wound must have necessitated/required treatment by a medical officer. Minor injuries that could be adequately treated by self-aid, buddy aid, or by a corpsman or medic have never qualified for the PH.

The Petitioner states that his injury occurred when he left his sleeping quarters and sought cover from incoming enemy rounds. Longstanding interpretation within the Marine Corps is that injuries sustained in those circumstances do not qualify for the PH. Encl (1) is PH guidance published for Marines serving in Iraq and Afghanistan. Although it was issued in 2007, it was not new policy, but rather reflects longstanding application of the PH criteria to specific types of injuries. The second page lists among those injuries that do not qualify, "Accidents on the battlefield, e.g., running for cover and breaking a leg."

The Petitioner's records contain only two mentions of a knee injury: he received follow-up wound care for a left knee injury at a Battalion Aid Station on 8 Sep 1969 and again on 17 Sep 1969, and was able to return to duty thereafter. The exact date of the Petitioner's injury is not recorded, nor are the cause and circumstances of the injury. Since his injury was in fact treated adequately by a corpsman, his medical record itself is prima facie evidence his injury did not necessitate treatment by a medical officer, and therefore did not qualify for the PH.

The disability rating by DVA in 2017 is not relevant. The PH and disability compensation by DoD and/or DVA are unrelated. DVA states that a PH in itself does not qualify a veteran for compensation, and vice versa.

The Petitioner's medical and service records appear to have been meticulously maintained. The presumption of regularity of government affairs attaches to those

records. By 1969 policies, procedures, and practices of awarding the PH in Vietnam were mature. Since the Petitioner's unit at the time was well aware of the nature and extent of his injuries, and yet did not award him or nominate him for the PH, we must presume the reason was that they judged he did not meet the PH criteria. The Petitioner did not present evidence sufficient to overcome the presumption.

The Board concurred with the AO that your record does not support the granting of the PH based on the circumstances involved with your leg injury. Further, while the Board carefully considered the evidence you submitted, the Board also agreed with the AO that you did not present sufficient evidence to overcome the presumption of regularity.

The BCNR sincerely appreciates, respects, and commends you for your Honorable and faithful service during your Marine Corps career. Unfortunately, it is regretted that the circumstances of your case are such that favorable action cannot be taken at this time.

You are entitled to have the Board reconsider its decision upon the 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,

6/14/2023

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Executive Director

Signed by: █