DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

[redacted]
Docket No. 7009-24
Ref: Signature date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [redacted]

Ref: (a) 10 U.S.C. § 1552
(b) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997
(c) ASN (M&RA) Memo, subj: Delegation of Authority, 19 April 2011
(d) SECNAV M-1650.1, Navy and Marine Corps Awards Manual, August 2019
(e) Executive Order 11016, Authorizing Award of the Purple Heart, 25 April 1962
(f) DOD Manual 1348.33, Volume 3, Manual of Military Decorations and Awards: DoD-Wide Performance and Valor Awards; Foreign Awards; Military Awards to Foreign Personnel and U.S. Public Health Service Officers; and Miscellaneous Information, 23 November 2010
(g) DOD Manual 1348.33, Volume 3, Manual of Military Decorations and Awards: DoD-wide Personal Performance and Valor Decorations, 21 December 2016 (with Change 5, effective 9 July 2024)
(h) SECNAVINST 1650.1G, Navy and Marine Corps Awards Manual, 7 January 2002
(i) SECNAVINST 1650.1H, Navy and Marine Corps Awards Manual, 22 August 2006
(j) SECNAVINST 1650.1J, DON Military Awards Policy, 29 May 2019
(k) MARADMIN 245/11, subj: Purple Heart Medal – Revised Criteria for Mild Traumatic Brain Injury and Updated Coordinating Instructions, dtg 151135 APR 11
(l) ALNAV 79/11, Department of the Navy Standards for Award of the Purple Heart, dtg 092016Z DEC 11

Encl:[1] (9) BCNR Memo BRB Docket No. 0771-23, subj: Review of Naval Record of [Petitioner], 4 August 2023 (with AGC (M&RA) Decision of 21 August 2023)
(10) DD Form 149, 25 June 2024 (with enclosures)
(11) SECNAV CORB Memo 1650 NDBDM, subj: Advisory Opinion ICO [Petitioner], 18 April 2025
(12) Response to Advisory Opinion, In Re: [Petitioner], before the Board for Correction of Naval Records, *undated* (with enclosures)

1. Pursuant to the provisions of reference (a), the Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting reconsideration of the decision of the Assistant General Counsel (Manpower

[1] Per paragraphs 4 and 5 below, enclosures (1) – (8) of the record of proceedings for Docket No. 0771-23 (enclosure (9)) are incorporated by reference herein.

and Reserve Affairs) (AGC (M&RA)) disapproving the Board's recommendation that Petitioner's naval record be corrected to reflect that his entitlement to wear the Purple Heart Medal (PHM) due to a mild traumatic brain injury (mTBI) incurred in combat in Docket No. 0771-23.[2]

2. A three-member panel of the Board, meeting in executive session, convened to reconsider Petitioner's allegations of error or injustice pursuant to its governing policies and procedures on 4 June 2025 and found insufficient evidence of any error or injustice warranting relief.[3] Documentary material considered by the Board included the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. Scope of the Board's Review.

a. In accordance with subsection (a)(1) of reference (a), the Secretary of the Navy (SECNAV) may correct any military record *of the Department of the Navy* (DON) when he determines it to be necessary to correct an error or remove an injustice. Except under limited circumstances not applicable in this case, however, he must act through the Board when doing so. Neither the SECNAV, nor the Board acting on his behalf pursuant to references (a) and (b), however, has the authority to correct military records not of the DON. Unfortunately, military medical records are not military records of the DON. Rather, they are now records of the Defense Health Agency (DHA), which is a combat support agency of the Department of War (DOW) (vice the DON). Accordingly, Petitioner's medical records fall outside of the Board's corrective authority of reference (a) and the Board could therefore not grant Petitioner's request to correct his medical records even if it found an error or injustice warranting such correction.[4]

b. In accordance with subsection (a)(3) of reference (a), record corrections made pursuant to reference (a) within the DON shall be made under procedures established by the SECNAV. The SECNAV established those procedures in reference (b). Reference (b) reserved the authority to take final corrective action to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) when the "comments by proper naval authority are inconsistent with

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[2] Petitioner characterized this request as one for correction of his medical records to establish Petitioner's eligibility for the PHM rather than as a request for reconsideration of the previous decision denying him the PHM. As discussed in paragraph 3 below, however, the correction of medical records is outside the purview of this Board. As such, Petitioner's request is substantively and necessarily one for reconsideration of the AGC (M&RA)'s decision in Docket No. 0771-23 regardless of how he characterized it. This reconsideration request was supported by the legal brief prepared by Petitioner's attorney, along with a personal statement from Petitioner, several supporting statements, and a media article purporting to evidence award of the PHM for another Marine under similar circumstances.

