

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2024

DOCKET NUMBER: AR20230003371

APPLICANT REQUESTS:

- reconsideration of his previous request for entitlement to the Purple Heart (PH)
- correction of his medical records

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

- DD Form 149 (Application for Correction of Military Record)
- PARS Brain and Spine Institute, 6 January 2021
- Army Board for Correction of Military Records (ABCMR) Letter, 28 April 2021
- Veterans Affairs (VA) Medical Center, 28 August 2021
- Board of Veterans' Appeals, 24 September 2022
- ABCMR Case AR20210014588, 21 January 2023
- ABCMR Letter, 28 February 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Dockets Number:

- AR20180015978 on 25 June 2020
- AR20210014588 on 3 January 2023.

2. The applicant states, in effect:

a. He was injured in Vietnam while driving a 3/4-ton pickup when he drove into some type of gas and could not see, which caused him to wreck the truck. The truck flipped on its top and he was pinned under it bruising his tail bone and his left cheek. He was diagnosed with a contusion of the face and left buttock. He feels the injury was caused by an enemy-released chemical. His wreck was in the same area that the enemy blew up ammo dump, while he was in the hospital. He was the only vehicle in the area when he wrecked and a little later a jeep came and the men in it got him out from under the truck and took him to the hospital. He thought he was okay until the next day when he realized he could not sit down and had a knot on his tail bone.

b. He did not know he was not getting disability for his back until 2014 when his pain started getting worse. At that time, he found out he was getting disability for something else, and he started asking for a correction to his records when he found out.

3. Regarding the applicant's medical records, the Board will not consider the applicant's request for correction of his medical records and the issue to correct his medical records will not be considered in this Record of Proceedings.

a. Medical records reflect the observations and opinions of medical professionals at the time they were created. Alteration of a diagnosis in those records after the fact may lead to fundamental questions about the veracity of the records in this case and in general. For these reasons, it would not be proper to change any of the medical documents which would, in effect, alter a diagnosis in the FSM's medical records.

b. Medical record entries will be made in all inpatient, outpatient, service treatment, dental, Army Substance Abuse Program, and occupational health records by the healthcare provider who observes, treats, or cares for the patient at the time of observation, treatment or care. No healthcare practitioner is permitted to complete the documentation for a medical record on a patient unfamiliar to him or her.

c. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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. Medical records are not within the purview of this Board.

3. The Board will consider his request for Purple Heart. The applicant provides the following:

a. A letter from PARS Brain and Spine Institute, dated 6 January 2021, which states the applicant has been seen for many years for his spine problems. He underwent cervical spine surgery in 2020. He also has degenerative spondylosis in his lumbar spine with severe stenosis at L4-5. The Certified Nurse Practitioner stated it was possible, within a reasonable degree of medical certainty that the applicant's injury in the service contributed to his current chronic lumbar degenerative changes and his ongoing lumbar pain and radiculopathy.

b. ABCMR letter, dated 28 April 2021, which shows the applicant's record was corrected to show he was awarded the Vietnam Service Medal with four bronze service stars and the Republic of Vietnam Gallantry Cross with Palm Unit Citation. He was issued a DD Form 215 (Correction to DD Form 214).

c. A VA Medical Center letter dated 28 August 2021, which states the lumbar spine degenerative changes and moderate to severe lumbar spinal stenosis that the applicant currently suffers from are likely related to the injuries that he sustained during his military service in Vietnam.

d. A letter from the Board of Veterans' Appeal, dated 24 September 2022, which shows the applicant's previously denied claim of entitlement to service connection for a back condition was remanded. The matter was remanded to readjudicate the applicant's claim of whether new and material evidence had been received sufficient to reopen his previously denied claim of entitlement to service connection for a back condition, considering all the evidence now of record. As a result of the remand, the VA made the following decision on the applicant's entitlement to VA benefits:

- Service connection for intervertebral disc syndrome with degenerative arthritis, granted with an evaluation of 40 percent
- Service connection for left lower extremity radiculopathy, sciatic nerve, granted with an evaluation of 10 percent
- Service connection for right lower extremity radiculopathy, sciatic nerve, granted with an evaluation of 10 percent

e. ABCMR Case AR20210014588, dated 3 January 2023, which denied his request for relief.

f. A letter from the ABCMR, dated 28 February 2023, shows the applicant had a duplicate application which had been recently boarded. A copy of the Board's decision was provided to the applicant.

