

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2023

DOCKET NUMBER: AR20220003266

APPLICANT REQUESTS: reconsideration of his previous request(s) to be awarded the Purple Heart.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
Online DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number:

- AR20150016129, on 28 February 2017
- AR20170012467, on 29 March 2019
- AR20200002768, on 12 April 2021

2. The applicant states, in effect, he was wounded on 11 June 1969 while under attack by the enemy during which another Soldier was killed. He contends that he should have received a line of duty (LOD) investigation for his wound. The Board has denied his request on three separate occasions. He contends that there was dereliction of duty by commanding officer and the medical officer in that they did not report or diagnose the cause of his head injury. The Army Board of Correction Military Records states it is not in an investigative service. Then the reconsideration of his applications AR20150016129, AR20170012467 and AR20200002768 for the Purple Heart should be sent to the Secretary of the Army for review. Then they can determine the error and injustice for the when, where and why he needed medical treatment for a head injury on 11 June 1969 at the Vinh Long Airfield Dispensary.

3. Review of the applicant's service records shows:

a. He was inducted into the Army of the United States on 25 September 1967 and he held military occupational specialty 35M, radio Relay and Carrier Operator.

b. He served in Vietnam from on or about 29 October 1968 to on or about 17 September 1969. He was assigned to Company C, 52nd Signal Battalion.

c. He was honorably released from active duty on 18 September 1969 and transferred to the U.S. Army Reserve to complete his remaining service obligations. His DD Form 214 does not show the Purple Heart as an authorized award. It shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal
- Sharpshooter Badge with M-14 Rifle Bar

4. Nothing in several typical sources show he was injured or wounded as a result of hostile action or that he was awarded the Purple Heart:

a. His name is not shown on the Vietnam casualty listing. This is a listing of Vietnam era casualties commonly used to verify entitlement to award of the Purple Heart.

b. His available personnel records do not contain an official Army message or a Western Union telegram notifying his next of kin of an injury or wound sustained in action. This was generally (not always) the proper notification procedure for injuries at the time.

c. Item 40 (Wounds) of his DA Form 20 (Enlisted Qualification Record) does not record any wounds sustained as a result of hostile action.

d. A review of the Awards and Decorations Computer-Assisted Retrieval System, an index of general orders issued during the Vietnam era between 1965 and 1973 maintained by the U.S. Army Human Resources Command, failed to reveal any orders for the Purple Heart pertaining to the applicant.

e. His records do not contain contemporaneous medical records showing he was wounded as a result of hostile action or treatment for such injury. On the Standard Form 89 (Report of Medical History) for the purpose of separation completed and signed by the applicant on 18 September 1969, the applicant did not report any wounds or injuries. Also, on the Standard Form 88 (Report of Medical Examination) for the purpose of separation completed and signed by the examining physician on 18 September 1969, there is no record of wounds.

5. In his several previous applications, the applicant provided/provides:

a. A medical record single page that contained no identification that showed whose record it was. It showed entries made between 15 November 1968 made by the 833rd Medical Detachment, and 19 June 1968 made by Vinh Long Airfield Dispensary. The medical record has four entries on it between 15 November 1968 made by the 83rd Medical Detachment and 19 June 1968 made by Vinh Long Airfield Dispensary. The entry on 11 June 1969 shows that an unnamed subject was treated at the Vinh Long Airfield Dispensary for a 1 1/2 inch cut on the right side of his head for which he received 5 stitches. The record does not name the source of the cut on the head. The record does not show signature or authentication of a medical officer as required by AR 600-8-22. An entry on 19 June 1969 made by the Vinh Long Airfield Dispensary states that the applicant returned for examination of the 11 June 1969 injury. It shows that the laceration to the scalp healed well. The stitches were removed, and the laceration was cleaned and dressed. This entry is signed by a specialist four (SP4). The applicant contends that it was an error in his records that the cause of the 1 1/2 cut on his head was not entered in his medical record nor was it signed by a medical officer to qualify him for award of a Purple Heart. There is no indication that the cut on the applicant's head was caused by enemy action.

b. Biography of another Soldier, Specialist Five (SP5) M___, who was killed in action on 11 June 1969 by mortar or artillery fire in the Vinh Long Province. The biography is from the SD Vietnam War Memorial Dedication, 15-16 September 2006. The short biography on SP5 M___ was submitted by a 7th grade student in SD with information provided by SP5 M's brother. There are no details in the biograph on the location of SP5 M's death in the Vinh Long Province. The Vinh Long Province encompasses 570 square miles. The second page of SP5 M___'s biograph provided with the application for this case shows that SP5 M___ was a member of the 523rd Engineer Company. Online references indicate that the 523rd was involved in building boat facilities on the Mekong River which flows through the Vinh Long Province. The U.S. Army Casualty Information System shows that SP5 M___ was killed by artillery or mortar fire on 11 June 1969 in Vinh Long Province.

c. His records show he was a member of Company C, 52nd Signal Battalion, from 1 November 1968 to 3 September 1969. According to his medical records, he was on Vinh Long Airfield during the period of 11 June 1969 to 19 June 1969. There is no evidence that the 523rd Engineer Company and Company C, and the 52nd Signal Battalion were co-located in Vinh Long Province or on Vinh Long Airfield.

