

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2024

DOCKET NUMBER: AR20230006510

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command, Awards and Decorations Branch, denial of award of the Purple Heart. He also requests a telephonic/video appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from the Armed Forces of the United States), for the period ending 26 May 1953
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 17 August 1956
- Department of Veterans Affairs (VA) Form 20-0995 (Decision Review Request: Supplemental Claim), dated 17 November 2022
- VA Form 26-4555 (Application in Acquiring Specially Adapted Housing or Special Home Adaption Grant), dated 17 November 2022
- VA Form 21-2680 (Examination for Housebound Status or Permanent Need for Regular Aid and Attendance), dated 15 November 2022
- VA Form 21-4142a (General Release for Medical Provider Information to the Department of Veterans Affairs)
- Emory Healthcare Medical Records from January 2002 to November 2022

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 that he is seeking exceptional relief and consideration for award of the Purple Heart. He says that his family recently submitted a request for the award of the Purple Heart but was denied due to partial medical records. The partial medical records did not show that he was treated for a shrapnel injury to his hand, only treated for a shrapnel injury to the leg that was treated by a unit medic. He further states that he was a medic at the time of his injuries and was fighting the enemy and providing

medical treatment to his fellow comrades. He does not feel that he should be denied the award of the Purple Heart based on who treated his wounds. He believes this correction should be made, as he feels that his VA disability compensation claim and approval of other military benefits.

3. The applicant provides:

a. VA documents/correspondence:

- VA Form 20-0995, which shows, in pertinent part, his specific issues and dates of VA decision notices; including right leg/right hand/shrapnel injuries
- VA Form 26-4555, which shows in remarks he stated he was completely blind and needed home improvement and structural alterations
- VA Form 21-2680, which shows his request for aid
- VA Form 21-4242a, which shows he released his medical information to the VA

b. Medical records from Emory Healthcare that contains a series of entries pertaining to the diagnosis and treatments of glaucoma in his eyes, anxiety, depression, and insomnia.

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

a. He was inducted into the Army of the United States on 31 August 1951, with a specialty number of 1666 (Medical Aidman).

b. On 26 May 1953, he was discharged from active duty with an honorable characterization of service. His DD Form 214 shows he completed 1 year, 8 months, and 26 days of active service and 1 year, 2 months, and 21 days of foreign and/or sea service.

- Item 27 (Decorations, Medals, Badges, Commendations, Citations and Campaigns Ribbons Awarded or Authorized: Korean Service Medal with 3 bronze service stars
- United Nations Service Medal, and Medical Badge
- Item 39 (Wounds Received as a Result of Action with Enemy Forces) shows "none."

c. He enlisted in the Regular Army on or about 19 August 1953. He was honorably released from active duty on 17 August 1956. His DD Form 214 for this period shows his specialty number 911.10 (Medical Aidman). It also shows that he completed 2 years, 11 months, and 28 days of active service. He was awarded or authorized the National Defense Service Medal.

5. A letter issued by National Personnel Records Center (NPRC) indicated that the military records pertaining to the applicant are not located in their files and was most likely destroyed in a fire on 12 July 1973 that contained a large portion of Army military personnel records.
6. On 1 December 2022, the U.S. Army Human Resources Command Awards and Decorations Branch notified the applicant's family member they were unable to verify the applicant's entitlement to the Purple Heart. The statutory and regulatory criteria governing this award require it to be authorized to Soldiers who are wounded as a direct result of enemy action. The wound must have required treatment by a medical officer and been made a matter of official record.
7. His name and/or service number is not shown on the Korean Casualty Roster, a battle and non-battle listing of Soldiers who were killed, wounded, sick, captured, or missing during their service in Korea.
8. Regulatory guidance provides that there are three basic criteria for award of the Purple Heart: The Soldier must have been wounded as a result of hostile enemy action; the wound must have required treatment by medical officer; and the medical treatment must have been made a matter of official record.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting a Purple Heart for shrapnel wounds received while serving in the Korean War. On his DD Form 149, he notes that PTSD is related to his request. He states:

"My family recently submitted a request for an award of a Purple Heart for one that I earned while serving in the Korean War. The military denied this request due to the reliance on partial medical records. The military was able to find in their partial records that I received a shrapnel injury to the leg which was treated by a unit medic at the time. However, Army Regulation 600-8-2 (Military Awards) requires examination by a medical officer for me to qualify for a Purple Heart. The partial records did not show that I was also treated for a shrapnel."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case.

d. Paragraph 21b(1) and 21b(2) of AR 60-45, Personnel - Decorations (27 June 1950), addresses the standards required for the awarding of a Purple Heart:

"b. Standards

(1) For the purpose of considering an award of this decoration, a "wound" is defined as an injury to any part of the body from an outside force, element, or agent sustained while in action in the face of the armed enemy or as a result of a hostile act of such enemy. A physical lesion is not required, provided the concussion or other form of injury received was directly due to enemy action and required medical treatment. An "element" pertains to weather and the award of this decoration to personnel who were severely frostbitten while actually engaged in combat is authorized. Not more than one award of this decoration will be made for more than one wound or injury received at the same instant or from the same missile, force, explosion, or agent.

(2) Record of medical treatment for wounds or injuries received in action as prescribed above must have been made a matter of official record during the period of hostilities or within 6 months thereafter.

e. The current version of AR 600-8-22, Military Awards (5 March 2019), added the requirement the wound required treatment by a medical officer and that such treatment is documented in the Soldier's medical records. Paragraph 2-8c:

"c. To qualify for award of the PH 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 SF medics). Medics (such as combat medics - MOS 68W) are not physician extenders.

(4) A medical officer is defined as a physician with officer rank.

f. It is the requirement for a medical officer's treatment upon which the 1 December 2022 denial by the United States Army Human Resources Command was based:

"With respect to Mr. [Applicant]'s case, we reviewed Korean War-era historical awards records pertaining to the 23d Infantry Regiment and 2d Infantry Division but were unable to locate original general orders awarding him the Purple Heart. Based on the provided narrative of events, he received a shrapnel injury to the leg which was treated by a unit medic at the time.

Per Army Regulation 600-8-22 (Military Awards), paragraph 2-8, in order for an injury to qualify for award of the Purple Heart, the wound must have been of such severity that it required treatment, not merely medical examination, by a medical officer. As it appears the injuries Mr. Bentley suffered on that date were not severe enough to require additional treatment by a medical officer at the time, nor are they documented in his military record, we cannot authorize issuance of the Purple Heart for this event."

g. The supporting documentation does not contain any contemporaneous medical documentation. The applicant references a record of treatment in his application. Because treatment by a medical officer was not required at the time the Purple Heart would have been awarded, the presence of these records could lead to the awarding of a Purple Heart for shrapnel wounds sustained during the Korean War.

h. It is the opinion of the ARBA Medical Advisor that the lack of medical documentation prevents a recommendation for the awarding of a Purple Heart with this request. In the event the applicant submits the required documentation mentioned above, an ARBA medical advisor will certainly review the applicant's claim at that time.

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 military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The contends that he sustained a shrapnel injury to the leg that was treated by a unit medic. 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 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:

<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]

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 (AR) 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.

3. AR 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It provides that 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.

a. 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.

b. 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.

//NOTHING FOLLOWS//