

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230006972

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 under the Provisions of Title 10, U.S. Code, Section 1552)
- Self-authored Testimonial Statement
- Spouse's Testimonial Letter

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 he should have been awarded the Purple Heart for wounds he sustained in the Republic of Vietnam in July 1970.

a. He states there was an error in not awarding him the Purple Heart while he was serving in Vietnam in 1969-1971. On or around 4 July 1970, he was serving as a tank driver assigned to the 3d Squadron, 5th Cavalry Regiment. On that day, they hit a land mine near Cam Lộ Combat Base, Quảng Trị, Vietnam. He was taken to the rear for medical attention. His face hit the driver's hatch, injuring his mouth and teeth. His front teeth were knocked loose and one tooth had to be extracted. When he returned home from Vietnam the end of March 1971, he requested outpatient dental treatment/X-rays/fillings. He ended up getting a front tooth implant.

b. His spouse attests that he was serving as a tank driver assigned to the 3d Squadron, 5th Cavalry Regiment. He first told her about hitting the land mine in November 1970 when she met him on rest and recuperation leave in Hawaii, stating his tank hit a land mine in the first part of July 1970. His face hit the driver's hatch and he was injured. He was taken to the rear for medical treatment. The impact knocked his front teeth loose and he had to have one tooth extracted. His whole tank and crew had

to be taken to the rear for repairs and medical treatment. Shortly after his rest and recuperation leave, Troop B had to reinforce Troop A in the Cam Lộ Valley. He and his unit were rewarded with a "Bronze Star" (presumed to mean bronze service star for campaign participation).

3. His Standard Form 88 (Report of Medical Examination), 1 May 1969, shows the examining physician found him qualified for induction with physical profile ratings of 1 in all functional capacity factors. No abnormalities were noted.

4. He was inducted into the Army of the United States on 19 August 1969.

5. He was awarded military occupational specialty 11E (Armor Crewman) effective 19 December 1969.

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

- item 17 (Physical Status) – physical profile ratings of 1 in all functional capacity factors effective 22 March 1971
- item 31 (Foreign Service) – overseas tour credit for service in U.S. Army Pacific-Vietnam from 26 February 1970 through 23 March 1971
- item 38 (Record of Assignments) – duty military occupational specialty 11E as a loader assigned to Troop B, 3d Squadron, 5th Cavalry Regiment, 9th Infantry Division, U.S. Army Pacific, from 24 March 1970 through 21 March 1971
- item 39 (Campaigns) – no entries
- item 40 (Wounds) – no entries
- item 41 (Awards and Decorations) –
  - National Defense Service Medal
  - Vietnam Service Medal
  - Marksman Marksmanship Qualification Badge with Rifle Bar (M-14)

7. His Standard Form 88, 22 March 1971, shows the examining physician found him qualified for separation with physical profile ratings of 1 in all functional capacity factors. No abnormalities were noted.

8. His DA Form 1811 (Physical and Mental Status on Release from Active Status), 22 March 1971, noted he was assigned physical profile ratings of 1 in all functional capacity factors and was physically qualified for separation or reenlistment without reexamination within 3 months.

9. He was honorably released from active duty as an overseas returnee on 22 March 1971. He completed 1 year, 7 months, and 4 days of net active service during this period. Item 24 (Decorations, Medals, Badges, Commendations, Citations and

Campaign Ribbons Awarded or Authorized) of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was awarded or authorized:

- National Defense Service Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-14)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Vietnam Service Medal

10. His military records are void of medical documentation indicating he was treated for any injuries during his military service.

11. His name is not shown on the Vietnam casualty listing.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The Board noted the applicant's contention of his dental treatment; however, found no documentary evidence that clearly or explicitly states the applicant's injury was due to a sustained vehicle accident by hitting a land mine in Vietnam. Additionally, there was not sufficient evidence provided by the applicant to substantiate award of the Purple Heart. Based on a preponderance of the evidence, the Board determined the Purple Heart was not warranted.

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:

Other than the corrections addressed in the Administrative Note below, the Board determined 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 otherwise 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.

ADMINISTRATIVE NOTE:

The applicant is authorized administrative correction of his DD Form 214 to show the following awards without Board action:

- Vietnam Service Medal with three bronze service stars
- Republic of Vietnam Campaign Medal with Device (1960)
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

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) 40-501 (Standards of Medical Fitness), in effect at the time, governed medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Chapter 7 prescribed a system for classifying individuals according to functional abilities. The functions were considered under six factors designated "P-U-L-H-E-S." Four numerical designations are used to reflect different levels of functional capacity. The basic purpose of the physical profile serial was to provide an index to overall functional capacity. Therefore, the functional capacity of a particular organ or system of the body, rather than the defect per se, would be evaluated in determining the numerical designation 1, 2, 3, or 4. An individual having a numerical designation of 1 under all factors was considered to possess a high level of medical fitness.
3. AR 600-200 (Enlisted Personnel Management System), 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 (Enlisted Qualification Record). The date the wound or injury occurred would also be entered in item 40.
4. AR 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 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. The Purple Heart differs from all other decorations in that an individual is not "recommended" for the decoration; rather, he or she is entitled to it upon meeting specific criteria. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider is the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer.

(1) The key issue commanders must take into consideration when contemplating an award of this decoration 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 sole justification for award.

(2) 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 below. 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. 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.

(3) Examples of enemy-related injuries which 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. 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 1 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. Participation credit was awarded for the following relevant campaigns:

- Vietnam Winter-Spring 1970 – 1 November 1969-30 April 1970
- Sanctuary Counteroffensive – 1 May 1970-30 June 1970
- Vietnam Counteroffensive Phase VII – 1 July 1970-30 June 1971

c. The Republic of Vietnam Campaign Medal with Device (1960) was awarded by the Government of the Republic of Vietnam to service members of the U.S. Armed

Forces who served in the Republic of Vietnam for 6 months during period 1 March 1961 to 28 March 1973, inclusive.

5. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) lists the awards received by units serving in Vietnam. This pamphlet shows the 3d Squadron, 5th Cavalry Regiment, was cited for award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation for the period 8 February 1971 through 30 April 1971 in Department of the Army General Orders Number 42, 27 November 1972.

6. The Department of the Army Office of the Adjutant General Casualty Division Casualty Reference Name Listing for the period 1 January 1961 through 30 June 1973 is a battle and non-battle listing of Soldiers who were killed, wounded, sick, captured, or missing during their service in Vietnam.

//NOTHING FOLLOWS//