



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

██████████  
Docket No: 5540-19  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████  
XXX-XX ██████████ USMC

Ref: (a) 10 U.S.C. § 1552  
(b) DODM1348.33-V2  
(c) 10 U.S.C. § 1128  
(d) SECNAVINST M1650.1 of 16 Aug 19

Encl: (1) DD Form 149 w/ attachments  
(2) NDBDM letter of 19 Jul 19  
(3) ██████████ letter of 30 Dec 19  
(4) Combat History  
(5) ██████████ POW Medal recommendation  
(6) DD Form 215 issued 5 Jul 17  
(7) DD Form 214 issued 30 Mar 18  
(8) ██████████ ltr MMRP-13/Cong of 4 Apr 18

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted Marine, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting a change to his Official Military Personnel File (OMPF) and his Certificate of Release or Discharge from Active Duty (DD Form 214) to recognize his status as a Prisoner of War (POW) and reflect entitlement to the POW medal.

2. The Board reviewed Petitioner's allegations of error and injustice on 11 June 2020, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, applicable statutes, regulations, policies. The Board also considered an advisory opinion (AO) from President, Navy Department Board of Decorations and Medals (NDBDM) dated 19 July 2019 and the enclosed letter received in rebuttal to the AO dated 30 December 2019. See enclosures (2) and (3).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

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b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 29 October 1965 and served honorably until his release from active duty on 5 May 1969. From June 1966 until April 1967, Petitioner's OMPF reflects his participation in ten combat engagements during the Vietnam War. See enclosure (4).

d. The following narrative is based on the recommendation of [REDACTED] the executive officer of [REDACTED] during the 5 April 1967 engagement who assumed command of the company when the company commander was killed in the initial ambush. See enclosure (5).

1) On the evening of 5 April 1967, Charlie Company, First Battalion, Ninth Marines were ambushed by the North Vietnamese Army (NVA). Petitioner was wounded while firing his machine gun and was then involved in hand to hand combat with four NVA soldiers. The NVA soldiers overcame Petitioner, carried him and his machine gun behind enemy lines in the village of Dong Ho, and tortured him.

2) Hearing Petitioner's screams, [REDACTED] rescued Petitioner by killing Petitioner's NVA captors. A wounded [REDACTED] carried Petitioner to safety over his shoulder because Petitioner was unable to walk because of the wounds to his side and legs. [REDACTED] subsequently was awarded the Navy Cross for his heroic rescue of Petitioner from the NVA.

3) Due to a clerical error in reporting the wounded and evacuated on 6 April 1967, Petitioner was listed as [REDACTED] instead of [REDACTED] and his medical records went astray. Not until the review of the Medal of Honor (MOH) recommendation for [REDACTED] was the error with Petitioner's medical record uncovered in the March 2013 timeframe resulting in Petitioner finally receiving the two Purple Heart Medals to which he was entitled.

4) Five witness statements detail various details corroborating the capture and rescue of Petitioner on 5 April 1967. Additionally, witness statements and documents submitted in [REDACTED] MOH recommendation package were submitted for consideration by the Board in determining whether Petitioner is entitled to recognition as a POW.

e. On 5 July 2017, Petitioner was recognized as a POW and issued a Change to his Certificate of Release or Discharge from Active Duty (DD Form 215) reflecting his entitlement to the POW Medal. On 4 April 2018, the recognition was rescinded because Petitioner was "erroneously awarded the POW Medal." See enclosures (6), (7) and (8).

f. On 5 April 2019, [REDACTED] was awarded a Navy Cross for his actions to rescue Petitioner who had been captured and tortured by the Navy on 5 April 1967.

g. In an AO dated 19 July 2019, the NDBDM concluded Petitioner was not entitled to the POW Medal. The NDBDM stated that "although it might be possible to craft a very technical, legalistic argument that the Petitioner met some elements of some definitions of POW, the circumstances in his case do not pass the common sense/military sense test of how the term POW is commonly understood in the military, and the circumstances are inconsistent with the intent of

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the POW Medal.” As stated by the AO, reference (b) “does not specify a minimum period of captivity,” but “being gone from one’s unit for at most a few hours, and no further than shouting distances away from friendly lines, does not pass the common sense or military sense test of being a POW.” Further, the AO states “it is dubious whether the Petitioner was ever truly taken prisoner and held captive. He was in a fluid combat situation in an ongoing engagement, and he was never bound or imprisoned by the enemy. Nor was he removed by the enemy from the battlefield, or from his own unit’s sphere of tactical influence.” Additionally, the AO states it “is difficult to determine from the witness statements exactly how much time expired between Petitioner being dragged off by the enemy, and his fellow Marine carrying him back to friendly lines” and purports “it is far more likely the total time that elapsed was less than two hours.” See enclosure (2).

h. Reference (c) states “The Secretary concerned shall issue a POW Medal to any person who, while serving in any capacity with the armed forces, was taken prisoner and held capture – (1) while engaged in action against an enemy of the United States...” As stated in the AO, the law does not define POW nor does it limit the award to those who are formally declared POWs. Reference (b) provides little amplifying guidance. As captured by the AO, reference (b) does not define POW nor require a person be officially designated as a POW to receive the award, and states “there is no minimum period of captivity required to qualify.” Reference (d) recently revised in August 2019, added the phrase “declared a POW” to its criteria for the POW Medal.

#### CONCLUSION:

Upon review and consideration of the evidence of record, the Board determined Petitioner’s request warrants relief.

The Board disagreed with the NDBDM AO’s application of references (b) and (c) to Petitioner’s request for recognition as a POW. The Board noted the AO’s focus on “common sense/military sense” and its conclusion that implied Petitioner was not “held captive” because he was “never bound or imprisoned” and the length of time was “more likely” less than two hours. However, the Board determined the evidence clearly supported the contention that Petitioner was a POW. He was a “person who, while serving in any capacity with the armed forces, was taken prisoner and held captive” “while engaged in action against an enemy of the United States.” Noting the authorities governing the award of the POW Medal, specifically references (b) and (c), and further noting reference (d) added the declaration requirement in 2019, the Board concluded Petitioner is entitled to recognition as a POW and award of the POW Medal.

#### RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a DD Form 215 to indicate his entitlement to the POW Medal.

No further changes be made to Petitioner’s record.

A copy of this report of proceedings be filed in Petitioner’s naval record.

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Upon request, the VA be informed that Petitioner's application was received by the Board on 14 May 2018.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)), it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED] 9/22/2020  
\_\_\_\_\_  
Executive Director

JUN 22 2021

ASSISTANT SECRETARY OF THE NAVY (M&RA) DECISION:

Reviewed and Approved Board Recommendation (Grant Relief)

Reviewed and Disapproved Board Recommendation (Deny Relief)

[REDACTED]  
Acting