[3] The Board reached a different conclusion regarding Petitioner's eligibility for the PHM than did its predecessor in Docket No. 0771-23 based upon the thorough advisory opinion (AO) discussing the regulatory eligibility criteria for award of the PHM provided by the President, Navy Department Board of Decorations and Medals (NDBDM) at enclosure (11).

[4] The subsequent assignment of all military medical records to the custody and control of the DHA essentially negated the precedential value of [redacted] 744 F.3d 990 (D.C.Cir. 2014), cited by Petitioner for support of his contention that the Board must correct his medical record since such records are not outside of the Board's corrective authority. The facts of *Haselwander* are also clearly distinguishable from those of this case in that Haselwander provided evidence of actual treatment missing from his medical record in addition to evidence of the injury itself.

the Board's recommendation."[5] The ASN (M&RA) delegated that authority for certain cases to the AGC (M&RA) in reference (c). Reference (b) further provides that the denial of an application is final subject to the reconsideration provisions established elsewhere in the regulation.[6] Accordingly, the decision of the AGC (M&RA) in Docket No. 0771-23 was final, and the Board's present review was granted in accordance with the reconsideration requirements of reference (a). Because the Board does not exercise corrective authority over medical records maintained by the DHA, Petitioner has not offered any alternative basis for corrective action.[7] Accordingly, Petitioner's application is in fact one for reconsideration of the AGC (M&RA)'s previous denial of his request in Docket No. 0771-23 despite his characterization of it otherwise.

4. Factual Background. Paragraphs 3c – 3l of the record of proceedings for Docket No. 0771-23 (enclosure (9)), along with the enclosures referenced in those paragraphs, are adopted and incorporated by reference herein.

5. Procedural Background. Paragraphs 3m – 3o of the record of proceedings for Docket No. 0771-23 (enclosure (9)), along with the enclosures referenced in those paragraphs, are adopted and incorporated by reference herein. This procedural background is supplemented as follows:

a. On 14 July 2023, a three-member panel of the Board convened in executive session and found sufficient evidence of an injustice warranting corrective action in Docket No. 0771-23. Specifically, the Board found that Petitioner provided two eyewitness statements attesting to his loss of consciousness (LOC) in the aftermath of an improvised explosive device (IED) detonation on or about 2 June 2005, thus satisfying the evidentiary criteria for award of the PHM in accordance with reference (d) in the absence of medical records.[8] This finding and recommendation was documented in a record of proceedings signed on 4 August 2023. See enclosure (9).

b. Because the Board's recommendation in Docket No. 0771-23 was inconsistent with the comments provided by the NDBDM President at enclosure (6), it was forwarded for Secretarial-level review in accordance with reference (b). On 21 August 2023, the AGC (M&RA), acting pursuant to the authority delegated in reference (c), disapproved the Board's recommendation in Docket No. 0771-23. Specifically, she found that the Board misread the evidentiary requirements of reference (d) because it permitted two eyewitness statements to substitute for documented evidence only when adequate documentation is not available "due to the complete

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[5] See paragraph 3b and section 6e(1)(a) of enclosure (1) to reference (b).

[6] The reconsideration provisions of reference (b) have since been superseded by subsection (a)(3)(D) of reference (a). The latter mandates reconsideration upon presentation of materials not previously presented to or considered by the board, vice the presentation of "new and material evidence or other matter not previously considered by the Board."

[7] The Board acknowledges that Petitioner requested that his medical *or* personnel records be corrected as necessary to establish his eligibility for the PHM. However, the AGC (M&RA) already disapproved the Board's recommendation that his personnel records be corrected as necessary to achieve this result. Additionally, there is no correction to a personnel record that can be made to establish the severity prong of the PHM criteria (i.e., that the injury was of such severity as a to require treatment by a medical officer); personnel records can only establish the circumstantial prong PHM criteria (i.e., that the injury was incurred as a result of enemy activity).

