



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

██████████
Docket No. 6320-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 8 March 2024. 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 naval record, and applicable statutes, regulations, and policies. Additionally, the Board also considered an advisory opinion (AO) furnished by President, Navy Department Board of Decorations and Medals (NDBDM), as well as your AO rebuttal response.

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 and commenced active duty on 28 October 1965. On 2 November 1966, you arrived and disembarked at ██████████. On or about 9 March 1967, you were injured as a result of the accidental discharge of an unexploded piece of ordnance that had been removed from the battlefield for disposal. You contended, in part, that the piece of ordnance was an improvised explosive device constructed by the ██████████ from an American-made munition, more specifically, a light antitank assault weapon. On 12 December 1969, you were honorably discharged and transferred to the Marine Corps Reserve.

On 25 September 2002, Headquarters United States Marine Corps (HQMC) denied your entitlement to a Purple Heart Medal (PH). HQMC noted the following:

Regrettably, the review of your service and medical records, and the records at this Headquarters reveals that the injury you received on March 9, 1967 when you received a superficial shrapnel wound to your right thigh from an accidental discharge while disarming a fuse, is considered non-hostile and would not qualify for the award of the Purple Heart. A copy of the Commanding General, ██████████ ██████████ ██████████ message showing non-hostile is forwarded as the enclosure...The Purple Heart Medal is not awarded for death or injury resulting from accidental discharge of weapons, malfunctioning of weapons' systems, vehicle accidents, or other action not directly or indirectly initiated by enemy forces and when not actively engaged in combat action. (emphasis added).

On 30 October 2017, HQMC denied your entitlement to a PH. HQMC noted, in part, the following:

A review of ██████████ records revealed a Report of Casualties message 241-57 dated March 7, 1967 which indicates that ██████████ received superficial fragment wound to his right thigh as a result of an accidental discharge from a light anti-tank weapon while disarming a fuse. This Report of Casualties message also indicates that the injury he received was deemed as non-hostile. Therefore, since his injury was deemed as non-hostile he is not eligible for the Purple Heart Medal. (emphasis added)

On 13 July 2018, HQMC again denied your entitlement to a PH. HQMC noted, in part, the following:

As described in our 2002 and 2017 correspondence, the Purple Heart Medal is not awarded for death or injury resulting from accidental discharge of weapons, malfunctioning of weapons' systems, vehicle accidents, or other action not directly or indirectly initiated by enemy forces and when not actively engaged in combat action.. ██████████ received a superficial shrapnel wound to his right thigh from an accidental discharge while disarming a fuse, which was considered non-hostile by the Commanding General, ██████████ as indicated in the Report of Casualties message dated March 7, 1967 which is provided as enclosure (3). Therefore, ██████████ is not eligible for the Purple Heart Medal.

HQMC advised you to submit a request to BCNR should you desire to appeal HQMC's decision.

On both 14 April 2021 and 5 June 2023, HQMC indicated that no further action can be taken on your PH request, and HQMC advised you of your option to request to petition BCNR.

Within the Department of the Navy, to qualify for the PH, a wound received has to be the direct or indirect result of enemy action, and such wound also required treatment by a Medical Officer¹ at the time of injury. Both criteria must be met to be awarded the PH.

As part of the Board review process, the NDBDM reviewed your contentions and the available records and issued an Advisory Opinion (AO) dated 1 February 2024. After reviewing the available evidence and pertinent regulations and past practices, NDBDM determined you were not entitled to the PH and recommended that BCNR deny relief. The NDBDM stated, in pertinent part:

It is a common misperception 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, the award has always been reserved for acute wounds sustained at the hands of the enemy that were severe enough to necessitate treatment by a physician. Minor injuries treatable by self-aid or buddy aid, or by a corpsman or medic, have never qualified for the PH.

The Petitioner's service and medical records, as well as official unit reports, establish he was injured on 9 Mar 1967 by the accidental discharge of a piece of unexploded ordnance that had been removed from the battlefield for disposal. [Casualty Report dtd 13 Mar 67] is found within the Petitioner's service record and was also appended to his petition. It clearly categorized his injuries as "non-hostile" and states they resulted from accidental discharge of a LAW while attempting to disarm its fuse. This official report further classifies the injuries as "superficial," and states he was treated in the field and returned to duty.

-The excerpts from official unit reports that the Petitioner submitted with his petition further confirm **the piece of ordnance** – described as the "tail assembly" of an M72 LAW (friendly forces weapon) – had been removed from the battlefield and was being transported when it discharged. This **was not an improvised explosive device emplaced by the enemy, but rather a piece of ordnance in the control of friendly forces.**

Award of the PH is only authorized when both the circumstantial and severity criteria are met. **Neither the circumstances under which the Petitioner's injury occurred, nor the severity of his injury, is consistent with the PH criteria** or with longstanding standards and practices for award of the PH across the Armed Forces. **He was not in action with the enemy when his injury occurred, nor did his injury directly result from the act of the enemy. It was simply an accident.** The severity of his injury is described in official reports as superficial, and there is no evidence that his injury either required or received treatment by a medical officer...The Petitioner failed to present evidence sufficient to overcome the presumption. (emphasis added)

¹ A Medical Officer (MO) is defined in statute and Department of Defense regulations as a physician of officer rank. A corpsman or medic does not qualify as an MO.

The Board, in its review of the entire record and petition, considered your contentions and your materials submitted. Unfortunately, the Board determined, even after reviewing the evidence in the light most favorable to you, that you do not meet the qualifying criteria to receive the PH. The Board determined there was no convincing evidence in the record you were injured under conditions for which the PH can be authorized, namely, that you received a wound resulting from enemy action, and that such wound that required treatment by an MO.

This Board sincerely appreciates, respects, and commends you for your Honorable and faithful service in Vietnam and your entire military career.

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,

3/14/2024