5. A review of the applicant's service record shows:

a. He was inducted into the Army of the United States on 7 May 1970. He was honorably discharged on 12 May 1970 for the purpose of immediate enlistment in the Regular Army. He enlisted in the Regular Army on 13 May 1970.

b. His DA Form 20 (Enlisted Qualification Record) shows the following information:

- Item 31 (Foreign Service): 9 November 1970 to 12 September 1971 – U.S. Army Pacific - Vietnam (USARPAC)
- Item 38 (Record of Assignments): he was assigned to the 155th Transportation Company in Vietnam
- Item 40 (Wounds): None
- Item 41 (Awards and Decorations): does not list the award of the PH

c. He was honorably released from active duty and transferred to the West Virginia Army National Guard (WVARNG) on 10 January 1972. His DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) shows he completed 1 year, 7 months, and 28 days of net active service for the covered period. It shows in:

- Item 22c (Foreign and/or Sea Service): Vietnam, 10 months and 4 days
- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Vietnam Service Medal with two bronze service stars, Republic of Vietnam Campaign Medal with Device (1960), Army Good Conduct Medal, and Expert Marksmanship Qualification Badge with rifle bar (M-16)

d. On 3 March 1972, the applicant enlisted in the WVARNG.

e. The applicant's National Guard Bureau Form 22 (Report of Separation and Record of Service in the ARNG) shows he was honorably discharged from the ARNG on 6 May 1973, due to the expiration of his original active-duty commitment. He was transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training).

f. Letter Orders Number 04-1078629, issued by the Office of the Adjutant General, Reserve Components Personnel and Administration Center, dated 28 April 1976, show the applicant was honorably discharged from the USAR Control Group (Standby), due to expiration of term of service, effective 1 May 1976.

g. U.S. Army Human Resources Command (AHRC), Awards and Decorations Branch letter, dated 18 October 2018, shows the applicant was informed that his request for award of the PH was forwarded to their office for adjudication. It shows:

(1) Based upon review of the forwarded documentation they were unable to verify the applicant's entitlement to the PH. Statutory and regulatory criteria governing the award required its authorization for Soldiers who are wounded as a result of enemy action which required treatment by a medical officer and was made a matter of official record.

(2) They reviewed award orders from the applicant's period of service in Vietnam but did not locate orders authorizing the award. Further, his name is not listed among the known casualties of the Vietnam conflict. They enclosed with their letter a resource handout detailing the required documentation needed to process a request for retroactive award of the PH, and stated that upon receipt of the requested documentation, AHRC would further process his request.

h. A DD Form 215 dated 28 April 2021, for the period ending 10 January 1972, shows the applicant's record was updated to show he was awarded or authorized the Vietnam Service Medal with four bronze service stars and the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

6. There are no documents in the applicant's record that indicate he was recommended for or awarded the PH.

7. A review of the Awards and Decorations Computer-Assisted Retrieval System (ADCARS), an index of general orders issued during the Vietnam era, maintained by the U.S. Army Human Resources Command, failed to reveal any orders that show the applicant was awarded the PH.

8. The applicant's name is not shown on the Department of the Army Office of the Adjutant General Casualty Division Casualty Reference Name Listing for the period 9 November 1970 to 12 September 1971, a battle and non-battle listing of Soldiers who were killed, wounded, sick, captured, or missing during their service in Vietnam.

9. The ABCMR considered the applicant's request for award of the PH in ABCMR Docket Number AR20180015978, on 25 June 2020. The Board considered the applicant's statement, his record of service to include service in Vietnam, documentation associated with his injury and the reason for his separation and entry into the ARNG. The Board considered the letters of support he provided, VA rating documentation and the review of his PH request by HRC. The Board considered the documents that recorded the cause of his injury and found no evidence that showed the accident was a result of enemy actions or that the event met the criteria for award of the PH. The Board determined that the applicant's requested amendment of VA ratings was outside the purview and authorities under which the ABCMR operates. Based on a preponderance of evidence, the Board determined that the absence of a PH in the applicant's records was not in error or unjust. The Board did determine that the applicant was awarded or authorized additional awards that was not listed on his DD Form 214 for the period ending on 10 January 1972. The applicant's record was corrected, and a DD Form 215 was issued and forwarded to the applicant.

