



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

█
Docket No. 3893-23

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 6 November 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 this 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, to include the Navy and Marine Corps Awards Manual and MARADMIN 245/11, Purple Heart Medal Revised Criteria for Mild Traumatic Brain Injury and Updated Coordinating Instructions. The Board also considered an advisory opinion (AO) from Commandant of the Marine Corps, Military Awards Branch (MMMA-2). Although you were offered the opportunity to reply to the AO, you chose not to do so.

From May 2009 through November 2009, you were deployed to █ in support of Operation Enduring Freedom (OEF), assigned to █, as an Ordinance Vehicle Maintenance Chief. On 20 July 2009, you suffered injuries after your mine resistant ambush protected vehicle (MRAP) was targeted by an Improvised Explosive Device (IED) in █.

In your petition, you request award of the Purple Heart medal for the injuries that you sustained during the explosion; specifically, the mild traumatic brain injury (mTBI)/concussion and related symptoms. You explain that you don't remember the explosion due to loss of consciousness and

awaking to feeling really dizzy, ringing in your ears and your back hurting. Only one Corpsman was assigned to the convoy and no other medical personnel available to assist with other injured Marines, so you returned to the vehicle to assist other Marines to the casualty collection point. You assert that after several hours, injured Marines including yourself were medically evacuated to █ to be evaluated and remained onsite for a few days for treatment related to concussion symptoms.

In support of your request, you provided photographic evidence of the blast which was estimated by EOD at over 500 lbs. of HME, two notarized witness statements verifying the incident, and a statement from your Company First Sergeant explaining the lack of medical documentation. You assert that there were limited Corpsman and the company was spread out between multiple units and areas, which is why medical documentation could have been easily lost or never updated. You explain that this why the PCR dated 20 July 2009 and follow-on PCR dated 27 July 2009 state the same exact information, and why no additional information or diagnoses were provided. Finally, you content Headquarters, United States Marine Corps' conclusion that there was no chain of command endorsement letters is erroneous, highlighting that the chain of command has endorsed the package, evidence of which was included in the original submission and again submitted in the current request.

As part of the Board review process, the Military Awards Branch (MMMA-3B), reviewed your contentions and the available records and issued an advisory opinion (AO) dated 21 July 2023. The AO stated in pertinent part:

A review of [Petitioner's] official military records revealed that Marine Corps Forces Central Command disapproved awarding the Purple Heart for wounds received on 20 July 2009, as there were no medical documents to support his claim for loss of consciousness, nor was there documentation to support he was placed on light duty for a period of 48 hours or greater due to his injury.

On 15 March 2023, this Headquarters responded directly to [Petitioner's] request for reconsideration of the Purple Heart for wounds received on 20 July 2009. This Headquarters advised [Petitioner] that in order to receive reconsideration of the Purple Heart, new substantive, and relevant material evidence must be provided that was not available when the original decision was made. There was no substantial documentation submitted to this Headquarters to justify a reconsideration package for the Purple Heart.

Furthermore, this Headquarters provided detail to [Petitioner] that the chain of command endorsements he provided did not provide a detailed description of the circumstances under which the injury occurred or what billet the endorsing officers served in at the time of injury.

The medical documentation provided did not state that [Petitioner] suffered a concussion or mild traumatic brain injury (mTBI) that resulted in the loss of

consciousness or being placed on light duty for a period of 48 hours or greater to be examined by a medical officer.

The AO concluded, “[t]his Headquarters does not recommend awarding of the Purple Heart to [Petitioner] without evidence provided in the form of a medical officer's disposition, at the time of the incident of "not fit for full duty" for a period of 48 hours or more for further examination of injury and detailed chain of command endorsements of knowledge of the circumstances that took place when the injury occurred and what took place after.

After careful review and consideration of all of the evidence of record, the Board determined that relief is not warranted. In making this determination, the Board concurred with the advisory opinion that there was insufficient evidence that you met the requirements of the governing regulation. The Board considered your contentions and supporting information regarding the lack of medical evidence documenting loss of consciousness and/or unfitness for duty. While the Board felt that there was evidence of a mTBI/concussion, such evidence did not sufficiently detail that the related symptoms rose to the level required per the applicable guidance. The Board recognized that the aftermath of such a traumatic event could lead to a lack of detailed medical documentation. However, due to the lack of specificity in the evidence and lack of information contained within the service medical record, the Board deferred to the judgment of the original approval authorities and denied relief. The Board noted that additional specificity in the witness statements and from your chain of command regarding your loss of consciousness and timeframe in which you were removed from duty may help the Board review the case in your favor. Historically, mTBI/concussions that do not either cause loss of consciousness (LOC) or disposition by a medical officer of “not fit for full duty” for a period of greater than 48 hours from the time of the concussive incident due to persistent signs, symptoms, or findings of functional impairment, are not granted the Purple Heart. Additional evidence containing details that overcome this guidance would be considered by the Board. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board thanks you for your Honorable and selfless service to your country.

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,

11/7/2023

