



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. 83-24
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 17 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 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.

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 originally enlisted in the U.S. Marine Corps and began an initial period of active duty service on 8 June 1992. On or about 3 December 2004, you were injured in a suicide vehicle borne improvised explosive device attack on █. On 30 June 2012, you retired from the Marine Corps with an Honorable characterization of service after completing over twenty (20) years of service.

In 2016, you applied for a PH Medal (PH). Following a denial by Headquarters, Marine Corps, Military Awards Branch (MMMA-3) to award you the PH, this Board denied your PH request on 15 March 2017. In its denial, the Board concurred with the CORB AO dated 30 January 2017 that recommended denial of the PH in your case.

As part of the Board review process for your current petition, the CORB again reviewed your contentions and the available records and issued an AO, dated 3 April 2024. After reviewing the available evidence and pertinent regulations and best practices, CORB determined you were not entitled to the PH and recommended that BCNR deny relief. The CORB stated, in pertinent part:

Petitioner claims he merits the PH for MBTI¹ sustained on 03 Dec 2004, and submitted documents not included with his 2016-17 appeals.

We stand by our previous advisory opinion. The Petitioner has not submitted any new, substantive, and materially relevant evidence that was not reasonably available when his case was previously adjudicated. He did not and does not meet the PH criteria published in [MARADMIN 245/11].

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 based on your mTBI contentions.

The Board noted that for concussive events caused by enemy action occurring after 11 September 2001, the PH is authorized when either: (a) a Marine suffers a loss of consciousness (LOC) of any duration as a result of a diagnosed mTBI/concussion, or (b) when the persistent signs, symptoms, or findings of functional impairment from a diagnosed mTBI/concussion result in a Medical Officer (MO) disposition of "not fit for full duty" for a period greater than 48 hours. The MO disposition of mTBI/concussion with either LOC or 48-hour restriction from return to full duty must be made within seven (7) days of the concussive event. The Board determined that while there was a possibility that you may have been injured under conditions for which the PH could be authorized, the proper and/or required mTBI/LOC notations were not entered into, or made in a timely manner by a MO in your service and/or medical records in 2004. The Board determined the absence of the required documentation in your records precluded the awarding of the PH.

The BCNR sincerely appreciates, respects, and commends you for your Honorable and faithful service during OIF/OEF and your entire stellar 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

¹ MTBI is the acronym for "mild traumatic brain injury."

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,

5/24/2024

