



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

██████████
Docket No. 1299-24
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 12 July 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) and your response to the AO.

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 enlisted in the U.S. Marine Corps on 31 March 1964. On or about 22 October 1966, you arrived and disembarked in ██████████. On 15 July 1967, the ██████████ Air Base where you were stationed came under enemy rocket attack.

You contend that you were injured in the attack on the DaNang Air Base when an enemy rocket blast flipped you over, caused you to lose hearing in your left ear, and resulted in headaches. You stated that you were initially treated on site by a Navy Corpsman who subsequently referred you to see a doctor. You contend that your injuries and subsequent treatment meet the criterion

for the Purple Heart Medal (PH) under the new standards. You also contend that you are entitled to the Combat Action Ribbon (CAR) for participating in certain activities during the attack on the ██████████ Air Base. You further argue that your fellow Marines who were still on active duty in 1969 all received the CAR retroactively for their actions at the ██████████ Air Base on 15 July 1967.

On 19 April 1974, Headquarters U.S. Marine Corps (HQMC) denied your PH request. HQMC determined that relevant HQMC records failed to show that you were wounded in action against hostile forces. HQMC advised you that before PH consideration can be given, that it would be necessary for you to furnish HQMC with information containing the date of the wound and whether or not medical attention was received. HQMC informed you that upon receipt of such information your case would be referred to the Bureau of Medicine and Surgery (BUMED) for verification of your claimed wound. The record appears to indicate that you did not submit any such medical evidence for HQMC and BUMED's review.

On 20 June 2016, HQMC (Military Awards Branch) determined a review of your records failed to reveal your entitlement to either the PH or the CAR. HQMC advised you that to be entitled to the CAR it was necessary to have actively participated in a bona fide ground or surface engagement. HQMC noted that personnel subjected to sustained incoming mortar/artillery/rocket attacks must have participated in retaliatory or offensive action, and HQMC determined there was no such evidence you met this requirement.

On 10 October 2023, HQMC again denied you entitlement to either the PH or CAR. HQMC determined the Sick Call treatment record you provided did not describe any injuries and/or treatment warranting the PH. HQMC also noted that ██████████ letter you provided indicated that, during the enemy rocket attack, your unit went to preassigned defensive positions in anticipation of ground action. HQMC determined that ██████████ letter did not indicate that you participated in a bona fide ground or surface enemy fire, or that he directed you not to return fire.

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 10 May 2024. After reviewing the available evidence and pertinent regulations and past practices, CORB determined you were not entitled to the PH and recommended that this Board deny relief. CORB noted that the HQMC letter sent to you dated 10 October 2023 clearly explained why neither the PH or CAR are authorized in your case. The CORB stated, in pertinent part:

[SECNAVINST 1650.1, Navy and Marine Corps Awards Manual, 16 Aug 2019]
states that receipt of indirect fire is not in itself sufficient to qualify; a person

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.

must have taken some retaliatory action toward the enemy, or actually participated actively in the ground or surface engagement... There is no evidence the Petitioner ever actively participated in a ground or surface combat engagement, and he therefore does not meet the fundamental criterion for the CAR.

The injuries for which he was seen by a corpsman on 16 Jul 1967 did not require treatment by a medical officer and were of a type not consistent with the PH criteria and historical awarding practices across the Military Services. [The HQMC 10 Oct 2023 letter] explicitly states that tinnitus is not a qualifying injury and there is no evidence he sustained an [mild traumatic brain injury] resulting in [loss of consciousness].

We concluded the Petitioner is not entitled to the PH or the CAR and found no evidence of material error or injustice. We recommend BCNR deny relief. Were BCNR to grant relief in this case, such action would be inconsistent with the criteria and standards applied to all other Service Members.

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 either the PH or the CAR. 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. The Board also determined there was no convincing evidence in the record that you took some retaliatory action toward the enemy, and/or actually participated actively in any ground or surface engagement during the attack on █ Air Base on the date in question in order to meet the CAR criterion. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board sincerely appreciates, respects, and commends you for your Honorable and faithful service in █ 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,

7/24/2024

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