

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 September 2023

DOCKET NUMBER: AR20230000896

APPLICANT REQUESTS: reconsideration of his previous requests for the following:

- Removal of the DA Form 67-6 (U.S. Army Officer Efficiency Report (OER)) for the rating period of 9 September 1968 to 26 January 1969
- Award of the Bronze Star Medal (BSM) for service in Vietnam between March and September 1968
- Amend the Army Commendation Medal to reflect award for service between September 1968 to January 1969
- Removal of the OER and substitution of a Bronze Star Medal for the Army Commendation Medal covering the period from March 1968 through January 1969
- A personal appearance before the Board via video or telephone

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Enclosure 1 – Power of Attorney
- Enclosure 2 - Diary entries, dated 19 March 1968 through 10 September 1968
- Enclosure 3 – Photographs
- Enclosure 4 - Letter and Exhibits from MAJ J-K-
  - DA Form 638 Bronze Star Medal, dated 13 February 2017
  - MAJ (Retired) J-K- Award Recommendation Letter and Summary of Action
  - Bronze Star Medal Proposed Citation
- Enclosure 5 - Statements from MAJ J-K-
  - MAJ J-K Recommendation for Award Letter, dated 10 February 2016
  - DA Form 638 Bronze Star Medal
- Enclosure 6 - Diary entries, dated 11 September 1968 through 9 November 1968
- Enclosure 7 - Communications with Staff of Senator S- C-

- Email correspondence
- Letter to Senator S-C-, dated 25 February 2016
- DD Form 149, dated 12 February 2016
- Email correspondence
- Senator S-C- Response Letter, dated 7 November 2016
- General Orders Number 721, dated 24 January 1969
- Letter to Senator S-C-, dated 21 February 2017
- Senator S-C- Letter, dated 24 October 2017
- Letter to Senator S-C-, dated 6 November 2017
  
- Enclosure 8 - 2016 Submission to the U.S. Army Human Resources Command (HRC)
  - Letter to Senator S-C-, dated 25 February 2016
  - DD Form 149, dated 12 February 2016 Duplicate
  - Character Letter from B-H, dated 9 February 2016
  
- Enclosure 9 - HRC 2016 Submission Response
  - HRC Letter to Senator S-C-, dated 26 October 2016
  
- Enclosure 10 - February 2017 HRC Submission
  - Letter to HRC, dated 21 February 2017
  - DD Form 215 (Correction to DD Form 214, Armed Forces of the United States Report of Transfer or Discharge), dated 14 October 1969
  
- Enclosure 11 - HRC February 2017 Submission Response
  - HRC Letter to Senator S-C-, dated 8 June 2017
  
- Enclosure 12 - August and November 2017 Submission to HRC
  - Letter to HRC, dated 11 August 2017
  - National Archives Records and Administration Letter to Senator S-C-, dated 5 June 2017
  - Email correspondence
  - Senator S-C- Response Letter, dated 24 October 2017
  - Letter to Senator S-C-, dated 6 November 2017
  
- Enclosure 13 - HRC August and November 2017 Submission Response

- HRC Letter to Senator S-C, dated 13 February 2018
- Enclosure 14 - Appeal of HRC Decision
  - Letter of Appeal of HRC Decision, dated 9 April 2018
- Mental Health Medical Records
- Medical Records

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 Docket Number AR20130020481 on 5 August 2014 and AR20180007654 on 12 May 2020.

2. The applicant defers to counsel.

3. Counsel states, in effect:

a. The applicant served honorably throughout the course of his service, but never more so than during the year he spent deployed in Vietnam. He volunteered to serve in a forward position and was assigned to the Dau Tieng Base Camp as a result. While there, he worked closely with the Recon Platoon and became responsible for all convoy operations. He would actively utilize their mechanized elements to support security elements and reconnaissance team to protect them and support the greater mission. He also took it upon himself to begin a series of "fake" convoy operations designed to identify and overpower potential ambush sites. As a result, convoys under his control were not ambushed, and they successfully removed various Viet Cong (VC) from the area. Word of his actions spread up through the leadership, and he was reassigned to Headquarters in an effort to spread his successes throughout the command. Upon his departure from the Dau Tieng Base Camp, his superiors submitted the required paperwork to award the applicant with a Bronze Star Medal. When the award request was processed, however, unbeknownst to the applicant at the time, Major (MAJ) T- unjustifiably interfered in the process by halting the packet without notifying anyone in violation of Army Regulations. This interference was due to jealousy on behalf of the MAJ because of how well-regarded the applicant was in the unit and specifically by the leadership.