6. On 28 February 2017, the Board denied his request for award of the Purple Heart. The Board determined that:

a. The applicant's DA Form 20 contains no entries indicating he was wounded in action and there is no evidence in his military records indicating he was treated for a combat-related wound. His name is not listed on the Vietnam casualty roster. The Chronological Record of Medical Care he provides does not include the patient's identifying information and/or the circumstances surrounding the head injury described therein.

b. The governing regulation for award of the Purple Heart requires that substantiating evidence must be provided to verify the injury was the result of hostile action and that the injury required treatment by medical personnel.

7. On 29 March 2019, the Board reconsidered his request to be awarded the Purple Heart and denied it. After reviewing the application and all supporting documents, the Board determined that relief was not warranted. The Board found that there was insufficient evidence presented or within the service record to show the applicant was injured while serving in combat and that the injury incurred required medical attention. Therefore, the Board recommended denying the applicant's request for correction.

8. On 12 April 2021, the Board reconsidered his request to be awarded the Purple Heart a second time. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board the carefully considered the applicant's service record and regulatory guidance for the award of the Purple Heart. In accordance with regulatory guidance on awarding the Purple Heart, there must be substantiating evidence to verify that a Service member was injured, the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record. The Board noted that medical documentation provided for review does reflect the applicant's name and does reflect that he received a laceration. However, in the absence of further information regarding circumstances under which the laceration was received - specifically, that it was the result of hostile action - there is no basis to grant relief.

9. By regulation (AR 600-8-22), the criteria for an award of the Purple Heart requires the submission of substantiating evidence to verify: the injury/wound was the result of hostile action, the injury/wound must have required treatment by personnel, and the medical treatment must have been made a matter of official record

10. AR 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR operates pursuant to law (10 USC 1552) within the Office of the Secretary of the Army. The ABCMR consists of civilians regularly employed in the executive part of the Department of the Army (DA) who are appointed by the Secretary of the Army and serve on the ABCMR as an additional duty.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The ABCMR, acting on behalf of the Secretary of the Army, is the highest level of administrative review within the Department of the Army with the mission to correct errors in or remove injustices from Army military records. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The Board is not an investigative agency. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. To be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; there must be proof a wound was incurred as a result of enemy action, that the wound required treatment by medical personnel, and that the medical personnel made such treatment a matter of official record. The evidence provided by the applicant in the current and previous applications does not satisfy all requirements for award of the Purple Heart.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Dockets Number AR20150016129, on 28 February 2017, AR20170012467, on 29 March 2019, and AR20200002768, on 12 April 2021

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 600-8-22 (Military Awards), prescribes policies and procedures for military awards and decorations, to include the Purple Heart.

a. The Purple Heart is awarded for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record. When contemplating an award of this decoration, the key issue that commanders must take into consideration is the degree to which the enemy caused the injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite but is not the sole justification for award.

b. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy-placed trap or mine
- Injury caused by enemy-released chemical, biological, or nuclear agent
- Injury caused by vehicle or aircraft accident resulting from enemy fire
- Concussion injuries caused as a result of enemy-generated explosions
- Mild traumatic brain injury or concussion severe enough to cause either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident

2. Army Regulation 600-200 (Enlisted Personnel Management System), chapter 9, of the version in effect at the time, stated a brief description of wounds or injuries (including injury from gas) requiring medical treatment received through hostile or enemy action, including those requiring hospitalization would be entered in item 40 (wounds) of the DA Form 20. This regulation further stated that the date the wound or injury occurred would also be placed in item 40.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR operates pursuant to law (10 USC 1552) within the Office of the Secretary of the Army. The ABCMR consists of civilians regularly employed in the executive part of the Department of the Army (DA) who are appointed by the Secretary of the Army and serve on the ABCMR as an additional duty. The Secretary of the Army will oversee the operations of the ABCMR. The Secretary will take final action on applications, as appropriate.

a. The ABCMR considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice

b. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

c. The ABCMR will decide cases on the evidence of record. It is not an investigative body.

//NOTHING FOLLOWS//