[8] The Board accepted as true Petitioner's premise that reference (k) established that mTBIs resulting in a LOC of any duration will automatically satisfy the severity criteria for award of the PHM.

or partial loss of an individual's record." Since Petitioner's records were not lost, the AGC (M&RA) found that Petitioner did not satisfy these evidentiary requirements. See enclosure (9).

c. On 25 June 2024, Petitioner signed a DD Form 149 requesting that his medical and/or personnel record be corrected to document his mTBI injury with LOC and to document his authorization to wear the PHM.[9] He insisted that his mTBI with LOC satisfied the criteria for award of the PHM and it is an injustice to preclude him from proving it. Specifically, he argued that reference (d) recognizes that medical officers are not always available to treat wounds severe enough to otherwise necessitate treatment, and that a commander with PHM approval authority may award the PHM despite a lack of treatment by a medical officer if he or she determines that the wound would normally have necessitated treatment by a medical officer had one been available. Since mTBI was not as well understood or provided for at the time that Petitioner experienced his injury, he asserts that his commander could not award the PHM contemporaneously or know to document it in his personnel records. Petitioner further asserts that the interpretation applied by the AGC (M&RA) in Docket No. 0771-23 is not consistent with the standard applied to all Marines. Specifically, he asserts that he was informed by an individual at Headquarters, Marine Corps (HQMC), Military Awards Branch, that he needed eyewitness statements and an endorsement from a commander with PHM approval authority, and that the NDBDM President advised in his AO that two notarized eyewitness statements were needed, concluding (presumptively) that HQMC would have issued the PHM if he had initially provided two such statements. Finally, Petitioner provided an article describing another Marine who was awarded the PHM for a mTBI with a LOC incurred under circumstances similar to those that his own mTBI was incurred to suggest that the AGC's interpretation was inconsistent with common practice in the Marine Corps.

d. By memorandum dated 18 April 2025, the NDBDM President provided another AO for the Board's consideration, continuing to opine that Petitioner is not entitled to the PHM and therefore recommending that his request be denied. The NDBDM President supplemented his previous AO at enclosure (8) as follows:

(1) Per reference (e), an injury must have both resulted from enemy action *and* been of a severity necessitating treatment by a medical officer. In this regard, a medical officer is defined as an officer in the Medical Corps of the Army or Navy; a Navy Corpsman is not a Medical Officer.

(2) Both references (f) and (g) require that an injury "must have required treatment, not merely examination, by a medical officer" and that treatment of the injury must be documented in the Service member's medical and/or health record in order to qualify for award of the PHM. They also provide that the PHM may be awarded for injuries treated by a medical professional other than a medical officer "provided a medical officer includes a statement in the Service member's medical record that the extent of the [injuries] were such that they would have required treatment by a medical officer if one had been available to treat them."

[9] As noted in footnote 2 above, the Board interpreted this request to be for reconsideration of Docket No. 0771-23 despite the fact that Petitioner characterized it as a request to change his medical and/or personnel records.

(3) Reference (h), which was in effect in 2005, provided that a concussion injury resulting from enemy action required treatment by a medical officer at the time of injury to be eligible for award of the PHM. Reference (i), which was in effect from 2006 and 2019 and therefore would have been the relevant authority if Petitioner had brought his claim for the PHM in a timely manner, provided the same requirement for concussive injuries described above. It also added the following provision with regard to the retroactive award of the PHM: "*Eligibility determination is based on documented evidence in personnel and/or medical records. If adequate documentation is not available, due to the complete or partial loss of an individual's records, two sworn affidavits from eyewitnesses to the injury, who were present at the time of the injury and have personal knowledge of the circumstances under which the injury occurred, may be submitted for consideration. Statements from witnesses "after the fact" will not be considered.*"[10] Finally, the current authority at reference (d) includes the exact quoted language from reference (i) immediately above and further provides that retroactive "*[e]ligibility determinations [for the PHM] will be based on documented evidence in the veteran's personnel and/or medical records.*"

(4) Reference (d) explicitly states that the PHM "shall be awarded in strict accordance with the criteria and standards in references [(d) and (g)].

(5) While references (k) and (l) clarified the criteria for award of the PHM for mTBI, neither authority canceled or overruled the provisions of reference (i) quoted in paragraph 5d(3) above at the time.

