

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 November 2023

DOCKET NUMBER: AR20230004570

APPLICANT REQUESTS:

- correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 15 July 1970 to show award of the Purple Heart
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Internet Article, "We Got Mortared Every Night; Vietnam War Veteran Recalls," 7 October 2019

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he was awarded the Purple Heart as a result of an injury incurred while serving with the 9th Infantry Division in Đồng Tâm, Vietnam. He was medically evacuated to Camp Zama, Japan, and given the Purple Heart at his bedside by his treating physician. When he returned to Đồng Tâm from Camp Zama, a massive attack exploded the ammunition dump, leveling the administration building where his award letter had been sent from Camp Zama.
3. Following prior enlisted service in the Regular Army, he was appointed as a Reserve warrant officer of the Army in the rank of warrant officer 1 on 12 August 1968. He was awarded military occupational specialty number 100B (Rotary Wing Aviator). The enlisted portion of the applicant's military records are not available for review.

4. On 15 July 1970, he was honorably discharged to accept an appointment as a Reserve commissioned officer of the Army. He completed 1 year, 11 months, and 4 days of net active service during this period. His DD Form 214 for this period shows:

a. he served in Vietnam from 13 September 1968 to 1 September 1969; and

b. he was awarded or authorized the:

- National Defense Service Medal
- Army Aviator Badge
- Army Good Conduct Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Distinguished Flying Cross
- two overseas service bars

5. He was appointed as a Reserve commissioned officer of the Army in the rank of first lieutenant on 16 July 1970.

6. The U.S. Army Military Personnel Center memorandum, 31 May 1973, notified him that he was selected for involuntary release from active duty due to a reduction in active duty officer strength. Unless earlier release is requested, and provided it is not in contravention with Army Regulation 600-31 (Suspension of Favorable Personnel Action), release from active duty will be accomplished on the 90th day after receipt of this notification. His military records do not contain and he did not provide his DD Form 214 covering his active duty commissioned service.

7. His military records do not contain and he did not provide evidence of any medical records showing he was injured as the result of hostile action while serving in Vietnam and treated by a medical officer.

8. His military records do not contain a DA Form 66 (Officer Qualification Record) documenting his duty assignments and awards.

9. His name does not appear on the Vietnam Casualty Roster and his record is void of orders awarding him the Purple Heart.

10. 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 Awards and Decorations Branch, failed to reveal orders awarding him the Purple Heart.

11. He provided an Internet article titled: "We Got Mortared Every Night; Vietnam War Veteran Recalls," 7 October 2019, describing the activities of another Soldier wherein he highlights an incident when a massive attack exploded the base ammunition dump, leveling buildings throughout the compound. An overnight mortar attack heavily damaged the administration building and required military personnel to carry personnel records from the burning building.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing 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 applicant's military records, the Board found that relief was not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The evidence shows the applicant served in Vietnam from 13 September 1968 to 1 September 1969. For the Purple Heart to be awarded, the preponderance of the evidence must clearly show a wound existed, that it directly resulted from hostile action, was treated, and was officially recorded at the time by medical personnel. While the applicant contends he was awarded the Purple Heart as a result of an injury incurred while serving with the 9th Infantry Division in Đồng Tâm, Vietnam and that he was medically evacuated to Camp Zama, Japan, and given the Purple Heart at his bedside by his treating physician, neither his available service record nor the applicant offer any medical documentation reflecting his wound/injury occurred, and/or it was made a matter of official record. The applicant's sincerity is not in question, rather it is necessary for all elements of the award criteria for the Purple Heart to be fulfilled.

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 for correction of the records of the individual concerned.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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 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 evidence. The ABCMR may, in its

discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

3. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. The Purple Heart is awarded for a wound sustained 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 a medical officer, and the medical treatment must have been made a matter of official record. The Purple Heart differs from all other decorations in that an individual is not "recommended" for the decoration; rather, he or she is entitled to it upon meeting specific criteria. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider is the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer.

a. A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed below. A physical lesion is not required. However, the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound will be documented in the service member's medical and/or health record. Award of the Purple Heart may be made for wounds treated by a medical professional other than a medical officer provided a medical officer includes a statement in the service member's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

b. The key issue commanders must take into consideration when contemplating an award of this decoration 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 sole justification for award.

c. Examples of enemy-related injuries which justify award of the Purple Heart are:

- 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

d. Examples of injuries or wounds which do not justify award of the Purple Heart are as follows:

- frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951)
- trench foot or immersion foot
- heat stroke
- food poisoning not caused by enemy agents
- chemical, biological, or nuclear agents not released by the enemy
- battle fatigue
- 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 disorder
- airborne (for example, parachute/jump) injuries not caused by enemy action
- hearing loss and tinnitus (for example, ringing in the ears)
- mild traumatic brain injury or concussions that do not either 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
- abrasions and lacerations (unless of a severity to be incapacitating)
- bruises (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer)
- soft tissue injuries (for example, ligament, tendon, or muscle strains, sprains, and so forth)
- first degree burns

4. U.S. Army Vietnam Regulation 672-1 (Decorations and Awards), in effect at the time, provided that the authority to award the Purple Heart was delegated to hospital commanders. This regulation directed that all personnel treated and released within 24 hours would be awarded the Purple Heart by the organization to which the individual was assigned. Personnel requiring hospitalization in excess of 24 hours or evacuation from Vietnam would be awarded the Purple Heart directly by the hospital commander rendering treatment.

//NOTHING FOLLOWS//