



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

██████████
Docket No. 265-25
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 8 July 2025. 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. In addition, the Board considered an advisory opinion (AO) from the Navy Department Board of Decorations and Medals. Although you were offered an opportunity to respond to the AO, you chose not to do so.

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 enlisted in the U.S. Navy and began a period of active duty on 15 May 2008. On 16 October 2008, you reported to Naval Security Force ██████████ for duty. In December 2008, you suffered multiple injuries in an accident while on duty in ██████████. On 31 March 2009, you were placed in a light and limited duty status. On 22 July 2010, the Physical Evaluation Board Proceedings (PEB) found you unfit due to a disability condition caused by an instrumentality of war (IOW) recommended you be separated from active duty with severance pay. You were so discharged on 9 November 2010.

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 for the Purple Heart Medal (PH) to be awarded to you and contention that the injuries you sustained meet the qualifications based on the PEB findings which led to your separation.

As part of the Board review process, the Board requested the AO to review your record for awards you were entitled to. The AO stated in pertinent part:

The first important point to understand is that award of the PH is not tied to disability determinations, be they made by the Department of Defense or the Department of Veterans Affairs or any other entity. The PH is awarded only in cases in which the totality of evidence clearly establishes the fundamental PH criteria were met, i.e., the wound(s) resulted from enemy action and was of such severity it necessitated treatment by a medical officer. Being granted compensation for a combat-related disability, being in receipt of combat-related special compensation, or even sustaining an injury within a designated combat zone are not determinative in PH decisions. The main reason is that all of those apply to broader types of injuries than does the PH, specifically many injuries that do not result from enemy action.

One type of injury that may result in combat-related disability compensation, but does not qualify for the PH, is an injury caused by an instrumentality of war (IOW). Note that ref (c) separates IOW from other types of combat-related injuries, specifically from injuries that are the direct result of armed conflict. The latter is the typical type of injury that might be consistent with award of the PH provided it necessitated treatment by a medical officer. Injury resulting from IOW is not consistent with award of the PH. The Board is no doubt aware that any injury caused by IOW such as Naval vessels, military aircraft, or military armored vehicles could be classified as combat-related for the purpose of a disability determination. In other words, IOW covers a broad category of injuries that do not result from engaging in combat with the enemy.

The PEB findings document submitted by the Petitioner states he was found unfit for further Naval Service due to mild cerebral dysfunction secondary to traumatic brain injury (TBI) caused by an IOW and therefore labeled the injury combat-related. The finding document is not specific as to the IOW or when or how the injury occurred.

During Dec 2008, the Petitioner was stationed in ██████████ with a security force element providing standoff observation, early warning, and defensive protection to berthed, anchored, and transiting ships. Based on his location and the nature of his duties, it seems very unlikely he could have been wounded by enemy action. Had he been wounded by enemy action in ██████████, one would expect a personnel casualty report would have been submitted, the fact would bear mention in his performance evaluation, or some other evidence of it would be in his OMPF. We must presume absence of any such evidence is due to his not sustaining a PH-qualifying wound.

The presumption of regularity in government affairs requires we presume the Petitioner's OMPF accurate and complete, that if the Petitioner has suffered injuries meeting the PH criteria, the circumstances of the injuries and their treatment would have been documented in his records, and his command would have taken the steps necessary to award him the PH. In the absence of any evidence that the Petitioner sustained a PH-qualifying wound, we must presume he did not. The Petitioner failed to present sufficient evidence to overcome the presumption.

The AO concluded, "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 by authorizing the PH, such action would be inconsistent with the criteria and standards applied to all other Service Members."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board concurred with the AO that, based on your location and the nature of your duties, it seems very unlikely you could have been wounded by enemy action. Additionally, the Board agreed that, had you been wounded by enemy action in Bahrain, one would expect a personnel casualty report would have been submitted. Finally, as pointed out in the AO, IOW injuries are not consistent with the PH since they are not the result of enemy combatant action. As a result, the Board determined that there is no evidence of material error or injustice with your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board thanks you for your faithful and selfless service to this country.

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,

7/18/2025

