

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230007492

APPLICANT REQUESTS:

- correction of the deceased former service member's (FSM's) DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show:
 - award of the Purple Heart
 - two bronze service stars with the Vietnam Service Medal
 - his correct rank
 - the county in the entry for his home of record as "Montmorency"
- reissuance of the following medals:
 - Purple Heart
 - Silver Star
- assistance replacing a stolen white Veterans of Foreign Wars (VFW) Commander's hat

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

- Two DD Forms 149 (Application for Correction of Military Record), dated 3 April 2023 and 29 June 2023
- Correspondence from Army Board for Correction of Military Record (ABCMR)
- State [REDACTED] Certificate of Death
- [REDACTED] of Health Certificate of Live Birth
- Congressional Correspondence and Privacy Release Form
- DD Form 214 for the period ending 15 August 1969
- DD Form 215 (Correction to DD Form 214)
- Memorandum, subject: ABCMR Record of Proceedings (AR20160005944)
- Photograph
- Clinical Record Coversheet and Three Standard Forms 502 (Clinical Record – Narrative Summary)
- "Meaning of Vietnam Service Medal with 2 Bronze Service Stars"

- ABCMR correspondence with Montmorency County Veterans Service Officer (VSO)

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, daughter of the deceased FSM, states she is seeking the corrections to obtain survivor benefits due to the FSM's military legacy. Additionally, she requests replacement medals to maintain family heirlooms and keepsake memories.
3. The applicant provides:
 - a. State ██████████ Certificate of Death showing the FSM's date of death.
 - b. ██████████ of Health Certificate of Live Birth that shows the FSM as the father of the applicant.
 - c. Congressional Correspondence and Privacy Release Form from the U.S. House of Representatives, requesting assistance with correcting the FSM's military record.
 - d. Memorandum, subject: ABCMR Record of Proceedings (AR20160005944) that details the correction made to the FSM's DD Form 214 to correct his HOR.
 - e. Photograph, presumably of the FSM in uniform.
 - f. Clinical Record Coversheet and three narrative summaries that describe the FSM's diagnoses of:
 - Wound, fragment, left temporal region, IRHA: Approximately 1400 hours, 23 January 1968, patient was injured when he was hit by hostile forces fragments of unknown type, at Dak To, Vietnam. LOD: Yes.
 - Wounds, fragment, multiple, right upper extremity, no nerve or artery involvement, incurred as in Dg. #2. LOD: Yes.
 - Contusion, left eye, with vitreous hemorrhage, secondary to Dg. #2. LOD: Yes.
 - Edema, macular, left eye, secondary to Dg. #4. LOD: Yes.
 - Scarring, macular, left eye, secondary to Dg. #4. LOD: Yes."

g. "Meaning of Vietnam Service Medal with 2 Bronze Service Stars" print out from Wikipedia that describes the award of the Vietnam Service Medal and the campaigns that are eligible for bronze service stars.

h. ABCMR correspondence with Montmorency County VSO that informs the VSO on how to file an application online or via regular mail, and the necessary documents that should accompany the application for consideration.

4. On 18 September 2019 a DD Form 215 (Correction to DD Form 214) was issued to correct the home of record on the FSM's DD Form 214. Because this correction has already been made, that portion of the applicant's request will not be addressed in these proceedings. Regarding the VFW Commander's hat, the applicant is advised to contact the VFW. The FSM's records show he is eligible for additional awards not annotated on his DD Form 214. As a result, these awards will be added administratively. The Board will consider:

- award of the Purple Heart
- his correct rank

5. The FSM's service record shows:

a. The FSM enlisted in the Regular Army on 7 June 1967. After completing initial entry training, he was awarded military occupational specialty 11B (Light Weapons Infantryman). He served in Vietnam from on or about 15 November 1967 through 30 January 1968 as an infantryman assigned to an infantry unit. He was assigned as a patient to the 249th General Hospital in Japan effective 31 January 1968 and to Walter Reed Army Medical Center in Washington, DC, effective 26 February 1968, and then returned to duty with a unit at Fort Meade, MD, for the remainder of his active duty service.

b. Special Court-Martial Order Number 234, dated 27 June 1968, found the FSM guilty of one charge and one specification of being absent without leave (AWOL) from on or about 6 May 1968 to on or about 2 June 1968. He was sentenced to be confined with hard labor for 6 months and to forfeit \$68.00 pay per month for 6 months.

c. Special Court-Martial Order Number 270, dated 26 July 1968, suspended the portion of the sentence adjudging confinement with hard labor for 6 months, for a period of 5 months, effective 29 July 1968.

d. Special Court-Martial Order Number 347, dated 19 November 1968, remitted the unexecuted portion of the approved sentence adjudging confinement with hard labor for 6 months and forfeiture of \$68.00 pay per month for 6 months, effective 19 November 1968.

e. On 4 March 1969, the FSM accepted nonjudicial punishment for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) as a result of failing to go to his appointed place of duty. His punishment included reduction to the rank/grade of private (PVT)/E-2 and extra duty for 14 days.

f. On 9 April 1969, the FSM accepted nonjudicial punishment for violation of Article 86 of the UCMJ as a result of absenting himself from his unit. His punishment included reduction to the rank/grade of PVT/E-2 and extra duty for 7 days.

