

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2024

DOCKET NUMBER: AR20230006314

APPLICANT REQUESTS: award of the Purple Heart.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 3 March 2023

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 while in Vietnam he was on a maneuver taking artillery to a battery. The lieutenant ran over a land mine, but it did not go off. A five ton drove over the mine and it detonated in front of him. He was driving a five ton behind them, and he dropped into the hole left from the explosion. His knees and back were injured from the explosion. He was concerned about the Soldiers who operated the five ton that got hit. They were a mess. He assisted in their medical evacuation by loading them into the helicopter. He was taken by road back to base. The battery first sergeant offered to award him the Purple Heart. He was angry, crying, scared, nervous and worried about the Soldiers that were more seriously injured. He refused the award and regrets it.
3. On 8 January 1969, the applicant was inducted into the Army of the United States. He held military occupational specialty 36K, Wireman. His DA Form 20 (Enlisted Qualification Record) shows in:
 - item 31 (Foreign Service) – Vietnam from 6 June 1969 to 28 March 1970.
 - item 38 (Record of Assignments) – he was assigned to Headquarters and Headquarters Battery, 3rd Battalion, 18th Artillery, from 18 June 1969 to 27 March 1970.
 - item 40 (Wounds) – No remarks.
 - item 41 (Awards and Decorations) – National Defense Service Medal, Vietnam Service Medal, Republic of Vietnam Campaign Medal with Device (1960), and one overseas service bar

4. On 7 January 1971, he was honorably released from active duty. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 2 years of active service. It also shows in item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) –

- Good Conduct Medal
- National Defense Service Medal
- Expert Marksmanship Qualification Badge with Rifle Bar
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)

5. A review of the Awards and Decorations Computer-Assisted Retrieval System (ADCARS), an index of general orders issued during the Vietnam era between 1965 and 1973 maintained by the Awards and Decorations Branch of the U.S. Army Human Resources Command, failed to reveal any orders for award of the Purple Heart pertaining to the applicant.

6. The applicant's name is not listed on the Vietnam casualty roster. This is a listing of Vietnam era casualties commonly used to verify entitlement to award of the Purple Heart.

7. By regulation (AR 600-8-22), 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
- the medical treatment must have been made 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 that a five ton truck drove over the mine in Vietnam, and it detonated in front of him. He was driving a five ton behind them, and he dropped into the hole left from the explosion. His knees and back were injured from the explosion. 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. There is no record in his service record of an injury as a result of enemy action and there is no contemporaneous medical documentation for his contended injury submitted with the application or found in the record. The applicant did not provide evidence that satisfies the criteria for award of the

Purple Heart and therefore the Board determined there is insufficient documentation to warrant awarding it to him.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | ■ | ■ | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records show he was awarded or authorized the following awards not listed on his DD Form 214:

- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- three bronze service stars to his previously issued Vietnam Service Medal

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 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. 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:

- An officer of the medical corps of the Army.
- An officer of the medical corps of the U.S. Navy.
- 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-placed trap or mine.

(3) Injury caused by enemy-released chemical, biological, or nuclear agent.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Concussion injuries caused as a result of enemy-generated explosions.

(6) 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 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) Chemical, biological, or nuclear agents not released by the enemy.
- (6) Battle fatigue.
- (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) Post traumatic stress disorders.
- (11) Airborne (for example, parachute/jump) injuries not caused by enemy action.
- (12) Hearing loss and tinnitus (for example: ringing in the ears).
- (13) 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.
- (14) Abrasions and lacerations (unless of a severity to be incapacitating).
- (15) Bruises (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).
- (17) First degree burns.

3. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) lists the awards received by units serving in Vietnam.

a. This pamphlet shows the unit (Headquarters and Headquarters Battery, 3rd Battalion, 18th Artillery) to which the applicant was assigned was cited for award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation for the period 24 August to 31 December 1969 by Department of the Army General Order Number 42, dated 1972.

b. A bronze service star is worn on the appropriate service ribbon, to include the Vietnam Service Medal, for each credited campaign.

4. U.S. Army Vietnam (USARV) Regulation 672-5-1 (Decorations and Awards), in effect at the time, prescribed policies, responsibilities, and criteria for awards to insure prompt and proper recognition of individuals. The regulation reads, in part:

a. The Purple Heart may be awarded to U.S. personnel who are wounded or killed in action as a direct result of enemy action. A wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received must have been made a matter of official record.

b. Authority to award the Purple Heart was delegated to hospital commanders. Further, 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 more than 24 hours or evacuation from Vietnam would be awarded the Purple Heart directly by the hospital commander rendering treatment.

//NOTHING FOLLOWS//