(6) Reference (k) and (l) clarified that an individual may be eligible for the PHM based upon a mTBI if the mTBI either resulted in loss of consciousness (LOC) or a medical officer's disposition of "not fit for full duty" due to persistent signs, symptoms, or findings of function brain impairment "for a period greater than 48 hours" from the concussive event. The signs, symptoms, or findings of brain function impairment must have manifested within the initial seven (7) day period following the concussive event. Diagnosis of [mTBI] by a medical officer or civilian physician weeks or months after a concussive incident will not justify award of the [PHM]." It further provided that "[v]arying levels of [mTBI] can produce signs, symptoms, and clinical findings of impaired brain function ranking from 'seeing stars' and disorientation to post-concussive amnesia and LOC" and "[o]nly the more severe instances of [mTBI] necessitate treatment by a medical officer, and therefore qualify for award of the [PHM]." These references only clarified the criteria under which a mTBI without a LOC could qualify for the PHM; they did not change the already existing criteria under which a mTBI *with* LOC could be eligible for the PHM.

(7) References (d), (k), and (j) recognized that a medical officer may not be readily available in every tactical situation and therefore allowed PHM awarding authorities some latitude in determining whether a particular injury was severe enough to warrant award of the PHM. Specifically, they provide that the PHM approval authority may award the PHM if he or she determines the injury would have normally necessitated treatment by a medical officer had one been available, and that this determination can be made based upon the information provided

[10] Emphasis was not added to this statement. The underlining and emphasis appears in reference (i).

in Personnel Casualty Reports (PCR) or review of the Service member's medical record by the supervising medical officer. However, in accordance with reference (g), "there must be a written statement from a medical officer substantiating the determination."

(8) References (d), (g), (k), and (l) do not permit PHM awarding authorities to accept eyewitness testimony in place of documentation of the injury in official records, and examination of those records by a supervising medical officer. That exception is available only in the case of partial or complete loss of records.

After supplementing his original AO at enclosure (8) with the discussion of the relevant regulatory criteria for award of the PHM discussed immediately above, the NDBDM President concurred with the comments of the AGC (M&RA) denying relief in Docket No. 0771-23, and asserted that the evidence does not support Petitioner's claim that he met the criteria for award of the PHM. He also acknowledged having missed the reference to a LOC in one of the eyewitness statements in enclosure (8), but asserted that this error was irrelevant because Petitioner did not meet the criteria for award of the PHM regardless since the applicable regulations simply do not permit substitution of eyewitness testimony to establish a qualifying wound or injury for documentation in official records unless the relevant records were lost. Accordingly, the eyewitness testimony was effectively "inadmissible" in this determination. The NDBDM President further asserted that Petitioner provided no evidence supporting his claim that his commanders could not award him the PHM and did not know enough to document his injury in his personnel records, noting that the individuals from whom Petitioner obtained statements did not have PHM approval authority in 2005 but did have the authority to nominate Petitioner for the PHM had they believe he might merit the award. Instead, the statements Petitioner provided create the impression that no one in his unit considered him to have been wounded in action with the enemy, and it does not appear that he considered himself to be. See enclosure (11).

e. Petitioner's counsel subsequently submitted an eight-page brief in rebuttal to the AO referenced in paragraph 5d above. Following are the assertions made by Petitioner's counsel in summary form:

(1) Petitioner's counsel asserted that the AO erroneously stated that the Board did not grant Petitioner relief in Docket No. 0771-23 and mischaracterized Petitioner's request as one for reconsideration. Specifically, she asserted that the Board recommended relief in Docket No. 0771-23, but that that relief was not effected only because the AGC (M&RA) disapproved the Board's recommendation, and that the Petitioner's present request is not one for reconsideration but rather for a change to his naval record necessary to satisfy the evidentiary requirements which the AGC (M&RA) found to be lacking.[11]

(2) The AO mistakenly presumed that Petitioner's mTBI did not qualify for award of the PHM, noting the evidence establishing that Petitioner experienced LOC. In this regard, Petitioner's counsel explained the poorly defined administrative lines of responsibility resulting

[11] As discussed in paragraph 3 above, the Board disagreed with this contention. The specific corrective relief requested was beyond the Board's authority to grant, leaving reconsideration of the AGC (M&RA)'s decision in Docket No. 0771-23 as the only possible basis for relief.

from the manner in which Petitioner's unit was organized to support the contention that his command would not know of the need to document this injury.

(3) Petitioner's counsel cites to the statement provided by Petitioner's commanding general to refute the AO's claim that Petitioner failed to provide evidence substantiating his claim that his commanders did not know enough to document the injury at the time.

(4) Petitioner's counsel asserted that the "historical practices of the military services" support award of the PHM. In this regard, she cited to the example of another Marine awarded the PHM described in an attached article.