b. When he arrived at his new assignment with the Divisional Headquarters, he was assigned to a position under the direct supervision of MAJ T-, who made his life very difficult without explanation. He consistently belittled the applicant and attempted to make him look incompetent in this new role because of his superior performance at his

prior post. MAJ T- let his personal disdain for the applicant override his professional responsibility (a fact made obvious by the OER he issued to the applicant). It contained false and/or misleading information and was inherently biased in the assessment of the applicant's performance and abilities, which was informally acknowledged by the endorser who noted that there was a personality difference and communication problem between the rater and rated individual.

c. MAJ T-'s actions in stopping the routing of the applicant's recommendation for a Bronze Star Medal and in preparing an OER with false and misleading information prove he acted outside the scope of Army Regulations, and his actions should not be upheld by this board.

4. A review of the applicant's service records reflects the following:

a. On 9 February 1966 he was inducted into the Army of the United States.

b. DD Form 214 (Report of Transfer or Discharge), ending 8 February 1967 shows he was honorably discharged to accept a commission with service from 9 February 1966 to 8 February 1967.

c. On 9 February 1967 he was appointed as a Reserve commissioned officer in the grade of second lieutenant (2LT).

d. On 13 December 1968, Headquarters, 25th Infantry Division issued Special Orders Number 348 assigning him to the 90th Replacement Battalion, Oakland, CA, with a report date of 28 January 1969.

e. On 24 January 1969, Headquarters, 25th Infantry Division issued General Orders Number 721 awarding him the Army Commendation Medal for meritorious service in the Republic of Vietnam against hostile forces for the period of March 1968 to February 1969.

f. His OER, covering the period of 9 September 1968 to 26 January 1969, for his duties as a Movement Control Officer, with an authorized grade of Captain, reflects the following:

(1) Part IV (Personal Qualities) and in Part VI (performance of Duty Factors), indicated on a scale from 1 to 5 (5 being the lowest), he received rankings of 1,2,4, and 5.

(2) Part VIII (Promotion Potential) he was rated as "Do no promote at this time" by his rater and "Promote along with contemporaries" by his indorser.

(3) Part XI (Comments) his rater commented, "[Applicant's] willingness to accept responsibilities is negligible. He accepted responsibilities only by direction and in most cases performed just enough to get by. He was counseled on several occasions concerning his performance; however, no effort was ever made to improve. His lack of interest and enthusiasm were the cause for the below average performance of his assigned duties. In view of the foregoing, it was recommended that the officer not be promoted at this time nor given a higher level of command."

(4) Part XI his indorser commented, "[Applicant] has performed his assigned duties in an acceptable manner. He believes the demonstrated personal qualities and duty performance have been adversely affected by a severe personality difference and a communication problem between the rating [sic] and the rated officers [sic]. He had personally counseled the applicant and observed some improvement in his performance and ability to satisfy his rating officer. He believes this young officer has the potential to be a definite asset to the service, providing his ability to perform in a combat environment."

g. DD Form 214, ending 9 February 1969 reflects an honorable release from active duty and assignment to the U.S. Army Reserve (USAR) Control Group (Annual Training) with service from 9 February 1967 to 9 February 1969.

h. On 1 March 1977, the Office of the Adjutant General, Reserve Components Personnel and Administration Center issued Orders Number 03-1038835 honorably discharging him from the Standby Reserve, effective 31 March 1977.

i. ABCMR Docket Number AR20130020481 decided on 5 August 2014, wherein the applicant requested award of the Bronze Star Medal and removal of the OER dated 9 September 1968 through 26 January 1969. The Board denied his request for insufficient evidence and the lapse of over 46 years between the time he was issued the contested OER and his application to this Board has made it difficult if not impossible for all the facts surrounding his case to be known.

