



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. 9141-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 19 April 2024, has carefully examined your current request. 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 the Secretary of the Navy Council of Review Boards, Navy Department Board of Decorations and Medals (CORB). Although you were provided an opportunity to respond to the AO, you chose not to do so.

You originally enlisted in the U.S. Marine Corps on 23 February 1965. On 28 August 1965, you arrived and disembarked in Vietnam. On your first night in Vietnam, you contend you were injured as a result of an enemy mortar attack. You stated that you were told by the Corpsman after he dressed the wound it was a minor wound, and that he gave you gauzes and told you to keep the area clean. On 22 February 1969, you were honorably discharged and transferred to the Marine Corps Reserve.

On 18 October 2022, this Board denied your request to be awarded the Purple Heart Medal (PH), and determined that you had not exhausted your available administrative remedies. The Board advised you to send your request to Headquarters, Marine Corps (HQMC) for review and adjudication. On 12 July 2023, HQMC denied your PH request. HQMC determined your request was without merit due to the absence of any evidence in your records that you ever met the PH criteria. HQMC also informed you that letters from the Department of Veterans Affairs

cannot be used to determine PH eligibility because they cannot attest to the circumstances of an injury.

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 CORB reviewed your contentions and the available records and issued an Advisory Opinion (AO) dated 6 March 2024. After reviewing the available evidence and pertinent regulations and past practices, CORB determined you were not entitled to the PH and recommended this Board deny relief. The CORB stated, in pertinent part:

It's 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, or in the face of the enemy, that were severe enough to necessitate treatment by a physician. Minor injuries that either required no medical treatment at all, or could be adequately treated by self-aid, buddy aid, or by a corpsman or medic have generally not qualified for the PH.

The Petitioner's official service and medical records available for our inspection do not contain any evidence at all indicating he ever sustained any type of wound in combat, let alone a PH-qualifying wound.

The Petitioner submitted a page from his discharge physical examination in Feb 1969. This document establishes only that he had some marks and scars on his body. The document does not state that any of the marks or scars were made by enemy ordnance, nor could such a document establish that as fact. Therefore, the document is not probative.

The Petitioner also submitted a page from a Department of Veterans Affairs decision document concerning his claim for PTSD compensation. The highlighted and underline portions of the document make clear the source of the information is the Petitioner himself. Though the document is undated, it refers to statements the Petitioner submitted in 2010 and a PTSD examination conducted by a DVA clinic in Sep 2010. Therefore, we can date the document after Sep 2010 – at least 45 years after the alleged mortar attack and injuries occurred. Such a document cannot possibly establish either the cause or severity of injuries allegedly sustained 45 years earlier. The document is not probative.

The Petitioner also submitted a 3 Feb 2021 decision by the Board of Veterans' Appeals, in which he was granted service connection for "shrapnel lacerations to his left hand." Disability determinations by the DVA are made independently of decisions by the Military Services whether to award the PH. These decisions are

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.

for completely different purposes and the criteria are wholly different. DVA compensation, whether “combat related” or not, does not entitle anyone to a PH. The DVA document does not, and could not, establish as fact that the lacerations mentioned resulted from enemy action or that they required treatment by a medical officer at the time. Therefore, the document is not probative.

The Petitioner’s service and medical records do not substantiate that he was ever wounded at all while in Vietnam, let alone wounded at the hands of the enemy and to a severity necessitating treatment by a medical officer. We are required to presume those official records accurate and complete, and therefore absence of any evidence in them that the Petitioner was wounded is evidence that he was not. The Petitioner not only failed to submit any evidence to overcome the presumption, but also failed to submit any evidence that a mortar attack had even occurred on the date in question at a location where he was physically present.

In his own written BCNR petitions and his statements to the DVA, the Petitioner admits that his alleged injuries were minor, were promptly treated in the field by a corpsman, that he was given some gauze to apply himself, and that he required no further treatment afterwards. This is prima fascia [sic] evidence he did not meet the PH criteria. He admits in one of his BCNR petitions that he was told in 1965 that he did not meet those criteria.

The Board, in its review of the entire record and petition, considered your contentions and your materials submitted. However, the Board unanimously 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. In making this finding, the Board concurred with the AO. 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. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

4/24/2024

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