10. On 3 January 2023, the ABCMR reconsidered the applicant's request in ABCMR Docket Number AR20210014588. The Board determined 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. By regulation, to be awarded the PH, 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. He asserts that he was in a truck driving

accident and was hospitalized. The Board determined his accident clearly does not meet the criteria for award of the PH.

11. AR 600-8-22 contains regulatory guidance pertaining to entitlement to the PH and 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.

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. The applicant contends he was injured in Vietnam while driving a 3/4-ton pickup when he drove into some type of gas and could not see, which caused him to wreck the truck. 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. Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action do not qualify for award of the Purple Heart. Based on the evidence, the Board determined the applicant's incident does not meet the criteria for award of the Purple Heart.

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 the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20180015978 on 25 June 2020 and AR20210014588 on 3 January 2023.

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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 Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Purple Heart is awarded in the name of the President of the United States to any member of an Armed Force of the United States under the jurisdiction of the Secretary of the Army, who, after 5 April 1917, 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 United States.
 - (2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States 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 United States is not a belligerent party.
 - (4) As the 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 7 December 1941, pursuant to Title 10, United States Code, section 1129, as a result of friendly fire provided the member was killed or wounded in action by friendly weapon fire while directly engaged in armed conflict, other than the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of the willful misconduct of the member.
 - (7) On or after 7 December 1941, to a member who is killed or dies while in captivity as a Prisoner of War under circumstances establishing eligibility for the Prisoner of War Medal, unless compelling evidence is presented that shows the member's death was not the result of enemy action.
- b. To qualify for award of the Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer. A wound is defined as an injury to any part of the body from an outside force or agent. A physical lesion is not required.
- (1) Treatment of the wound will be documented in the member's medical and/or health record.
 - (2) Award may be made for a wound treated by a medical professional other than a medical officer provided a medical officer includes a statement in the member's medical record that the severity of the wound was such that it would have required treatment by a medical officer if one had been available to provide treatment.
 - (3) A medical professional is defined as a civilian physician or a physician extender. Physician extenders include nurse practitioners, physician assistants, and other medical professionals qualified to provide independent treatment (to include Special Forces medics). Medics (such as combat medics – military occupational specialty 68W) are not physician extenders.
 - (4) A medical officer is defined as a physician with officer rank. The following are medical officers:

- (a) An officer of the medical corps of the Army.
 - (b) An officer of the medical corps of the U.S. Navy.
 - (c) An officer in the U.S. Air Force designated as a medical officer in accordance with Title 10, United States Code, section 101.
- c. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:
- (1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.
 - (2) Injury caused by enemy emplaced trap, mine or other improvised explosive device.
 - (3) Injury caused by chemical, biological, or nuclear agent released by the enemy.
 - (4) Injury caused by vehicle or aircraft accident resulting from enemy fire.
 - (5) Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract.
 - (6) Concussions (and/or mild traumatic brain injury (mTBI)) caused as a result of enemy-generated explosions that result in 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.
- d. Examples of injuries or wounds which clearly do not justify award of the Purple Heart are as follows:
- (1) Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951).
 - (2) Trench foot or immersion foot.
 - (3) Heat stroke.
 - (4) Food poisoning not caused by enemy agents.

(5) Exposure to chemical, biological, or nuclear agents not directly released by the enemy.

(6) Battle fatigue, neuro-psychosis, and post-traumatic stress disorders.

(7) Disease not directly caused by enemy agents.

(8) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

(9) Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.

(10) First degree burns.

(11) Airborne (for example, parachute/jump) injuries not caused by enemy action.

(12) Hearing loss and tinnitus (for example: ringing in the ears, ruptured tympanic membrane).

(13) Mild traumatic brain injury (mTBI) that does not result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function.

(14) Abrasions or lacerations (unless of a severity requiring treatment by a medical officer).

(15) Bruises or contusions (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer).

(16) Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).

2. Army Regulation 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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//