j. ABCMR Docket Number AR20180007654 decided on 12 May 2020, wherein the applicant requested reconsideration for award of the Bronze Star Medal. The Board determination states, " After reviewing the application and all supporting documents, the Board found that relief was not warranted. Based upon the available documentation and the lack of specific duty or service accomplishments which led to the applicant being awarded an Army Commendation Medal vice receiving the Bronze Star Medal, the Board concluded there was insufficient evidence of an error or injustice which would warrant changing the applicant's record to reflect being awarded a Bronze Star Medal."

5. Counsel provides the following:

a. Enclosure 1 – Power of Attorney authorizing her legal counsel to act on her behalf for the correction of military records application.

b. Enclosure 2 - Diary entries, dated 19 March 1968 through 10 September 1968 detailing the applicant's experience while deployed in Vietnam.

c. Enclosure 3 – Photographs taken while he was deployed to Vietnam.

d. Enclosure 4 - Letter and Exhibits from MAJ J-K-, wherein the recommending officer (at the time of service) provided documents for recommendation for retroactive award of the Bronze Star Medal. The following documents were submitted in support:

- DA Form 638, Bronze Star Medal, dated 13 February 2017
- MAJ (Retired) J-K- Award Recommendation Letter and Summary of Action
- Bronze Star Medal Proposed Citation

e. Enclosure 5 - Statements from MAJ J-K-, wherein the recommending officer (at the time of service) provided additional documents for recommendation for retroactive award of the Bronze Star Medal. The following documents were submitted in support:

- MAJ J-K Recommendation for Award Letter, dated 10 February 2016
- DA Form 638, Bronze Star Medal

f. Enclosure 6 - Diary entries, dated 11 September 1968 through 9 November 1968 further detailing the applicant's experiences while deployed to Vietnam.

g. Enclosure 7 - Communications with the Staff of Senator S- C-, wherein the applicant requested assistance with being awarded the Bronze Star Medal. The following documents were submitted as support:

- Email correspondence
- Letter to Senator S-C-, dated 25 February 2016 (previously considered by the Board)
- DD Form 149, dated 12 February 2016 (previously considered by the Board)
- Email correspondence
- Senator S-C- Response Letter, dated 7 November 2016
- General Orders Number 721, dated 24 January 1969
- Letter to Senator S-C-, dated 21 February 2017
- Senator S-C- Letter, dated 24 October 2017
- Letter to Senator S-C-, dated 6 November 2017

h. Enclosure 8 - 2016 Submission to HRC wherein the applicant, with the

assistance of Senator S-C-, requested HRC to retroactively award him the Bronze Star Medal for his actions while deployed in Vietnam. The following documents were submitted in support:

- Letter to Senator S-C-, dated 25 February 2016 (previously considered by the Board)
- DD Form 149, dated 12 February 2016 Duplicate (previously considered by the Board)
- Character Letter from B-H, dated 9 February 2016

i. Enclosure 9 - HRC 2016 Submission Response letter to Senator S-C-, dated 26 October 2016 wherein they denied the applicant's request for award of the Bronze Star Medal as he was awarded the Army Commendation Medal for the actions listed in his request.

j. Enclosure 10 - February 2017 HRC Submission wherein the applicant submitted his appeal, in conjunction with Senator S-C-, to HRC's 2016 denial for the award of the Bronze Star Medal. The following documents were submitted in support:

- Letter to HRC, dated 21 February 2017
- DD Form 215 (Correction to DD Form 214, Armed Forces of the United States Report of Transfer or Discharge), dated 14 October 1969 (previously considered by the Board)

k. Enclosure 11 - HRC February 2017 Submission Response to Senator S-C-, dated 8 June 2017, wherein they denied the applicant's appeal, in effect, for lack of sufficient evidence to support his request.

l. Enclosure 12 - August and November 2017 Submission to HRC wherein the applicant, in conjunction with Senator S-C-, submitted a rebuttal to HRC's denial with additional evidence to support his request. The following documents were submitted in support:

