



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. 1389-25
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 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 5 September 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 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) and your AO rebuttal submission.

You enlisted in the U.S. Marine Corps on and commenced active duty on 3 February 1967. You served with █ while forward-deployed in █

On or about 31 August 1967, you were a member of a squad assigned to be security for a convoy that was being sent from the █ on a humanitarian mission. Approximately halfway through the return trip to the Rockpile, the NVA ambushed the convoy. During the firefight, you purportedly assisted a wounded Marine back up onto one of the moving vehicles while simultaneously providing covering fire. You received the Purple Heart Medal for certain

wounds received during the engagement with enemy forces. Ultimately, on 25 March 1970, you were honorably discharged from the Marine Corps and released from active duty.

The Board noted there are approximately 100 pages of documents in your service record concerning various awards-related inquiries and demands you have made to the Department of the Navy over the past several decades. On 15 August 1985, Headquarters, U.S. Marine Corps, Decorations and Medals Branch (HQMC), informed you that a review of your records indicated no evidence you were ever recommended for the Bronze Star Medal (BSM) for a personal act of heroism or service performed in Vietnam. On 23 October 1985, HQMC again informed you there was no evidence in your service record you were ever recommended for the BSM. On 7 June 2006, HQMC in a response to a Congressman regarding his request that you receive a BSM, HQMC noted that they again reviewed your service record and found no basis which would merit further consideration for such medal.

On 13 July 2021, HQMC informed █ USMC (Retired) that his nomination for you to receive the Silver Star Medal (SSM) for your actions on 31 August 1967 was denied. The HQMC Awards Board had first considered the █ nomination to award you the SSM, and the HQMC Awards Board forwarded the nomination package to the Commandant of the Marine Corps (CMC) for his recommendation. On 10 December 2020, the CMC forwarded his recommendation to the Secretary of the Navy (SECNAV) for final decision. SECNAV carefully considered your nomination package and, on or about 24 June 2021, determined that the totality of evidence did not support an award of the SSM or any personal decoration.

In your current petition, you originally requested consideration for the Navy Cross (NX) based on the contents of the awards package submitted to HQMC. You contended that, while your original recommendation was for the SSM, your actions met or exceeded the standards for the NX and were consistent with prior 3/3 Marines in 1967. However, your counsel in his AO rebuttal submission, stated your NX request was misstated and that your request was for an SSM. In support of your petition, you argued, in part: (a) the determination of “no award” is in conflict with the documentation and submitted contents of the SSM nomination, (b) it is impossible to come to the determination of “no award” just based on common sense, (c) the “no award” decision clearly lacks a plausible rationale, and such a decision is just not possible if it was based on the award package submitted, (d) the three (3) official responses from HQMC lack a specific rationale for denial, (e) it is difficult to see how anybody can come to the conclusion that your actions in shielding, with your own body, a Navy Corpsman from receiving further wounds, while he himself was severely wounded, and in addition was responsible for preventing another Marine from being captured, tortured, or killed, did not merit a valor award, (f) clearly the determination rendered was not consistent with the evidence and documents submitted in the SSM nomination and as such warrants review under "material error," and (g) the denial decision does not conform to the spirit and regulations for awards for valor under Title 10, Section 1130.

Pursuant to 10 U.S.C. §8292, “the President may award a Navy Cross to a person who, while serving in any capacity with the Navy or Marine Corps, distinguishes himself by extraordinary heroism not justifying the award of the Medal of Honor, while engaged in an action against an enemy of the United States, or while engaged in military operations involving conflict with an

opposing foreign force.” Within the Department of the Navy, the NX is awarded to a person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by extraordinary heroism not justifying the award of a Medal of Honor (MoH). To warrant this distinctive decoration, the act or the execution of duty must be performed in the presence of great danger or at great personal risk and must be performed in such a manner as to render the individual highly conspicuous among others of equal grade, rate, experience, or position of responsibility. An accumulation of minor acts of heroism does not justify the award. The high standards demanded must be borne in mind when recommending the award.

Pursuant to 10 U.S.C. §8294, “the President may award a Silver Star Medal to a person who, while serving in any capacity with the Navy or Marine Corps, is cited for gallantry in action that does not warrant the MoH or NX while engaged in an action against an enemy of the United States, or while engaged in military operations involving conflict with an opposing foreign force. Within the Department of the Navy, the SSM is awarded to a person who, while serving in any capacity with the Navy or Marine Corps, is cited for gallantry in action that does not warrant a MoH or NX. The Heroic act(s) performed must render the individual conspicuous and well above the standard expected.