g. On 21 April 1969, the FSM accepted nonjudicial punishment for violation of Article 86 of the UCMJ as a result of absenting himself from his unit. His punishment included reduction to the rank/grade of PVT/E-1, extra duty and restriction for 14 days.

h. On 10 May 1969, the FSM accepted nonjudicial punishment for violation of Article 92 of the UCMJ as a result of violating a lawful general regulation. His punishment included extra duty and restriction for 14 days.

i. The FSM's DA Form 20 (Enlisted Qualification Record) shows:

(1) Item 33 (Appointments and Reductions):

- PVT/E-1 – 7 June 1967
- PVT/E-2 – 7 October 1967
- private first class (PFC)/E-3 – 21 November 1967
- PVT/E-1 – 21 Jun 1968
- PVT/E-2 – 19 November 1968
- PFC/E-3 – 22 January 1969
- PVT/E-1 – 22 April 1969

(2) Item 40 (Wounds) is void of any entries.

j. On 15 August 1969, he was released from active duty with an honorable characterization of service. His DD Form 214 shows he completed 2 years and 2 days of active service with 68 days lost time. It also shows in:

- item 5a (Grade, Rate or Rank): PVT (P) [Permanent]
- item 5b (Pay Grade): E-1
- item 6 (Date of Rank): 22 April 1969
- item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):
 - National Defense Service Medal

- Vietnam Service Medal
- Driver Badge with Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-14)
- Silver Star

6. The FSM's record does not contain orders for the Purple Heart.

7. The FSM's name is shown on 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, a battle and non-battle listing of Soldiers who were killed, wounded, sick, captured, or missing during their service in Vietnam. The list shows his casualty code as 23 (hostile wounded in action: not serious, hospitalized) and the date of the wounding as 23 January 1968.

8. By regulation:

a. 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.

b. When a person is reduced in grade as a result of an unsuspended reduction, his or her date of rank in the grade to which reduced is the date the punishment of reduction was imposed.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted.

2. The Board found the FSM met the criteria for the Purple Heart. The Board determined he should be awarded this medal and it should be added to his DD Form 214.

3. The Board also found the FSM met the criteria for the Combat Infantryman Badge as an infantryman who was wounded in action and had also been awarded the Silver Star. The Board determined he should be awarded this badge and it should be added to his DD Form 214.

- 4. The Board noted the FSM's release from active duty in the lowest enlisted grade was the result of nonjudicial punishment due to periods of unauthorized absence. The Board determined there is no error or injustice in the rank shown on the FSM's DD Form 214.
- 5. 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>	
:	:	:	GRANT FULL RELIEF
█	█	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

- 1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial 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 wounds incurred as a result of hostile action on 23 January 1968
 - Awarding him the Combat Infantryman Badge effective 23 January 1968
 - Making the corrections described in Administrative Note(s) below
- 2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

6/3/2024

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CHAIRPERSON

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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):

The FSM's service records contain evidence substantiating the following administrative corrections to the applicant's DD Form 214 without Board action:

- a. delete the Vietnam Service Medal.
- b. add the following awards:
 - Vietnam Service Medal with two bronze service stars
 - Presidential Unit Citation
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation
 - Republic of Vietnam Civil Actions Honor Medal First Class 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) 27-10 (Military Justice) prescribes the policies and procedures pertaining to the administration of military justice. When a person is reduced in grade as a result of an unsuspended reduction, his or her date of rank in the grade to which reduced is the date the punishment of reduction was imposed. If, however, a reduction is set aside and all rights, privileges, and property are restored, the member concerned will be entitled to pay as though the reduction had never been imposed.
3. Army Regulation 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. In item 5a (Grade, Rate or Rank) enter active duty grade or rank and pay grade at time of separation from ERB/ORB.
4. Department of the Army Pamphlet 672-3 (Unit and Campaign Participation Credit Register) shows:

a. Department of the Army General Orders 3, dated 1970, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation for service in Vietnam to the 3d Battalion, 12th Infantry Regiment.

b. Department of the Army General Orders 53, dated 1970, announced award of the Republic of Vietnam Civil Actions Honor Medal for service in Vietnam to the 3d Battalion, 12th Infantry Regiment.

c. Department of the Army General Orders 5, dated 1979, announced award of the Presidential Unit Citation for service in Vietnam to the 1st Battalion, 503d Infantry Regiment.

d. Department of the Army General Orders 51, dated 1971, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation for service in Vietnam to the 1st Battalion, 503d Infantry Regiment.

e. A bronze service star is worn on the appropriate service ribbon, to include the Vietnam Service Medal, for each credited campaign. During his service in Vietnam, the applicant participated in the following 2 campaigns:

- Vietnam Counteroffensive Phase III, 1 June 1967 – 29 January 1968
- TET Counteroffensive, 30 January 1968 – 1 April 1968

5. 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.

6. AR 600-8-22 states the Combat Infantryman Badge is awarded to infantry officers and to enlisted members and warrant officers who have an infantry MOS. They must have served in active ground combat while assigned or attached to an infantry unit of brigade, regimental or smaller size.

//NOTHING FOLLOWS//