(5) Petitioner's counsel reiterated Petitioner's argument that the precedent of *Haselwander* obligates the Board to correct Petitioner's records as necessary to satisfy the regulatory evidentiary standard for award of the PHM.[12]

(6) Petitioner's counsel supplemented Petitioner's application with a letter of support from [redacted][13]

See enclosure (12).

6. Conclusions. Upon careful review and reconsideration of all the evidence of record, the Board found no error or injustice in the fact that Petitioner is not eligible to wear the PHM or in the AGC (M&RA)'s decision disapproving the Board recommendation to correct his record to reflect his eligibility for the PHM in Docket No. 0771-23.[14] Based upon the more thorough discussion of the regulatory eligibility criteria for award of the PHM provided by the NDBDM President in enclosure (11), the Board concluded that Petitioner's mTBI simply did not satisfy the criteria for award of the PHM. In this regard, the Board found sufficient evidence to conclude that Petitioner suffered a mTBI with LOC due to enemy action on 2 June 2005. However, a LOC alone is not sufficient to qualify for award of the PHM for a mTBI. Rather, to qualify for award of the PHM, a mTBI, like any wound or injury suffered as a result of enemy action, requires that the symptoms be of such severity as to require actual treatment by a medical officer (or by a physician extender when timely access to a medical officer is not tactically feasible). The evidence reflects that Petitioner's mTBI did not require such treatment, so it did not satisfy the criteria for award of the PHM. Except as may be otherwise stated herein, the Board adopted the analysis of the NDBDM President in enclosure (11) in reaching this conclusion.

a. When Petitioner suffered his mTBI on 2 June 2005, issuance of the PHM for members of the DON was governed by references (e) and (h). Reference (e) provided that a wound suffered

[12] As stated in footnote 4 above, the precedential value of *Haselwander* was negated with the establishment of and transfer of responsibility for the maintenance of medical records to the DHA. The Board now lacks authority to direct correction of a medical record because such records are no longer under the control and custody of the DON.
[13] In accordance with references (b) and (c), the inclusion of this letter, indicating congressional interest beyond that reflected in routine inquiries, reserves approval authority for this decision to the ASN (M&RA).
[14] This conclusion was not unanimous. The Minority of the Board continued to believe that Petitioner's injury satisfied the criteria for receipt of the PHM and that his record should be corrected to reflect his eligibility for the award.

as a result of enemy action "must have required treatment by a medical officer" to qualify for issuance of the PHM, while reference (h) provided that "the wound for which the [PHM] is made must have required treatment by a medical officer at the time of injury" except in the case of a prisoner of war.[15][16] Despite the eyewitness testimony establishing Petitioner's LOC, his mTBI did not require treatment by a medical officer. The evidence of record reflects that Petitioner briefly lost consciousness after being knocked down after an improvised explosive device (IED) was detonated next to the HMMWV in which he was manning a machine gun in the rooftop turret. He was subsequently revived and was able to resume manning the machine gun until the convoy cleared the area. At no time during or after this incident did Petitioner seek out or require treatment from any medical professional, medical officer or otherwise.[17] Accordingly, the Board found no error or injustice in the fact that Petitioner was not awarded or nominated for the PHM at the time of his injury – it simply did not satisfy the criteria for issuance of the PHM in effect when it was incurred.[18]

b. Award of the PHM for members of the DON is currently governed by reference (d).[19] Reference (d) provides that "[f]or award of the [PHM] there exist both circumstantial and severity thresholds that must both be met. First, the wound must have resulted from enemy action. Second, *the wound must have been of such severity that it necessitated treatment, not merely examination, by a medical officer* (*emphasis added*)."[20] The Board acknowledges that paragraph 2B.4(b)(3)(a) of reference (d) provides that a mTBI occurring on or after 11 September 2011 "will be considered severe enough to have necessitated treatment by a medical officer, and therefore qualified for the [PHM], if … [t]he Service Member suffered a LOC of any duration." However, when read in the context of the remainder of reference (d) and in conjunction with reference (g), it was apparent to the Board that this provision is properly interpreted as establishing the minimal symptomatic threshold under which a mTBI may be considered for award of the PHM rather than to create an automatic eligibility criteria for the PHM.

(1) This provision is contained within a subparagraph of paragraph 2B.4(b), which is labeled "When MTBI *May* Qualify for the [PHM] (*emphasis added*)." This permissive, vice directive language, suggests that its provisions establish the minimal symptomatic requirements under which a mTBI *may* qualify for the PHM rather than the circumstances under which a mTBI *will* qualify for the PHM.

