



**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. 2177-24  
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 14 June 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 AO rebuttal response.

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 on 30 December 1976. On or about 30 October 1980, you sustained a head wound while on duty as a Marine security guard at the █ in █. You were purportedly struck on the head with a liquor bottle by a Cuban national who had been staying in the embassy compound for several months while awaiting asylum.

You later commissioned as a Warrant Officer in December 1982, and subsequently as a First Lieutenant in May 1987. Following a retirement grade determination after receiving non-judicial punishment (NJP), on 4 March 2003, for two violations of UCMJ Article 92, you retired from the Marine Corps in the grade/rank of Lieutenant Colonel on 31 December 2003.

On 5 May 2022, Headquarters United States Marine Corps (HQMC) denied your entitlement to a Purple Heart Medal (PH) for the head injury you sustained on 30 October 1980.

The PH differs from all other decorations in that an individual is not “recommended” for the decoration, rather the service member is entitled to the PH upon meeting specific criteria. 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,<sup>1</sup> and such wound also required treatment by a Medical Officer<sup>2</sup> 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 1 April 2024. After reviewing the available evidence and pertinent regulations and past practices, CORB determined you were not entitled to the PH and recommended that BCNR deny relief. The CORB stated, in pertinent part:

It is a common misperception that any injury sustained while on active duty outside the United States 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 that were severe enough to necessitate treatment by a physician. Minor injuries treatable by self-aid or buddy aid, or by a corpsman or medic, have never qualified for the PH. Nor have injuries resulting from criminal acts that are not officially classified by the federal government as international terrorist attacks.

The Petitioner does not submit any objective evidence to establish the cause of his injury. He submits only his own account of how it occurred. It has long been standard practice in the Navy and Marine Corps that evidence beyond the potential recipient’s own account of his own injuries is necessary to substantiate award of the PH. Nevertheless, even if the Petitioner’s own account were to be accepted as accurate and complete, it would not justify the PH.

The Petitioner’s core assertion is that the assailant constituted a “hostile foreign force” because he was a ██████████ national who apparently also served in the ██████████

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<sup>1</sup> Executive Order 11016, Authorizing of the Purple Heart, 25 Apr 1962, was the top-level guidance for the PH during the period in question. It established both circumstantial and severity thresholds for the PH, requiring the person was “wounded in action against an enemy of the United States, or as the result of an act of such an enemy or opposing force.” Further, “A wound for which the award is made must have required treatment by a medical officer.” (emphasis added)

<sup>2</sup> 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.

armed forces. That assertion is unsound. The individual who allegedly struck the Petitioner with the bottle is described as having come voluntarily into the U.S. embassy compound nearly a full year prior to this incident. The individual was apparently permitted to move about freely within the embassy compound for some period of time, and later move about within a more limited area. The individual was not treated a detainee or prisoner – he was apparently at liberty to leave the embassy at any time and eventually did so. We must assume the individual was unarmed, meaning not in possession of any military weapon or instrument of war. In summary, the incident described in the Petitioner’s statement was a criminal act of battery, not an act of war by a foreign military agent against the United States. Such circumstances are wholly inconsistent with the letter and intent of the PH criteria and with the past practices of awarding the PH across all the Military Services.

Perhaps the most compelling evidence against the Petitioner’s claim is his own admission that his chain of command was fully aware of what happened and determined it did not meet the PH criteria.

All the documentation submitted by the Petitioner about ██████████ and its armed forces is irrelevant. The Petitioner was not attacked by ██████████. The individual described in the Petitioner’s statement was not acting as a member of the Cuban armed forces or as an agent of the ██████████ government. He was apparently just an individual frustrated with the lack of action on his asylum request and desperate to obtain the alcohol that had been forbidden to him.

The Board, in its review of the entire record and petition, considered your contentions and your materials submitted, to also include your AO rebuttal. 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.

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, or as the result of an act of such an enemy or opposing force. The Board concluded you were the victim of an assault and battery by a Cuban national acting purely in his private capacity. The Board determined that your contentions regarding the incorrect application of the PH eligibility requirements, and any misinterpretation of US law relative to “hostile foreign forces” were not persuasive or supported by applicable regulations, policy, and precedent. 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 Ethiopia and over 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,

6/25/2024

