

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230005449

APPLICANT REQUESTS: award of the Purple Heart.

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

- Army Board for Correction of Military Records, Case Management Division Letter, Docket Number AR20210014230, 10 June 2022
- Applicant's Statement with picture of a sleeping quarters
- National Personnel Records Center Letter

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, in effect, he was recommended for the Purple Heart but never received the award. He contends that he was hit by a glass fragment on 31 January 1968 during the TET Offensive in South Vietnam.
3. The records shows the applicant was inducted into the Army of the United States on 5 January 1967.
4. The applicant served in the Republic of Vietnam from 6 December 1967 to 5 December 1968 as a military policeman.
5. His DA Form 20, Enlisted Qualification Record, shows in:
  - Item 38, Record of Assignments, no entry pertaining to being hospitalized
  - Item 40, Wounds, no combat wound or injury
  - Item 41, Awards and Decorations, no entry for award of the Purple Heart

6. His name is not shown on the Vietnam casualty roster which is a compilation of most of those who were wounded in Vietnam that is commonly used to verify eligibility for the Purple Heart.
7. His record contains a Report of Medical Examination documenting his separation physical. This form does not mention an injury to his legs.
8. The applicant was honorably released from active duty on 5 December 1968. His DD Form 214, Armed Forces of the United States-Report of Transfer or Discharge shows he completed 1 year, 11 months, and 1 day of total service.
9. The applicant provides an account of his injury. He states, in effect, that in January 1968 while serving with the 212th Military Police Company (Sentry Dog) in South Vietnam he was attacked by the North Vietnamese Army. His room was hit by a self-propelled grenade, and he sustained injuries to his legs from the flying glass. They were rescued by a convoy and a medic treated his wounds. He contends that a lieutenant told him that he was being recommended for a Purple Heart. He is aware that injuries were normally reported on Morning Reports but when you are in combat there is not always time to complete these reports. Further Morning Reports do not show information about combat action or unit activity. He also provides a photograph of his barracks room after it was hit by the grenade.
10. Regulatory guidance states 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.
11. Title 10, U.S. Code, Section 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.
12. 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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 Board carefully considered the applicant’s contentions, the military record, and regulatory guidance on the award of the Purple Heart. In accordance with applicable guidance, 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. After due consideration of the request, the Board found the evidence presented insufficient to determine compliance with the regulatory standard for the Purple Heart and thus recommended denying the request.

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 Board determined 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 Signature]

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[Redacted Name]

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 Army Board for Correction of Military Records (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 (AR) 600-8-22, Military Awards, provides that 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 that 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. Award of the Purple Heart is announced in orders.

3. U.S. Army Vietnam Regulation 672-1, Decorations and Awards, stated the authority to award the Purple Heart was delegated to hospital commanders. It 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.

4. Section 1130 of the United States Code (Title 10 USC 1130) allows the Service Secretary concerned to review a proposal for the award of, or upgrading of, a decoration otherwise precluded from consideration by limitations established by law or policy.

a. In order to request an award under Title 10 USC 1130, the applicant must submit a DA Form 638, Recommendation for Award. The DA Form 638 should clearly identify your unit, the period of assignment, and the recommended award. A narrative of the actions or period for which you are requesting recognition must accompany the DA Form 638. In addition, your award request should be supported by sworn affidavits, eyewitness statements, certificates, and related documents. Commanders, leaders, and fellow Soldiers who had personal (i.e., eyewitness) knowledge of the circumstances and events related to the request are the best persons to provide corroborating evidence.

b. Title 10 USC 1130 also requires that a request of this nature be referred to the Service Secretary from a Member of Congress. Therefore, the applicant must submit his request through a Member of Congress who will send it to the United States Army Human Resources Command, ATTN: AHRC-PDP-A, 1600 Spearhead Division Avenue, Fort Knox, KY 40122. The burden and costs for researching and assembling

documentation to support approval of requested awards and decorations rests with the requestor.

5. 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 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.

//NOTHING FOLLOWS//