

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2024

DOCKET NUMBER: AR20230006809

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command (HRC), Awards and Decorations Branch denial of his award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- DD Form 215 (Correction to DD Form 214)
- HRC denial decision, 28 November 2022
- HRC denial decision, 1 March 2023
- Photograph of a Soldier sitting on a chair
- Statement from a witness
- 2003 Department of Veterans Affairs Rating Decision
- Printout of Statutes related to the Purple Heart

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, the law changed the requirements to the Purple Heart in 2015. His injury resulted from a mine explosion and was improperly reported as a fall from a truck when it should have been "blown off the truck." A medic treated his dislocated shoulder. There were no reports kept for this type of injury. Also, a lieutenant colonel was killed at the time of this incident. There are no survivors to this incident. Additionally, he believes his bursitis, tendinitis, and arthritis were all caused by the enemy mine explosion.
3. The applicant's complete service records are not available for review. An exhaustive search was conducted to locate his service records, which are necessary in the processing of your case, but they could not be found. However, there were sufficient

documents provided by the applicant together with documents contained in his previous application to this Board, remaining in a reconstructed record to conduct a fair and impartial review of this case.

4. Review of the applicant's available service records shows:

a. He enlisted in the Regular Army for 3 years on 31 August 1965 and he held military occupational specialty 05C, Radio Telephone Operator

b. He served in Vietnam from around June 1966 to around July 1967. He was assigned to Troop E, 17th Cavalry, 173rd Airborne Brigade in Vietnam from 6 July 1966 through 22 June 1967.

c. He was honorably released from active duty on 3 June 1968, in the temporary rank of sergeant after completing 2 years, 9 months, and 3 days of creditable service with no time lost. His DD Form 214 shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Army Commendation Medal
- Combat Infantryman Badge
- Parachutist Badge
- 2 overseas service bars
- Marksman Marksmanship Qualification Badge with Rifle Bar

5. On 17 June 2008, the Board granted him relief regarding other awards. As a result, he was issued a DD Form 215 (Correction to DD Form 214) that added awards of the:

- Air Medal with Numeral 2
- Good Conduct Medal
- Valorous Unit Award
- Meritorious Unit Commendation
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- 3 bronze service stars for wear on his already-awarded Vietnam Service Medal

6. On 28 November 2022, by letter, the HRC Awards and Decorations Branch informed the applicant that based upon review of the forwarded documentation and the historical resources available to this office, they are unable to verify his entitlement to the Purple Heart. The statutory and regulatory criteria governing this award requires 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. HRC specifically requires military medical documentation from immediately after

or close to the incident reflecting a diagnosis of and treatment for a qualifying wound. In this regard, HRC acknowledges receipt of the forwarded Standard Form 513, Clinical Record Consultation Sheet) dated May 7, 1968, which states he injured his left shoulder after falling from a truck. In accordance with Army Regulation (AR) 600-8-22 (Military Awards) paragraph 2-8, the Purple Heart cannot be awarded for accidental injuries not directly caused by enemy action. While their office also noted the statement that the fall was caused by enemy mine, they were unable to locate any official military documentation reflecting this event. Further, it does not appear his injuries meet the strict criteria for award of the Purple Heart as outlined in Army regulation. As such, HRC cannot authorize issuance of the Purple Heart for this incident.

7. On 1 March 2023, by letter, the HRC Awards and Decorations Branch informed the applicant that they remain unable to authorize issuance of the requested award. HRC acknowledged receipt of the additional documentation provided in his request; however, they have yet to receive any official military documentation explicitly stating that his fall from the truck was caused by a mine explosion. Further, conditions such as bursitis do not meet the strict criteria for award as outlined in AR 6000-8-22, paragraph 2-8. As such, HRC cannot approve an award of the Purple Heart for the incident in question. If he disagreed with this determination, he may appeal this denial to the ABCMR.

8. The applicant provides:

a. Extract of the National Defense Authorization Act for Fiscal Year 2015, section 571, that states award of the PH for Servicemembers killed or wounded in attacks by foreign terrorist organizations, the Secretary will treat a Servicemembers of the Armed Forces who is killed or wounded as a result of an international terrorist attack against the United States as stated in 2-b(6). [Note: the applicant bolded the example that states "injury caused by enemy placed mines or trap" qualifies for the PH.

b. Statement from a retired Soldier who states he was a squad leader for E Troop, 17th Cavalry, in October 1966, performing road security. He observed the vehicle that the applicant was riding in, hit an enemy land mine. He was blown off the rear of the truck and injured his shoulder. During his tour of duty in Vietnam, he received two awards of the Purple Heart, and it is his desire that the applicant also receives this award.

c. VA Rating Decision dated 16 September 2003 that states "evaluation for bursitis, left shoulder, which is currently 0% disabling is increased to 20% effective 3 July 2003.

9. Nothing in several typical available sources show he was injured or wounded as a result of hostile action or that he was awarded the Purple Heart:

(1) His name is not shown on the Vietnam casualty listing. This is a listing of Vietnam era casualties commonly used to verify entitlement to award of the Purple Heart.

(2) His available personnel records do not contain an official Army message or a Western Union telegram notifying his next of kin of an injury or wound sustained in action. This was generally the proper notification procedure for injuries at the time.

(3) 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, failed to reveal any orders for the Purple Heart pertaining to the applicant.

(4) His medical records are available for review with this case. As stated before, he provides a VA rating decision related to a shoulder injury. No contemporaneous medical records exist to support an injury (as a result of hostile action) or treatment for such injury.

(5) His complete DA Form 20 (Enlisted Qualification Record) is not available for review. Item 40 (Wounds) of the DA Form 20 records any wounds sustained as a result of hostile action.

10. 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 his injury resulted from a mine explosion and was improperly reported as a fall from a truck when it should have been "blown off the truck," that a medic treated his dislocated shoulder, and that there were no reports kept for this type of injury. 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. Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action do not qualify for the Purple Heart. The Board did not find documentary

evidence that clearly or explicitly states that the applicant's fall from the truck was caused by a mine explosion or enemy action. Based on the evidence, the Board determined the applicant does not meet the criteria for award of the Purple Heart.

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.



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 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 the evidence.

2. 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.

3. Army Regulation 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:

- 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

b. Examples of injuries or wounds which clearly 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 disorders
- 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. Army Regulation 600-200 (Enlisted Personnel Management System), chapter 9, of the version in effect at the time, stated a brief description of wounds or injuries (including injury from gas) requiring medical treatment received through hostile or enemy action, including those requiring hospitalization would be entered in item 40 (wounds) of the DA Form 20. This regulation further stated that the date the wound or injury occurred would also be placed in item 40.

//NOTHING FOLLOWS//