



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. 9168-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 May 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. The Board also considered the advisory opinion (AO) furnished by the Department of Navy Board of Decorations and Medals. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and commenced active duty on 12 October 1964. You participated in counterinsurgency operations in Vietnam from 10 November 1966 to 26 August 1967 and 23 October 1967 to 16 March 1968. On 4 April 1968, the Commanding Officer of the squadron where you were temporarily assigned during your second period of counterinsurgency operations submitted a recommendation for you to receive the Bronze Star Medal (BSM). The Commanding Officer of your Air Group recommended the award be downgraded to a Navy Commendation Medal (NCM), and the Commanding Officer of the Air Group where you had been temporarily assigned recommended a further downgrade to a Navy Achievement Medal (NAM), as did the Commanding General of the █ Marine Air Wing, █ (MAW). Ultimately, the approval authority determined your actions merited a NAM with combat "V." You were honorably discharged on 11 October 1968 and issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that did not include your awarded NAM.

On 23 September 2002, you were issued a Correction to DD Form 214, (DD Form 215) that included your awarded NAM with combat “V”. You also received correspondence from the Marine Corps Military Awards Branch informing you that you were not eligible for the Combat Action Ribbon as you had requested.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to, your belief that you should have been awarded the BSM because you believed that one of the endorsing officers, who recommended a downgrade of your award, had incorrect information. The Board considered your statement and the documentation you provided. As part of the Board’s review process, the Department of Navy Board of Decorations and Medals issued an AO dated 14 March 2024. The AO stated in pertinent part:

After thorough review of the available evidence and pertinent regulations and past practices, we determined the Petitioner is not entitled to the BSM, and therefore recommend BCNR deny relief.

[Applicable policies state] reconsideration shall only be authorized if new, substantive, and materially relevant evidence is presented that was not reasonably available when the original award was made; or when there is evidence of impropriety or material error in processing the original award nomination... information merely adding detail to what was generally known will not meet the evidentiary threshold...requires that such upgrade nominations be submitted in the same manner as an original nomination and may be originated only by a commissioned officer who would have had standing to nominate this award at the time...[and] testimony of the award nominee cannot form the factual basis for a personal decoration and will not be considered.

The Petitioner claims the nomination his commanding officer submitted for the BSM was unjustly downgraded due to an inaccurate endorsement by a member of his chain of command. In support of his claim, he submits only an unsworn statement of his own.

The Petitioner’s claim is without Merit. SECNAV Manual 1650.1, Navy and Marine Corps Awards Manual, 16 Aug 2019, explains that personal decorations, such as the BSM and NAM, are discretionary honors conferred by the chain of command in the name of the President or the Secretary of the Navy. They inherently involve subjective judgment. The originator, Major Bierhaalder, was the most junior officer within the chain of command, and the one with the least experience and most limited perspective. It is a fallacious argument that all senior officers and officials ought to defer to the most junior officer in the nomination process. Rather, the function of the senior officers and officials is to place the actions described into context with the empirical standards according to which these decorations have historically been awarded.

CG, [Fleet Marine Forces Pacific] had full authority to approve whatever decoration he thought appropriate within the limits of his authority (Silver Star Medal and below at the time). He was not bound to follow the recommendation of CG █ any more than CG █ was bound to follow Major Bierhaalder's recommendation. The fact is that every officer in the chain of command above the rank of major (including two independent general officers) believed the Petitioner's actions did not rise to the level meriting the BSM.

The AO concluded, "the Petitioner is not entitled to the BSM. We found no evidence of material error or injustice, and therefore recommend BCNR deny relief. Were BCNR to grant relief in this case by authorizing the [requested award], such action would be inconsistent with the criteria and standards applied to all other Service Members across the Military Services."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. the Board concurred with, and relied heavily on, the AO determination that there was no evidence of material error or injustice. The Board noted that although your Commanding Officer during the time of action recommended you receive the BSM, it was within the authority and discretion of the approval authority to determine that your actions warranted a NAM with combat "V." Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board thanks you for your selfless and Honorable service to this 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,

5/23/2024