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[15] A "wound" was defined in reference (h) as "an injury to any part of the body from an outside force or agent, sustained while in action as described in the eligibility requirements." While the PHM authorities require a qualifying "wound," the term "injury" is used interchangeably with the term "wound" herein since the former more accurately describes Petitioner's mTBI.

[16] The quoted provision of reference (h) was carried forward in reference (i), which remained in effect until 2019.

[17] Nothing in the record establishes that the Navy Corpsman who was in the HMMWV with Petitioner provided any "treatment." His own notarized statement describes nothing resembling actual treatment.

[18] This conclusion is in no way intended to minimize the injury that Petitioner suffered in combat or his valor in continuing the mission after suffering such an injury. It is simply a statement of the standard in effect at the time as applied to the facts in the record.

[19] Reference (d) incorporates the provisions of reference (k) cited by Petitioner as the basis for his eligibility for the PHM.

[20] See paragraph 2B.1(c)(2) of reference (d).

(2) Paragraph 2B.4(b)(3) of reference (d) follows two other subparagraphs which establish that mTBIs or concussions (as opposed to severe/penetrating TBI or moderate TBI) will rarely be of significant severity as to qualify for award the PHM.

(a) Paragraph 2B.4(b)(1) discusses the wide range of symptoms that may result from a mTBI and emphasizes that "[o]nly the more severe instances of MTBI necessitate treatment by a medical officer, and therefore qualify for award of the [PHM]." This is significant, because Petitioner's interpretation of paragraph 2B.4(b)(3), if adopted, would establish mTBI as the only wound or injury for which award of the PHM may be granted absent the need for actual medical treatment, which would be contrary to obvious intent of this subparagraph to limit the circumstances under which mTBI may qualify for the award. Paragraph 2B.4(b)(1) also emphasizes that mere evaluation of a mTBI by a medical officer based on displayed signs, symptoms, or findings of impaired brain function is not sufficient. Rather, actual treatment is required. It would make no sense to include this explanation if paragraph 2B.4(b)(3)(a) was intended to establish automatic eligibility for the PHM for a mTBI with LOC absent the occurrence of actual treatment, as Petitioner suggests.

(b) Paragraph 2B.4(b)(2) explains that only those mTBIs resulting in LOC were historically considered to qualify for the PHM, but that recent research has produced a clearer understanding of the relationship between the severity of mTBI and the time required for brain tissue to recover and return to its normal state and that "military neurologists now consider the duration of brain function impairment to be a more accurate measurement of the degree of the brain injury than whether or not a LOC occurred." Given this context, it makes no sense to interpret paragraph 2B.4(b)(3)(a) as establishing automatic eligibility for the PHM regardless of whether treatment actually occurred – LOC was previously considered to be the minimal symptomology necessary for a mTBI to qualify for the PHM, but LOC without treatment did not automatically entitle a mTBI victim to the award. Rather, it is more logically understood as establishing a minimal symptomatic threshold for consideration for the PHM for an otherwise qualifying mTBI.

(3) In addition to establishing that a LOC of any duration will satisfy the minimal symptomatic threshold for award of the PHM for a mTBI, paragraph 2B.4(b)(3) also established that the minimal symptomatic threshold for award of the PHM may be met when "[t]he persistent signs, symptoms, or findings of brain functional impairment result in a medical officer disposition of 'NOT FIT FOR FULL DUTY' for a period greater than 48 hours (emphasis not added)" will be considered severe enough to have necessitated treatment by a medical officer, and therefore qualified for the PHM.[21] This sister provision to paragraph 2B.4(b)(3)(a) actually limits the circumstances under which a mTBI requiring treatment by a medical officer may qualify for the PHM, which suggests that the entirety of paragraph 2B.4(b)(3) is intended to establish the minimal symptomatic threshold under which a mTBI may qualify for award of the PHM rather than to establish an automatic eligibility criteria as Petitioner suggests.