- Letter to HRC, dated 11 August 2017
- National Archives Records and Administration Letter to Senator S-C-, dated 5 June 2017
- Email correspondence
- Senator S-C- Response Letter, dated 24 October 2017
- Letter to Senator S-C-, dated 6 November 2017

m. Enclosure 13 - HRC August and November 2017 Submission Response to

Senator S-C, dated 13 February 2018, denying the request, in effect, for lack of sufficient evidence and referring him to apply to the ABCMR for final administrative recourse.

n. Enclosure 14 - Appeal of HRC Decision, dated 9 April 2018 (previously considered by the Board).

o. Mental Health Medical Records submitted as supporting evidence to the applicant's request.

p. Medical Records submitted as supporting evidence to the applicant's request.

**BOARD DISCUSSION:**

1. The applicant's request for a personal appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance before the Board is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board found insufficient new evidence or argument that would support changing the Board's decisions in the previous considerations of the applicant's requests. The Board determined the contested OER is not in error or unjust and further determined the evidence does not support upgrading the applicant's Army Commendation Medal to the Bronze Star Medal.



BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AR20130020481 on 5 August 2014 and AR20180007654 on 12 May 2020.

X █

█

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 (AR) 672-5-1 (Awards), purpose of the awards program is to provide tangible evidence of public recognition for acts of valor and for exceptional service or achievement. Medals constitute one of the principal forms for such evidence; in the United States Army.

a. Paragraph 31 (Bronze Star Medal), the Bronze Star Medal is awarded to any person who, while serving in any capacity in or with the Army of the United States after 6 December 1941, shall have distinguished himself by heroic or meritorious achievement or service, not involving participation in aerial flight, in connection with military operations against an armed enemy; while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. Meritorious achievement or meritorious service, awards may be made to recognize single acts of merit or meritorious service. The required achievement or service while of lesser degree than that required for the award of the Legion of Merit must nevertheless have been meritorious and accomplished with distinction.

b. Paragraph 8 (Duplication of awards), only one award will be made for the same act, achievement, or period of meritorious service. An award for meritorious service may include meritorious achievements, but duplicating awards will not be made for meritorious achievement and meritorious service involving the same period of time. Continuation of the same or similar type service already recognized by an award for meritorious service will not be the basis for a second award. If appropriate, an award may be made to include the extended period of service by superseding the earlier award or the award previously made may be amended to incorporate the extended period of service. An award of a decoration for heroism performed within a period which is recognized by an award for meritorious service or achievement, and award of decorations for meritorious service that occurred in the period covered by a terminal award

2. Title 10 of the U.S. Code, section 1130 (10 USC 1130) provides the legal authority for consideration of proposals for decorations not previously submitted in a timely fashion. Upon the request of a Member of Congress, the Secretary concerned shall review a proposal for the award of or upgrading of a decoration. Based upon such review, the Secretary shall determine the merits of approving the award.

3. AR 623-105 (Officer Evaluation Reporting System (OERS)), in effect at the time, established the policies and procedures for the OERS. The regulation stated in:

a. Paragraph 5-32 - an evaluation report accepted by Headquarters, Department of the Army (HODA), and included in the official record of an officer,

was presumed to have been prepared by the properly designated rating officials, and to represent the considered opinion and objective judgment of the rating officials at the time of preparation. The burden of proof in an appeal of an OER rested with the applicant. Accordingly, to justify deletion or amendment of an OER under the regulation, the applicant must produce evidence that clearly and convincingly overcame the presumptions referred to above and that action to correct an apparent material error or inaccuracy was warranted.

b. Paragraph 9-3 - because evaluation reports were used for personnel management decisions, it was important to the Army and the rated individual that an erroneous report be corrected as soon as possible. As time passed, people forget and documents and key personnel were less available; consequently, preparation of a successful appeal became more difficult. Normally, appeals would be considered regardless of the period of the report and a decision would be made in view of the regulation in effect at the time. However, the likelihood of successfully appealing a report diminished as a rule with the passage of time. Substantive appeals on reports rendered 5 or more years prior are particularly difficult to substantiate with credible existence. Prompt submission was, therefore, recommended.

4. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//