



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. 5334-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your uncle's 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 12 August 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, applicable statutes, regulations, and policies, and an advisory opinion (AO) provided by the Navy Department Board of Decorations and Medals (NDBDM), dated 1 July 2024. Although you were provided an opportunity to respond to the AO, you chose not to do so.

Your enlisted in the Marine Corps and began a period of active duty on 16 June 1997. On 23 June 2007, you were honorably discharged from the Marine Corps by reason of completion of required service.

The Board carefully weighed all factors in your case, including your desire to be awarded the Purple Heart Medal. The Board considered your assertions that you sustained a Traumatic Brain Injury (TBI) and a broken elbow as a result of your vehicle being hit twice by an improvised explosive device (IED) while serving in Iraq.

Based on your request, the Board requested and considered the AO. The AO stated in pertinent part:

The Petitioner's OMPF contains no evidence that he ever met the PH criteria.

The Petitioner failed to submit new, substantive, and relevant material evidence that was not previously considered by HQMC and MARCENT when they denied his claim.

The statements attached to the petition lack signatures, as well as notarization of the signatures, which are fundamental requirements of adjudicating PH claims based on eyewitness testimony.

The Petitioner's own unsigned and unnotarized statement, as well as the unsigned and unnotarized statement from his platoon commander, state that he lost consciousness on 5 Oct 2005 due to an IED detonation. Yet his OMPF contains no evidence to substantiate that claim. His fitness report covering the date in question does not substantiate any period of LOC or any physical injury he sustained due to any IED detonation on 5 Oct 2005. Rather, it lauds the Petitioner for his immediate actions in responding to the IED detonation. The Petitioner failed to submit any documentation to substantiate his claim other than the two unsigned statements.

It must be noted that prior to issuance of ref (c), mTBI or concussion had been deemed to be a PH-qualifying wound only if the Marine suffered some period of LOC. In other words, ref (c) only changed the PH criteria for mTBI/concussion that DID NOT result in some period of LOC. The process in ref (c) for retroactive consideration due to mTBI only applied to those instances in which LOC has not been experienced, and therefore the PH had not previously been authorized.

This is an important point in this case because the unsigned and unnotarized statements by the Petitioner and his platoon commander both claim the Petitioner sustained LOC on 5 Oct 2005. Under USMC standards for the PH in effect during 2005, such an injury would have qualified for the PH. Yet, neither the Petitioner nor his platoon commander explains why the Petitioner (and presumably the other Marines in the same vehicle who allegedly sustained LOC) was not nominated for the PH in 2005. The failure of the platoon commander to make a PH nomination, his failure to mention the injury in the fitness report covering the period, and the failure to document the injury in the medical record all militate against the accuracy and veracity of the unsigned statements now attached to the petition.

We are required to presume the official records to be complete and accurate, and that those in the chain of command at the time exercised due diligence in faithfully discharging their official duties. The official records contain no evidence of the Petitioner sustaining a PH qualifying TBI in 2005, nor evidence that the chain of command nominated him for the PH. The Petitioner has thus far failed to present evidence sufficient to overcome the presumption.

Based on the foregoing, we concluded the Petitioner is not entitled to the PH.

Nothing in the foregoing is intended to diminish the value of the Petitioner's military service or any of the decorations, medals, and ribbons he received for his service. It is merely an objective assessment of the evidence available and

applicable statutes, regulations, and standards concerning award of the PH.

The AO concluded, “the Petitioner is not entitled to the PH and (we) found no evidence of material error or injustice. Therefore, 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.”

After a thorough review, the Board concluded these factors and assertions were not sufficient to warrant a change to your record. In making this finding, the Board concurred with the AO that there is insufficient evidence in your record to substantiate your entitlement to the PH. As explained in the AO, you failed to submit new, substantive, and relevant material evidence that was not previously considered by HQMC and MARCENT when they denied your previous claims. Further, the Board observed that the statements attached to your petition lack signatures, as well as notarization of the signatures, which are fundamental requirements of adjudicating Purple Heart claims. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board thanks you for your heroism and faithful service in the Marine Corps.

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,

9/4/2024

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Executive Director

Signed by: █