



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

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Docket No. 8487-23

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.

A three-member panel of the Board, sitting in executive session, considered your application on 5 February 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 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 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). As part of the Board's review, the Navy Department Board of Decorations and Medals (NDBDM) provided the Board with an Advisory Opinion (AO). Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 27 January 1972. On 1 October 1972, a shell prematurely detonated in the bore of one of █ guns. You provided a crewmember account of the incident that states you suffered inhalation injuries as part of the fire and rescue operations. You were honorably discharged on 30 December 1975.

On 7 February 2023, correspondence in response to your inquiry from Navy Personnel Command, documents a review of your record did not support an eligibility determination for the PH Medal. On 14 December 2023, an Advisory Opinion (AO) from the NDBDM determined you were not entitled to the Purple Heart (PH) Medal. The AO determined, at the time, the criteria for the PH was only authorized for those who were wounded or injured as a direct result of action by an enemy of the United States and must have been treated by a medical officer. A review of your record found that: (1) your official service and medical records do not contain any

evidence indicating you sustained any type of PH qualifying wounds, (2) there were no records indicating you were treated for any injuries of any kind aboard █ in Oct 1972, (3) although you submitted documents from the Department of Veterans Affairs and from doctors who apparently examined you decades after the alleged injury, none of these documents is probative, and (4) although you submitted a statement by your shipmate at the time, the statement does not definitively establish that you sustained an injury on the date in question, nor does it testify to any kind of medical treatment for such an injury. The AO further states that eyewitness testimony may only be used to establish eligibility for the PH in the case of total or partial loss of the Service Members service and medical records, and this was not the case.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to be awarded a PH Medal and your contentions that you merit the PH for inhaling toxic fumes while trying to rescue friends and shipmates during the incident in 1972. The Board noted you submitted multiple documents for consideration.

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In reviewing your record, the Board concurred with both the correspondence from NPC and the AO that your record does not support the awarding of the PH Medal. While the Board carefully considered your contentions, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Unfortunately, as explained in the AO, the evidence you submitted was insufficient to overcome this presumption. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

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

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 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,

2/15/2024

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