(4) Paragraph 2B.2(b)(3) of reference (d) acknowledges that there are circumstances when a wound severe enough to necessitate treatment by a medical officer must be treated by a

[21] See paragraph 2B.4(b)(3)(b).

physician extender, corpsman, or medic at a forward deployed location because evacuation to a facility with a medical officer is not feasible and establishes the criteria for award of the PHM under those circumstances. Specifically, it provides that the PHM approval authority may award the PHM if he determines that the wound would have normally necessitated treatment by medical officer had one been available, and that such determination can be made "based upon the information provided in [PCR's] or review of the Service Member's medical record by the supervising medical officer, or upon the advice of the commander's staff surgeon after review of the medical documentation available." It further provides that the determination must be substantiated by "a written statement from a medical officer" pursuant to reference (g). This requirement negates any interpretation that paragraph 2B.4(b)(3)(a) establishes automatic eligibility for the PHM for a mTBI with LOC since a medical officer must review the relevant *medical* documentation when the tactical circumstances would have prevented treatment by a medical officer. The requirement for a medical officer to review *medical* documentation under such circumstances implies that the wound or injury must have received actual treatment, whether by a medical officer or by a physician extender, corpsman, or medic when access to a medical officer is not tactically feasible, that would generate such documentation. To interpret paragraph 2B.4(b)(3)(a) as establishing automatic eligibility for the PHM upon LOC due to a mTBI as Petitioner suggests would be inconsistent with this *de facto* requirement for actual treatment, which further suggests that it was instead intended to establish a minimal symptomatic threshold for an otherwise qualifying mTBI to be considered for the PHM.

(5) When read in conjunction with reference (g), paragraph 2B.4(b)(3)(a) of reference (d) simply cannot be interpreted to establish automatic eligibility for the PHM upon LOC due to a mTBI as Petitioner suggests. Reference (g) provides that "[a] wound for which the [PHM is awarded] must have required treatment, not merely examination, by a medical officer" and that "treatment of the wound will be documented in the Service member's medical and/or health record."[22] It is not sufficient that the mere occurrence of a mTBI with LOC be documented in the member's medical records; the actual treatment of the injury must be so documented. Reference (g) further clarifies that "[a]ward of the [PHM] may be made for wounds treated by a medical professional other than a medical officer provided a medical officer includes a statement in the Service member's medical record that the extent of the wounds were such that they would have required treatment by a medical officer if one had been available to treat them." These provisions establish that actual treatment, whether by a medical officer or by another medical profession under limited circumstances, is required for award of the PHM. Since reference (g) establishes the criteria for award of the PHM across the Department of Defense (DOD), the DON could not lawfully establish a contradictory criteria permitting award of the PHM for a wound or injury that does not require actual treatment. Accordingly, paragraph 2B.4(b)(3)(a) of reference (d) cannot be interpreted as establishing automatic eligibility for the PHM upon receipt of a mTBI with LOC.

(6) Finally, the Board notes that the NDBDM is the proponent of reference (d) within the DON. Accordingly, the NDBDM President's interpretation of reference (d) with regard to any ambiguous provisions is highly persuasive. As such, the opinion of the NDBDM President in enclosure (11) that reference (k) did not establish a new eligibility criteria for the PHM based

[22] See paragraph 3.7.c.2. of reference (g).

upon a mTBI with LOC and that actual documentary evidence of treatment is required for award of the PHM strongly suggests that Petitioner's interpretation of paragraph 2B.4(b)(3)(a) as establishing an automatic eligibility criteria is mistaken.

c. Having determined that a mTBI with LOC resulting from enemy action does not automatically establish eligibility for the PHM, the Board found that the evidence of record failed to establish that Petitioner's mTBI satisfied the eligibility criteria. Specifically, the evidence does not establish that Petitioner's mTBI was of such severity as to require treatment by a medical officer. The most compelling evidence that Petitioner's mTBI did not require treatment by a medical officer is that it did not receive such treatment. As noted by the NDBDM President in enclosure (11) and reflected in Petitioner's supporting documentation, Petitioner was stationed at or in the vicinity of [redacted] where he certainly would have had access to a medical officer if necessary. As such, the absence of such treatment and/or documentation of his injury logically and conclusively establishes that the treatment was not necessary. Petitioner's disqualification for the PHM is also evidenced by the fact that his mTBI did not require any treatment, from a medical officer or otherwise. The statement provided by the Hospital Corpsman who witnessed Petitioner's LOC did not describe anything resembling actual treatment. Rather, he explained that Petitioner responded to "some physical shaking" and was then able to again man the turret. Accordingly, even if access to a medical officer was not tactically feasible, Petitioner's mTBI would not qualify for the PHM because it did not necessitate any treatment. Finally, there is no evidence of any treatment of Petitioner's mTBI in his medical record, as required by reference (g).

