



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 0949-23

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552

Encl: (1) DD Form 149 with enclosures
(2) Case summary
(3) NDBDM Advisory opinion of 9 May 2023

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that he be awarded two Purple Heart (PH) Medals as a result of chemical agent exposure.

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 5 June 2023, and, pursuant to its regulations, determined the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the Petitioner's application together with all material submitted in support thereof including enclosure (3), an advisory opinion (AO) from the Navy Department Board of Decorations and Medals. Although Petitioner was provided an opportunity to respond to the AO, he chose not to do so.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 13 September 1993. He was honorably discharged on 30 September 2013. While on active duty, Petitioner served aboard █ from Jul 1994 to May 1996. From 7 April to 14 October 2002, Petitioner deployed to █ with Naval Mobile Construction Battalion █ and supported Typhoon Chata'an relief operations during July 2002. Petitioner deployed to █ on two separate occasions from 2005-2006 and 2009-2010.

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[REDACTED]

d. Petitioner asserts his record is missing awards and citations awarded while deployed to the Fifth Fleet Area of Operations in support of Operation Southern Watch, for participating in Typhoon Chata'an relief operations in [REDACTED] and two PH medals as a result of chemical agent exposure during two separate deployments to [REDACTED]

e. As part of the Board's review, Navy Department Board of Decorations and Medals (NDBDM) reviewed Petitioner's request and provided the Board with an advisory opinion (AO). The AO states in pertinent part:

Official records indicate the Petitioner and his unit were deployed to [REDACTED] from 7 Apr 2002 to 14 Oct 2002. Encl (1) substantiates that U.S. Naval Forces Marianas (NAVMARIANAS) was awarded the Meritorious Unit Commendation (MUC) for the period 1 Jul 2002 to 30 Jan 2003, and award mentions Typhoons Chata'an, Halong, and Pongsona. The same enclosure documents the Petitioner's unit at the time, NMCB-40, was a participating command in this MUC. So it is a fact that the Petitioner and his unit received the MUC—one of the Navy's only three unit decorations—for supporting the Typhoon Chata'an relief operations.

Navy commands were required to submit recommendations for the HSM within two years of the operation. We found no evidence that any such recommendation was ever made for NAVMARIANAS or the Petitioner's battalion for Typhoon Chata'an relief operations. The presumption of regularity in government affairs attaches to the Navy's unit award records. We are therefore required to presume the absence of any evidence that NAVMARIANAS and the Petitioner's unit were authorized the HSM for Typhoon [REDACTED] is due to their never having been recommended for that award. And further, that the reason they were not recommended was they did not meet the criteria. We may not presume the absence is due to material error, and the unit's nomination for the HSM for a subsequent operation the same year indicates the chain of command was aware of the policies and procedures and followed them. The Petitioner bears the burden of proof for overcoming the presumption, and he failed to submit sufficient evidence to do so. Therefore, we conclude the omission of his unit from the list of those authorized the HSM for Typhoon Chata'an is not due to material error.

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

f. Petitioner submitted multiple documents for consideration to include a copy of his DD Form 214, documents from his official military personnel file (OMPF), VA documents, images, an open burn permit registry, his personal diary entries, research articles and Defense Health Agency correspondence.

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[REDACTED]

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief. Specifically, the Board concurred with the AO that Petitioner is entitled to the MUC for his units' participation in Typhoon Chata'an relief operations.

Notwithstanding the recommended corrective action below, the Board determined Petitioner was not entitled to any additional awards. The Board again concurred with the AO in determining Petitioner is not entitled to the HSM. Further, the Board also determined Petitioner's record currently reflects all of his entitled awards for the deployment in support of Operation Southern Watch. Finally, the Board concluded that Petitioner's evidence did not meet the burden of proof for awarding of two PH medals. In making this finding, the Board carefully considered the evidence submitted including his assertion that his illnesses were caused by chemical exposure during his deployments. Ultimately, the Board found this evidence insufficient to support granting his request for two PH medals.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge From Active Duty (DD Form 215) indicating he was awarded the Meritorious Unit Commendation for participating in Typhoon Chata'an relief operations in [REDACTED]

No further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

6/12/2023

