

IN THE CASE OF: ██████████

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230006897

APPLICANT REQUESTS: correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 27 August 1970 by adding the Purple Heart.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Clinical Records, dated 16 August 1968
- DD Form 214 for the period ending 27 August 1970
- Department of Veterans Affairs (VA) Disability Rating Decision, dated 11 July 2018

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code (USC), 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 is entitled to the award of the Purple Heart. He was wounded in action in the Vietnam War and was never issued a Purple Heart.
3. The applicant provides the following information:
 - a. Clinical Records, dated 16 August 1968, which list the applicant's name and that he had a "wound penetrating (r) elbow, no artery or nerve involvement. Line of Duty. Patient was hit by fragments from enemy's mortar fire at 1900 hours, 15 August 1968, near Tuy Hoa, RVN".
 - b. VA Disability Rating Decision, which reflects, "Residuals of shell fragment wound of the right elbow with limited pronation/supination, service connected, Vietnam Era, incurred – COMBAT" with a 0 percent (%) disability rating and a combined evaluation and disability rating of 80% effective 16 May 2018.

4. The applicant's service record shows the following:

a. On 31 August 1967, he enlisted in the Regular Army.

b. General Orders Number 2770, issued by Headquarters, 173rd Airborne Brigade, dated 30 October 1968, reflects he was awarded the Army Commendation Medal (ARCOM) with "V" Device for heroism in connection with military operations against a hostile force.

c. His DA Form 20 (Enlisted Qualification Record) shows in:

- Item 31 (Foreign Service): he served in Vietnam from 3 April 1968 through 29 March 1969
- Item 38 (Record of Assignments): he was a patient on 13 October 1968 to 1 November 1968
- Item 40 (Wounds): reflects "Fragment Wound Right Arm" dated 15 August 1968
- Item 41 (Awards and Decorations): does not reflect the award of the Purple Heart, but does list the ARCOM with "V" Device

d. A DD Form 214 for the period ending 27 August 1970 shows he was honorably released from active duty and transferred to the U.S. Army Reserve. He completed 2 years, 11 months, and 27 days of net service this period, with service in Vietnam from 3 April 1968 to 29 March 1969. This document also reflects in:

- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): no entry for the Purple Heart or the ARCOM with "V" Device
- Item 30 (Remarks): Served in Vietnam from 3 April 1968 to 29 March 1969

5. The applicant's records are void of orders announcing award of the Purple Heart.

6. The applicant's name does appear on the Vietnam Casualty Roster with a code indicating he was wounded as a result of hostile action on 15 August 1968.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found relief is warranted.

- 2. The Board found the evidence confirms the applicant incurred a wound as a result of hostile action that met the criteria for the Purple Heart. The Board determined he should be awarded the Purple Heart and it should be added to his DD Form 214.
- 3. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- Awarding him the Purple Heart for a wound incurred as a result of hostile action on 15 August 1968
- Adding the Purple Heart to his DD Form 214
- Making the corrections described in Administrative Note(s) below

4/1/2024

X

CHAIRPERSON

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 NOTES:

A review of the applicant's records shows he is authorized additional awards not listed on his DD Form 214. As a result, amend his DD Form 214 for the period ending on 29 January 1971 by adding the following awards:

- ARCOM with "V" Device
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- four bronze service stars with the Vietnam Service Medal

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within three 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 three-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 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.

b. A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required. However, the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound will be documented in the Service member's medical and/or health record. Award of the Purple Heart may be made for wounds treated by a medical professional other than a medical officer, provided a medical officer includes a statement in the Service member's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

c. When contemplating an award of the Purple Heart, the key issue that commanders must take into consideration is the degree to which the enemy caused the

injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite, but is not the sole justification for award.

d. Examples of enemy-related injuries that clearly justify award of the Purple Heart include concussion injuries caused as a result of enemy-generated explosions resulting in a mild TBI 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.

e. Examples of injuries or wounds that clearly do not justify award of the Purple Heart include post-traumatic stress disorders, hearing loss and tinnitus, mild TBI 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.

f. When recommending and considering award of the Purple Heart for a mild TBI or concussion, the chain of command will ensure that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

4. Army Directive 2011-07 (Awarding the Purple Heart), dated 18 March 2011, provides clarifying guidance to ensure the uniform application of advancements in medical knowledge and treatment protocols when considering recommendations for award of the Purple Heart for concussions (including mild TBI and concussive injuries that do not result in a loss of consciousness). The directive also revised AR 600-8-22 to reflect the clarifying guidance.

a. Approval of the Purple Heart requires the following factors among others outlined in Department of Defense Manual 1348.33 (Manual of Military Decorations and Awards), Volume 3, paragraph 5c: wound, injury or death must have been the result of an enemy or hostile act, international terrorist attack, or friendly fire and the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound shall be documented in the Soldier's medical record.

b. Award of the Purple Heart may be made for wounds treated by a medical professional other than a medical officer provided a medical officer includes a statement in the Soldier's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

c. 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 Navy, or an officer in the Air Force designated as a medical officer in accordance with Title 10, U.S Code, section 101.

e. 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 (for example, independent duty corpsmen and Special Forces medics). Basic corpsmen and medics (such as combat medics) are not physician extenders.

e. When recommending and considering award of the Purple Heart for concussion injuries, the chain of command will ensure that the criteria are met and that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

4. Army Regulation 600-8-22 (Military Awards) prescribes Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards. The Vietnam Service Medal was awarded to all service members of the Armed Forces of the United States for qualifying service in Vietnam after 3 July 1965 through 28 March 1973. Qualifying service included attachment to or assignment for one or more days with an organization participating in or directly supporting military operations. One bronze service star is authorized with the Vietnam Service Medal for each campaign during which a member was assigned or attached to and present for duty with a unit during the period in which it participated in combat or was under orders in the combat zone and served at a normal post of duty.

5. Army Regulation 635-5 (Separation Documents) states that the DD Form 214 will reflect the conditions and circumstances that existed at the time the records were created. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate and reflects the conditions as they existed at the time of separation. Personnel officers will prepare and authenticate DD Form 214WS (Worksheet) prior to forwarding records to the transfer facility. All available records will be used as a basis for the preparation of DD Form 214WS, including DA Form 20 (Personnel Qualification Record) and orders.

6. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register), paragraph 6d, states that Department of the Army General Orders Number 8, dated 1974, announced award of the Republic of Vietnam Gallantry Cross

with Palm Unit Citation to Headquarters, U.S. Army Vietnam, and its subordinate units for the period 20 July 1965 to 28 March 1973.

//NOTHING FOLLOWS//