

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2020-01350

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be awarded the Purple Heart.

APPLICANT'S CONTENTIONS

On 30 December 1968, while under attack from 122 mm rockets, he was knocked down by an exploding round when running to the control bunker. He had just moved to a new control center, but the bunker was not moved. As a result, he had to run outside to reach the bunker. The next morning, he went to the dispensary because he was recovering from the flu and told the doctor he noticed a hole in the back of his pants. The doctor told him he had a hole in the back of his knee, and he might do more damage by going into the knee to examine it. The doctor then asked him if he wanted a Purple Heart, and in the notes, it states shrapnel wound twice.

He declined as both he and his brother were in Vietnam at the same time and his mother would have a heart attack if she found out. It was his fault because he volunteered for Vietnam believing, under the Sullivan Act, both he and his brother would not be sent. It turns out he was wrong. There are also comments regarding the command bunker in his performance report. He really did not like running out in the open during attacks.

After a number of years, when he was laid off from work, he discovered you can get points toward government jobs if you have a Purple Heart, so he applied. The response stated there was nothing in his records in support and it would have to be a shrapnel wound. He requested a copy of his records and forgot about it since it took two years to get reviewed. Approximately two months ago, the Veterans Administration sent him a letter saying Purple Heart recipients were going to receive base privileges at the exchange, commissary, etc. He thought that would be nice as he previously could not get in. After reading his file, he found a dispensary note dated 30 December 1968. So, he is again applying for a change in his record. He does not intend to use the base privileges and does not need to burden an already over-burdened system.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force captain (O-3).

On 30 December 1968, according to SF 600, *Chronological Record of Medical Care*, the applicant was seen at the 633rd USAF Dispensary, Pleiku Air Base, Vietnam.

On 2 February 1969, the applicant was issued an AF Form 77, *Company Grade Officer Effectiveness Report*, for the period 2 August 1968 – 1 February 1969, while stationed at Pleiku Air Base, Vietnam.

On 18 April 1971, the applicant was furnished an honorable discharge and credited with 4 years, 2 months, and 18 days active service, of which 1 year was foreign and/or sea service.

On 25 February 2002, according to National Personnel Records Center letter to the applicant, they could not verify entitlement to award of the Purple Heart Medal. They requested additional information from the applicant to further consider his request.

According to an undated Headquarters, Air Force Personnel Center Awards and Decorations (HQ AFPC/DPPRA) letter to the applicant, a personal detailed description of how he sustained his injuries and medical documentation was requested for consideration of award of the Purple Heart.

According to an undated applicant letter in response to HQ AFPC/DPPRA request, he provided an account of how he sustained the injury for which he is requesting award of the Purple Heart.

On 1 November 2003, according to HQ AFPC/DPPRA letter to the applicant, they were unable to determine his entitlement to award of the Purple Heart, and if he believed an injustice existed, encouraged him to appeal to the Board.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

AIR FORCE EVALUATION

AFPC/DP3SP (Recognition Program) recommends denying the application. In accordance with Air Force Manual (AFMAN) 36-2806, *Awards and Memorialization Program*, dated 10 June 2019, the Purple Heart was established by General George Washington on 7 August 1782. It was reestablished by War Department General Order No. 3, dated 1932, and is currently awarded pursuant to Executive Order 11016, dated 25 April 1962, subject to the provisions in 10 U.S.C. § 1127, 1129, 1129a, and 1131; Public Law 104-106; DoD Instruction 1348.33; and Volume 3 of DoD Manual 1348.33. The medal is awarded to any Service member who is killed or wounded as a result of enemy action. The wounds received must have required treatment by a medical officer. The Purple Heart differs from other decorations in that a member is entitled to the decoration upon the awarding authority determining that the specified award criteria have been met.

The Purple Heart may be awarded to any Service member, while serving under competent authority after 5 April 1917, who has been wounded, killed, or who has died or may hereafter die of wounds received under any of the following circumstances: (1) In any action against an enemy of the U.S.; (2) In any action with an opposing armed force of a foreign country in which the Military Services are or have been engaged; (3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the U.S. is not a belligerent party; (4) As a result of an act of any such enemy or opposing armed forces; (5) As the result of an act of any hostile foreign force; (6) After 28 March 1973, as a result of an international terrorist attack against the U.S. or a foreign nation friendly to the U.S., recognized as such an attack for purposes of award of the Purple Heart by the Secretary of the Air Force, or jointly by the Secretaries of the Military Services concerned if members from more than one Military Service are killed or wounded in the attack; After 28 March 1973, as a result of military operations while serving outside the territory of the U.S. as part of a peacekeeping force.

Examples of enemy-related injuries which clearly justify the award of the Purple Heart include injuries caused by: enemy bullet, shrapnel injuries that require wound closure or have retain foreign bodies, fractures, perforated eardrum, inhalation injuries or burns due to smoke, fumes or chemical agents introduced or caused by the enemy, second and third degree burns, moderate or penetrating traumatic brain injuries and concussions resulting in a loss of consciousness.

Examples of injuries or wounds which clearly do not justify award of the Purple Heart include: frostbite or trench foot injuries; heat stroke; food poisoning not caused by enemy agents; chemical, biological, or nuclear agents not released by the enemy; disease not directly caused by enemy agents; accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action; self-inflicted wounds, except when in the heat of battle and not involving gross negligence; post-traumatic stress disorders; jump injuries not caused by enemy action; and/or injuries that are the result of the member's willful misconduct.

After a thorough review of the applicant's official military personnel record, award of the Purple Heart could not be verified. In support of his request, the applicant provided SF 600 which reflected medical care he received from the 633rd USAF Dispensary, Pleiku Air Base, Vietnam; however, the information was indecipherable. In addition, he provided an excerpt from AF Form 77, dated 3 February 1969, which highlighted his construction of an operations bunker on page 2. Further, the applicant provided a copy of a memorandum from the Purple Heart Review Board, Recognitions Program Branch, that informed the applicant they would need a personal detailed description of how he sustained his injuries and medical documentation in order to process his request for the Purple Heart. This was followed by a memorandum from the Recognitions Program Branch, dated 1 November 2003, stating they were unable to determine entitlement to the Purple Heart as there was no medical documentation in his military personnel record that contained evidence of an enemy related injury.

Finally, the applicant did not provide any additional documentation to substantiate medical treatment received at the time of the incident or eyewitness statements to verify he sustained injuries due to an enemy action; therefore, he does not meet established criteria for award of the Purple Heart. To grant relief would be contrary to the criteria established by AFMAN 36-2806.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 23 March 2023 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The applicant does not meet the criteria for award of the Purple Heart established by AFMAN 36-2806. The package submitted by the applicant was incomplete as it did not contain actual medical records for treatment for a shrapnel wound, but instead noted past history. Nor did he provide eye-witness accounts of the injury/event. Therefore, the Board concurs with the rationale and recommendation of AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2020-01350 in Executive Session on 17 August 2023:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 15 February 2020.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DP3SP, dated 23 December 2022.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 March 2023.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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Board Operations Manager, AFBCMR