



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. 6712-24
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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 19 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 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. In addition, the Board considered an advisory opinion (AO) from the Navy Department Board of Decorations and Medals (NDBDM). Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Navy Reserve (USNR) on 4 March 1966 and were honorably discharged on 30 June 1966, to accept a commission as an officer in the USNR. On 1 July 1966, you commenced a second period of active duty. On 4 April 1969, you sustained minor shrapnel wounds during a firefight with enemy forces in █. You were initially treated by a medic at an Army outpost and later received follow-up care from a corpsman in your unit. You were honorably discharged on 1 September 1969.

On September 9, 2014, the Chief of Naval Operations (CNO) responded to your inquiry, stating that a review of your record did not support your entitlement to the Purple Heart (PH) Medal. At the time of your injury, the criteria for the PH required that wounds or injuries be a direct result of enemy action and be treated by a medical officer. Since your wound did not necessitate

treatment by a medical officer, the correspondence indicated that you did not qualify for the PH Medal. On December 11, 2021, the CNO responded to your second inquiry, confirming that your minor shrapnel wounds were not severe enough to require treatment by a medical officer. The letter also noted that an evaluation by a medical officer solely to assess the extent of the injury does not meet the PH threshold if it is determined the injury could have been adequately treated by a physician extender or a corpsman/medic.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to, your desire to be awarded the PH medal and your contentions that, on 4 April 1969, while serving in ██████████ with ██████████, you were wounded in the right groin by shrapnel. Initially treated by a medic at an Army outpost, you received follow-up care from the Corpsman assigned to ██████████. The Corpsman provided you with a form to submit for a PH medal, which you completed. However, your executive officer, who was leaving at the time and unsure of what to do with the form, discarded it. As a result, you never received the medal. The Board considered the evidence you submitted in support of your application.

The Board considered the NDBDM AO dated ██████████. The AO stated in pertinent part:

The circumstantial cause of the Petitioner's injuries is not in question. Official documents, including the one submitted by the Petitioner, establish he was wounded during a firefight with enemy forces. Rather, the question is whether the severity of his injuries was consistent with the published criteria, intent, and past practices associated with the PH.

The official evidence substantiates the Petitioner's chain of command was fully aware of the circumstances and severity of his injuries, and yet took no action to award him the PH. We must presume they did not do so because they did not consider his wounds severe enough to necessitate treatment by a medical officer one of the two fundamental criteria for the PH.

Pursuant to reference (d), award of the PH must be based upon verifiable facts, and specifically upon documented evidence in the member's service and medical records. There is no documentation of any treatment of the Petitioner's injuries in his service or medical records. In a 15 Oct 13 letter to Navy Personnel Command, the Petitioner claimed his injuries were treated by a medic and then a corpsman. Neither qualifies as a medical officer under Title 10 or DoD regulations. Now the Petitioner claims he may have actually received care from a medical officer at the Army medical facility (emphasis added). Regardless of who actually treated the injuries, the key issue as it relates to the PH criteria is whether the injuries necessitated treatment by a medical officer. None of the casualty reports, or any other evidence in the Petitioner's record, substantiate the Petitioner sustained injuries of a severity necessitating treatment by a medical officer. The Petitioner's medical service records contain no evidence of treatment proximate to his injuries. Per reference (d), the Petitioner's own account of the cause of his injuries, and/or treatment thereof, cannot satisfy the evidentiary requirements for the PH.

The AO concluded, “[b]ased on a thorough review of evidence available and applicable policies and statutes, we concluded the Petitioner is not entitled to the PH. The prior denials of the PH by NPC and CNO were neither arbitrary nor capricious, but rather correct applications of PH criteria and standards. Finding no evidence of material error or injustice in this case, 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 thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. In reviewing the record, the Board concurred with the NDBDM assessment of that your record does not support the awarding of the PH medal. Specifically, the medical evidence does not support a finding that your injury necessitated treatment by a medical officer. Additionally, while the Board carefully considered your contentions, the Board relies on presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Unfortunately, the Board determined the evidence you submitted was insufficient to overcome this presumption. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

The Board thanks you for your selfless and Honorable service to our country and wishes you continued success.

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,

9/13/2024

