



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

█  
Docket No. 3054-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your late uncle's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your uncle's 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 you did not file your application 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 21 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). Although you were provided an opportunity to respond to the AO, you chose not to do so.

During the World War II, your late uncle was serving as a Rifle Platoon Leader with █ during action on Japanese-held Iwo Jima. Unfortunately, on █, your uncle was killed in action while engaged with enemy Japanese forces on Iwo Jima.

On 22 April 1945, your uncle was recommended posthumously for the Navy Cross (NX) for his extraordinary heroism during action on Iwo Jima. On 8 October 1945, the NX was approved and signed by the Secretary of the Navy on behalf of the President. The NX was presented to your aunt on 8 June 1946 at █.

You contend that your late uncle should instead receive the Medal of Honor (MoH) for his actions on Iwo Jima. You contend that he made seven, not six, trips to a tank under fire on the day in question, and used a bayonet, not a fighting knife, in action. You further contend that his gallantry and risk of life was above and beyond the call of duty. You submitted newspaper articles and photos, the original NX nomination package and citation, as well as a book describing the battle on Iwo Jima, and certain service record documents.

Within the Department of the Navy, the MoH was awarded to a member of the naval service who, while in combat with the enemy or in the line of profession, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life beyond the call of duty and without detriment to the mission of his command. To justify this award, the individual must clearly render himself conspicuous above his comrades by an act, the omission of which could not subject him to censure or criticism for shortcoming or failure in the performance of his duty.

As part of the Board review process, the CORB reviewed your contentions and the available records and issued an AO dated 1 May 2024. After reviewing the available evidence and pertinent regulations and past practices, CORB determined your late uncle was not entitled to MoH and recommended that BCNR deny relief. The CORB stated, in pertinent part:

[The applicable references] govern reconsideration of previously approved decorations for upgrade to the MoH. All preclude such reconsideration without presentation of “new, substantive, and relevant material evidence that was not available when the original nomination was considered.” The information must have been previously unknown and “New information that merely adds detail to what was previously available will not meet the reconsideration requirement.” Additionally, the regulations do allow reconsideration if there is evidence of material error or impropriety in the processing of the original nomination.”

...personal letters, diaries, or books, articles, and other commercially published works cannot form the factual basis for any military decoration and therefore will not be considered as part of a MoH nomination...No other record exists of any subsequent request for the MoH, or any nomination for upgrade of the NX.

The Petitioner was killed in action on ██████████. The official records reflect that his chain of command took all the actions expected of them at that time, and went even further to originate a NX nomination for his actions earlier in the battle. It was neither required nor common for enlisted Marines to be nominated for personal decorations, let alone the Nation’s second highest decoration for valor, solely because they had been killed in action. The NX nomination was carefully prepared according to the regulations in place at the time, and promptly submitted up the chain of command for consideration. It contained detailed statements from his company commander and company executive officer citing eyewitness testimony to the Petitioner’s actions. There is no evidence of any material error or impropriety in the processing of the nomination. It was processed and approved in the same manner as every other such posthumous decoration at that time.

Now comes the Petitioner alleging the original nomination and citation were inaccurate in terms of the number of times the Petitioner went back and forth to a tank, and the type of weapon with which he was armed. Specifically, the Petitioner alleges the citation, nomination, and eyewitness statements are in error because they say “at least six times” vice “seven times”. This seems a distinction without a difference. It is entirely reasonable the witness statements used the verbiage they did because they only had evidence of six trips to the tank, but allowed for the possibility there may have been more that were not witnessed. The Petitioner failed to present any definitive evidence that he made more than six trips. Regardless, whether six or seven trips were made seems a detail that would fail to meet the Department of Defense standard in [DoDI 1348.33, Military Decorations and Awards Program, 21 Dec 2016 & DoD Manual 1348.33 Vol. 1, Medal of Honor, 21 Dec 2016] for upgrade to the MOH, which was quoted in paragraph 2.b above: “New information that merely adds detail to what was previously available will not meet the reconsideration requirement.” Even if there was evidence of a seventh trip, this in itself would not justify reconsideration of the case let alone upgrade to the MoH.

In summary, the Petitioner failed to present:

- (1) new, substantive, and materially relevant evidence that was not available when the NX was approved; or
- (2) evidence of material error or impropriety in the processing of the original NX nomination; or
- (3) evidence to overcome the presumption of regularity in government affairs, namely that the original records are accurate and actions by the chain of command were neither arbitrary nor capricious; or
- (4) any other evidence that substantiates any material error or injustice occurred.

Based on the foregoing, we concluded the Petitioner is not entitled to the MoH, there is no basis for reconsideration of the NX for upgrade, and no basis for relief of any kind.

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 your petition and its accompanying materials does not meet the qualifying criteria to receive consideration for the MoH. The Board concurred with the AO in that there was no new, substantive, and materially relevant evidence that was not available when the NX was approved, and determined that there was no evidence of material error or impropriety in the processing of the original NX nomination.

The BCNR sincerely appreciates, respects, and commends your late uncle for his selfless, courageous, honorable, and faithful service during World War II. He was precisely the type of Marine referenced and described in Admiral Nimitz's infamous quote that read, "Among those who served on Iwo Jima, uncommon valor was a common virtue."

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,

6/27/2024