d. Even if the correction of medical records was within the Board's purview, the Board would find no injustice warranting the correction necessary to establish Petitioner's eligibility for the PHM. As discussed above, it would not be sufficient to merely document that Petitioner suffered a mTBI with brief LOC in Petitioner's medical record. Rather, the Board would have to manufacture an actual treatment record with details sufficient to convince a medical officer that the mTBI in question would have required treatment by a medical officer if one had been available. Since Petitioner's mTBI did not even require treatment by the Navy Corpsman who was present on the scene, there would be simply no basis for reason for the Board to manufacture such evidence.

e. Appendix 8B of reference (d) establishes the standard for retroactive nominations of the PHM for former members of the DON like Petitioner. It provides that eligibility determinations for such members will be based on documented evidence in the Veteran's personnel and/or medical records,[23] and that "two sworn affidavits from eyewitnesses to the injury, who were present at the time of the injury, who were present at the time of the injury and have personal knowledge of the circumstances under which the injury occurred, may be submitted for consideration" *in the event of a loss of the personnel and/or medical records*.[24] There is no evidence that Petitioner's personnel and/or medical records were lost, so sworn affidavits from eyewitnesses may not serve as the substitute evidentiary basis to retroactively award the PHM. Accordingly, Petitioner would remain ineligible for the retroactive award of the PHM even if there was merit to his contention that his mTBI with LOC automatically qualified him for the

[23] See paragraph 8B.1(c) of reference (d).
[24] See paragraphs 8B.1(c) and 8B.2(a)(2) of reference (d).

award. There was, therefore, no error or injustice in the AGC (M&RA)'s enforcement of this standard in Docket No. 0771-23.

(1) The Board found no merit to Petitioner's contention that this interpretation unjustly deprived Petitioner of the opportunity to prove his eligibility for the PHM. The absence of evidence of any treatment for Petitioner's mTBI in his medical records was not due to his command's unawareness of the need for such documentation as he claims, but rather due to the fact that his injury neither merited nor received any treatment, by a medical officer or otherwise. In other words, the very absence of such evidence establishes his ineligibility for the PHM.

(2) Even if this interpretation unjustly deprived Petitioner of the opportunity to prove his eligibility for the PHM as Petitioner claims, he asserts an injustice in DOW and DON regulations rather than in his naval record. The Board is bound by and exercises no authority over such regulations, and as discussed in paragraph 3 above lacks the authority to correct Petitioner's medical records in such a manner as to satisfy this requirement.

(3) Even if the Board found that Petitioner's mTBI qualified for receipt of the PHM, it would find no injustice in the fact that Petitioner would have to comply with the same evidentiary standards applicable to every other former Marine to establish his eligibility retroactively. Award of the PHM under the circumstances of this case would afford Petitioner retroactive consideration for a prestigious award that is afforded to no other Marines under similar circumstances, which the Board was not inclined to grant.

f. The Board found no merit to Petitioner's contention that the denial of his request is inconsistent common practice within the Marine Corps. Specifically, the article that Petitioner provided in support of this claim established that another Marine was awarded the PHM for an injury incurred under similar circumstances to Petitioner but was silent regarding the evidence of treatment he may have received in his medical records and the availability of those records. Accordingly, this example does not establish that the Marine Corps has awarded the PHM to other Marines under similar circumstances. Based upon its interpretation of the relevant provision of reference (d), which is supported by the AO provided by the DON's preeminent expert in PHM award criteria, the Board believed that other Marines under similar circumstances would not be properly awarded the PHM based solely upon a mTBI with LOC absent evidence of any medical treatment.

g. Petitioner's personal appearance, with or without counsel, would not materially aid the Board to understand the issues involved in his case. Accordingly, Petitioner's request for a personal appearance was denied.

7. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

Subj: REVIEW OF NAVAL RECORD OF [redacted]

8. The foregoing action of the Board is submitted for your review and action in accordance with reference (c).[25]

12/1/2025

[redacted]

ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS) DECISION:

CSO Board Recommendation Approved (Deny Relief – I concur with the Board's conclusions and therefore direct that no corrective action be taken on Petitioner's naval record.)

___ Board Recommendation Disapproved (Grant Relief – I do not concur with the Board's conclusions herein, and instead adopt the Board's previous conclusions in Docket No. 0771-23. Accordingly, I direct that HQMC (MMMA) prepare a PHM for Petitioner and coordinate issuance in accordance with its standard operating procedures. I further direct that Petitioner be issued a DD Form 215 indicating his entitlement to wear the PHM.)

[redacted]

[25] See footnote 13.