



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

█  
Docket No. 1375-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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.

A three-member panel of the Board, sitting in executive session, considered your application on 28 April 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, to include the material previously considered upon your first application to the Board, which was considered in Docket No. 278-22, and the guidance in Secretary of the Navy Manual 1650.1 and Department of Defense Manual 1348.33.

The relevant facts documented in your service record were previously addressed in the Docket No. 278-22 decision letter. They relate to your injury due to an improvised explosive device (IED) on 20 December 2011, while deployed in support of █. Your previously applied to this Board requesting the Purple Heart Medal (PHM) but were denied due to not meeting the criteria required for award of in cases of traumatic brain injury (TBI) due to exposure to IEDs or similar percussive blasts. Specifically, the Board determined insufficient evidence existed to support a finding that your injury either involved a verifiable loss of consciousness or, within 7 days of the incident, required a medical officer (MO) or physician extender (PE), to make determination that your persistent symptoms rendered you unfit for full duty for a period of over 48-hours.

The Board noted that your earlier applications through Marine Corps channels were primarily denied due to your treating corpsman not qualifying as a PE within the meaning of regulations. In your first application to the Board, you previously presented evidence of a personal statement with an attached second-page notary seal from your unit adjutant, dated 11 April 2018, in which you documented your purported LOC as evidence that your injury met the criteria for the award

of the PHM due to TBI. However, the Board noted that you did not raise this purported LOC in a substantially similar personal statement dated 12 April 2018.

In your current request for reconsideration, you submitted supplemental evidence in the form of a notarized letter from an individual who identified himself as the Battalion Surgeon, ██████████ ██████████ at the time you were assigned to ██████████ ██████████

Consistent with evidence you have previously submitted regarding the incident, this letter describes factual details of the situation in which your unit was unable to receive medical evacuation for 3 days after the IED. It further specifies that you were placed on a 48-hour Sick in Quarters due to not being fit for duty, which he states was his decision on disposition of your injury, after the onsite corpsman reported the results of your examination to him. He explained that this coordination occurred remotely on his part due to his role as the sole physician requiring that he be centrally located within the theater of operations. He further explained that he did not have access to the electronic medical records (EMR) system at the time of your IED exposure and subsequently had to enter over 500 potentially concussive events once EMR capability was obtained, some of which did not properly upload and/or transfer to state-side records. He states that the failure to maintain the medical documentation which would have verified your injury was his fault and that you should not be penalized for it.

The Board carefully weighed all potentially substantiating factors in favor of your request for award of the PHM. While the Board observed that it is possible the Medical Officer (MO) statement could substantiate a qualifying injury within the criteria specified by regulatory guidance, the Board noted that the statement you provided does not include the date of your injury or any evidence which would substantiate that the named individual in the letter was actively serving in the position which the letter claims. Although the Board acknowledges that this letter was submitted by an individual who would have been required to prove his identity in order to have the statement notarized, there is no external evidence which substantiates that the individual who provided this letter, regardless of his actual identity, is the individual who served as the MO at the time of your IED exposure. The Board, referring back to your previous contentions and the purported evidence you submitted in support thereof, found that the conflicting personal statements from 11 April 2018 and 12 April 2018, which both appear to have the same notary seal from the same unit adjutant, gives sufficient cause to question the veracity of the letter you have now submitted as evidence of the purported MO disposition. Lacking verifiable proof of that this letter was, in fact, submitted by the MO who was serving in support of your unit at the time of your injury, the Board concluded that the available evidence is insufficient to substantiate that your injury met the precise criteria required for the award of the PHM for your TBI. Accordingly, although the Board sympathizes that you continue to receive medical care for your TBI even years after your combat exposure, the Board determined that insufficient evidence still exists to approve your request. 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 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,

5/8/2023

[REDACTED]