The CORB reviewed your contentions and the available records and issued an AO on 30 May 2025. As part of the Board’s review, the Board considered the AO. The AO stated in pertinent part:

Personal military decorations (PMDs) are discretionary honors conferred upon individuals in recognition of heroism or exceptionally meritorious achievement. Judgment is an inherent part of every discretionary honor process, and the military awards program is no exception. There are no formulae for PMDs. The decision by a commander whether to nominate an individual for a PMD and the level of award nominated; the recommendations of intermediate commanders as to the appropriate award-if any; and the final decision by the award approval authority as to which PMD, if any, is appropriate recognition of a given act, all inherently involve judgment. The fact that a government official applies professional judgment to a discretionary decision or recommendation does not in itself make that decision or recommendation arbitrary and/or capricious.

-No statute or regulation requires SECNAV to provide a “rationale” or other explanation of his discretionary decisions in exercising his awarding authority to anyone, nor has it been historically customary for him to do so. Further, since the nominee is not officially part of the nomination and approval process, SECNAV certainly has no obligation to provide a nominee with an explanation of his discretionary decision. Were regulations strictly adhered to, a nominee for a PMD would never be told he or she had been nominated for one, and were it disapproved would not be informed of that either. Such information serves no positive morale purpose.

-...regulations limit later reconsideration of discretionary award decisions to cases in which there was a significant omission or discrepancy of fact, or there is later proved some discriminatory bias or impropriety that affected the outcome.

Subsequent office holders or commanders are not entitled to revisit the discretionary award decisions of their predecessors merely to substitute their own judgment for the judgment of those who duly exercised their discretionary authority at the time.

-The nominee/awardee's disagreement or dissatisfaction with the ultimate outcome is not a basis for reconsideration. Nor is disagreement with the outcome by those lower in the chain of command; their input was only advisory, i.e., merely a recommendation.

-The Petitioner's claim amounts to little more than criticism of the intelligence and judgment of then-██████████ and ██████████ simply because he disagrees with their opinion of the merits of his award nomination. He alleges that he hasn't been provided a satisfactory rationale for the final decision, and therefore material error must have occurred.

-The current petition does not include any new, substantive, and materially relevant factual evidence that was not available in 2021. Nor does it contain evidence of material error or impropriety.

-The Petitioner alleges there was material error in the process that led to Acting Secretary Harker's decision, but he fails to support his allegation with evidence.

-The opinions of the Petitioner and his advocate are not probative. Neither of them was nor could be a participant in the award approval process for this case. The fact that their opinions differ from those of the officials, especially CMC and Acting SECNAV, who legitimately participated in the approval process is not evidence that the opinions and judgment of the legitimate participants are wrong. Neither does this difference of opinion constitute evidence of material error, impropriety, or injustice.

-A presumption of regularity in government affairs attaches to the actions taken by all the participants in the award approval process during 2019-2020. Specifically, that due diligence was exercised, actions taken were in good faith and with sufficient knowledge of the facts, and that the final decision was neither arbitrary nor capricious. The Petitioner bears the entire burden of overcoming the presumption by preponderant evidence. The Petitioner failed to present evidence sufficient to overcome the presumption.

-In summary, the petition does not meet the DoD and DON requirements for the reconsideration of his award nomination. It fails to present either new, substantive, and materially relevant factual evidence, or evidence of material error or impropriety in the processing of the original nomination. The Petitioner failed to submit sufficient evidence to substantiate probable material error or injustice, or to overcome the presumption of regularity.

██████████ 2021 decision to disapprove the SSM nomination was neither arbitrary nor capricious, but rather legitimate exercise of statutory and regulatory authority within the limits of his discretion. The Petitioner's dissatisfaction or disagreement with that decision is not, and never has been, a legitimate basis for reconsideration or reversal of that decision.

The CORB concluded, "We concluded the Petitioner **is not entitled** to the NX and found no evidence of material error or injustice and therefore 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 Sailors and Marines." (Emphasis in original)

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 either the NX or the SSM. The Board determined there was no new, substantive, and materially relevant evidence that was not available when the SSM was denied in 2021. The Board also determined that there was no evidence of any significant omissions, discrepancies of fact, material error, impropriety, or discriminatory bias in the handling, routing, and processing of the original SSM nomination, and no evidence to overcome the presumption of regularity in government affairs. The Board further determined that your dissatisfaction or disagreement with the "no award" decision does not amount to material error or injustice. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board concurred with the AO that, in denying your petition, this decision was simply an objective assessment of the merits of your claim, and was in no way intended to diminish the value of your military service and selfless contributions to your country. The Board sincerely appreciates, respects, and commends you for your Honorable and faithful service in Vietnam and your entire military career.

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,

9/11/2025

