

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2023

DOCKET NUMBER: AR20230005602

APPLICANT REQUESTS: reconsideration of his prior request for award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form 89 (Report of Medical History), dated 20 October 1970
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Department of Veterans Affairs (VA) Rating Decision, dated 25 November 2020

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 AR20120007166 on 1 November 2012.

2. The applicant states he was involved in combat operations and suffered an injury, shrapnel to the face, for which he feels he is entitled to award of the Purple Heart.

3. The applicant was inducted into the Army of the United States on 13 January 1969 and was awarded the military occupational specialty (MOS) 11B (Light Weapons Infantryman). His DA Form 20 (Enlisted Qualification Record) shows the following:

a. Item 31 (Foreign Service) shows he served in Vietnam from 10 June 1969 through 23 December 1969.

b. Item 40 (Wounds) is blank.

c. Item 41 (Awards and Decorations) shows the following:

- National Defense Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Combat Infantryman Award (1st Award)

- Army Commendation Medal (1st Award)
 - Army Commendation Medal with “V” Device (1st Oak Leaf Cluster)
5. Headquarters, 199th Infantry Brigade (Separate) (Light) General Orders Number 2540, dated 26 December 1969, awarded the applicant the Army Commendation Medal with “V” Device (1st Oak Leaf Cluster) for heroism in connection with military operations against an armed hostile force in the Republic of Vietnam on 22 November 1969. The reason for the award shows on that date, the applicant was participating in a platoon size operation when his unit made contact with a company size enemy force. Without regard for his personal safety, the applicant took an exposed position to better return fire despite the intense enemy fire. He then evacuated the wounded while under enemy fire and resupplied his unit’s position with ammunition.
6. A Standard Form 89 shows the applicant provided his medical history in conjunction with a medical examination conducted on 20 October 1970. The form shows the applicant was hit in the right jaw sometime in October 1969 in Vietnam. X-rays from the dental clinic shows an object in his jaw.
7. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 20 October 1970, for the purpose of expiration term of service (ETS). The form shows the applicant was found qualified for separation with a physical profile rating of “1” in all factors.
8. The applicant’s DD Form 214 shows the following:
- a. He was honorably released from active duty on 12 January 1971, due to ETS and transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training). He completed 2 years of active service, of which 6 months and 13 days were foreign service in Vietnam.
 - b. He was awarded or authorized the following:
 - National Defense Service Medal
 - Vietnam Service Medal
 - Republic of Vietnam Campaign Medal with Device (1960)
 - Combat Infantryman Award (1st Award)
 - Army Commendation Medal with “V” Device (1st Oak Leaf Cluster)
 - Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
9. The applicant’s name does not appear on the Vietnam Casualty Roster.
10. A prior review of the Awards and Decorations Computer Assisted Retrieval System (ADCARS) maintained by the U.S. Army Human Resources Command Military Awards

Branch, an index of general orders issued during the Vietnam era between 1965 and 1973, failed to reveal any orders for the Purple Heart pertaining to the applicant.

11. The applicant previously applied to the ABCMR in March 2012, requesting award of the Purple Heart. Among the documents he provided with his prior application, those not previously discussed above include a self-authored statement, a witness statement, an Army Commendation Medal with "V" Device Certificate (corresponding to the above detailed orders), and photographs of Soldiers.

12. In the applicant's prior self-authored statement, he indicates on or about 5 November 1969, while on patrol in Vietnam, he was injured with shrapnel metal on the right side of his face. He was flown to Fire Support Base Libby by helicopter. After his evaluation by medics, he was told he could be flown to Japan for surgery, or he could leave it as is. He chose to stay in Vietnam.

13. A witness statement, provided by S____ K____, shows around 5 November 1969, he was in Vietnam in the same platoon as the applicant. They were in war zone D on a search and destroy mission when they ran into the enemy bunker and had a fire fight. He remembers the applicant being hit in the cheek with shar metal and first aid was given.

14. The prior photograph provided includes individual photos of 25 Soldiers of a grainy, photocopied quality. Among the Soldiers photographed is the applicant, with what appears to be a bandage on the right side of his cheek.

15. On 1 November 2012, the Board denied the applicant's request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of the case were insufficient as a basis for correction of his records.

16. The applicant provided a copy of VA Rating Decision, dated 25 November 2020, which shows the following:

- service-connection for post-traumatic stress disorder (PTSD) was granted with an evaluation of 50 percent effective 26 August 2020
- service-connection for tinnitus was granted with an evaluation of 10 percent effective 26 August 2020
- service-connection for hearing loss was granted with an evaluation of 0 percent effective 26 August 2020
- a decision on entitlement to compensation for fungal infection of the feet (trench foot) was deferred
- a decision on entitlement to compensation for shrapnel injuries right side of face with scarring was deferred

17. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

18. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

19. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

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. 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 he presents evidence, in the form of a photograph, and a VA rating, together with a witness letter affirming that he remembers the applicant being hit in the cheek with metal and first aid was given, neither his available service record nor the applicant offers any medical documentation reflecting his contested wound required treatment or 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 to amend the decision of the ABCMR set forth in Docket Number AR20120007166 on 1 November 2012.



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) 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 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.
2. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for

aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

3. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

//NOTHING FOLLOWS//