



to reflect that you were returned to full duty without any noted medical limitations, notwithstanding your injury. The Personnel Casualty Report (PCR) submitted by your command, and officially documenting your injury, identified that it was due to hostile activity by enemy forces, that you were treated by competent medical authority at the BN Aid Station, that you were not seriously ill or injured, and that your prognosis was stable. Whereas the medical officer's (MO's) diagnosis did not address LOC, line 39 of the PCR, "Circumstances," specifies that you "sustained a level II concussion without the [LOC]." Your combat fitness report of 10 April 2006 documented that your patrols were hit by IEDs on several occasions; however, the 8 March 2006 appears to be the only incident for which you have submitted documentation of a traumatic brain injury (TBI).

You were transferred back to the Selected Marine Corps Reserve on 31 May 2006 and, subsequently, to the retired reserve on 29 February 2008. After the publication of MarAdmin 245/11, which outlined revised criteria for the award of the Purple Heart Medal (PHM) due to mild TBI, the Honorable Senator ██████████ submitted a request on your behalf for consideration for award of the PHM. MMMA's response of 24 January 2012 indicates that this request was received in November 2011. On 27 March 2013, your former BN Commanding Officer provided a favorable command endorsement of your request for award of the PHM. His letter confirmed the accuracy of the PCR regarding your experience of a level II concussion without loss of consciousness; he noted that your injury had not met the criteria under previous guidance but he believed it did meet criteria under the revised guidance. However, on 22 July 2013, MMMA disapproved your request for award of the PHM on the basis that it did not meet the severity criteria for qualifying injuries, even under the revised guidance.

The Board carefully weighed all potentially relevant, available evidence in assessing your request for award of the PHM, noting your submission of recent medical disability claims letters from the Department of Veterans Affairs (VA). Because your potentially qualifying injury falls under the revised criteria for minor TBI but occurred prior to those revisions, the Board also considered the AO, which noted that, although you suffered a grade 2 concussion, that the available evidence does not establish that the severity of your injury resulted either in a loss of consciousness or in disposition by an MO that you were not fit for full duty for a period greater than 48 hours. In this regard, the Board concurred with the AO, observing that you have submitted evidence of your initial treatment which recommended that you return to the clinic that same night, but no additional evidence of a follow up or disposition other than that you were fit to return to, presumptively full, duty.

The AO further advised that, although you have submitted subsequent evidence of your diagnosis of TBI by the VA, that medical evidence does not constitute new, substantive, and relevant material for consideration of your request. Again, the Board concurred with the AO, specifically on the basis that the relevant medical evidence upon which the Board must rely, as a matter of regulatory guidance, is the determination of the severity of your injury at the time of such injury (or within no more than 7 days thereafter) by a MO who, upon assessment of your injury, determined it to be of such severity as to render you not fit for full duty for a period of greater than 48, assuming that you had not experienced documented LOC. The Board found the available evidence definitive on both points with respect to your not having experienced LOC, per the PCR, and being returned to duty rather than placed into a limited duty status.

After applying the highly specific criteria which delimit award of the PHM due to minor TBI, the Board found that the injury any service member suffers must meet the severity threshold at the time it is incurred and as determined by the MO at that time. Unfortunately, the Board concluded that the available evidence of the severity of your injury and its disposition does not meet this criteria. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board recognizes your Honorable and faithful service in the Marine Corps during a period of extended conflict and sincerely appreciates the sacrifice you made volunteering for the perilous duties of combat during the War on Terror. The Board emphasizes that its analysis and findings, in applying existing regulations and guidance, are not intended in any way to diminish the value of your service to the Nation.

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 is attached 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,

6/13/2023

