

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230007694

APPLICANT REQUESTS: correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 27 January 1972 to show 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).

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 was significantly burned during his service in Vietnam and he was awarded the Purple Heart; however, it was never added to his DD Form 214.
3. His Standard Form 88 (Report of Medical Examination), 9 July 1969, for the purpose of enlistment shows the examining physician annotated marks or scars on his buttocks in item 39 (Identifying Body Marks, Scars, Tattoos). He was found qualified for enlistment.
4. He enlisted in the Regular Army on 10 July 1969.
5. Item 31 (Foreign Service) of his DA Form 20 (Enlisted Qualification Record) shows he received overseas tour credit for service in Vietnam from 2 December 1969 through 10 November 1970.
6. Item 38 (Record of Assignments) of his DA Form 20 does not list his individual duties and units of assignment for the period 10 July 1969 through 27 January 1972.

7. Item 39 (Campaigns) of his DA Form 20 shows he received participation credit for the following Vietnam campaigns:

- Vietnam Winter-Spring
- Sanctuary Counteroffensive
- Vietnam Counteroffensive Phase VII

8. Item 40 (Wounds) of his DA Form 20 contains no entries.

9. Item 31 (Foreign Service) of his DA Form 2-1 (Personnel Qualification Record – Part II) shows he received overseas tour credit for service in Vietnam from 2 December 1969 through 10 November 1970.

10. Item 35 (Record of Assignments) of his DA Form 2-1 does not list his individual duties and units of assignment for the period 10 July 1969 through 27 January 1972.

11. His records contain no medical documentation showing he sustained any wounds or injuries received through hostile or enemy action requiring medical treatment.

12. His name is not shown on the Vietnam casualty listing as being wounded or injured.

13. His records contain no orders awarding him the Purple Heart.

14. His Standard Form 88, on or about 4 January 1972, for the purpose of separation shows the examining physician annotated marks or scars on his buttocks in item 39 (Identifying Body Marks, Scars, Tattoos). He was found qualified for separation.

15. His DA Form 3082 (Statement of Medical Condition), 4 January 1972, shows he marked "There has been no change in my medical condition."

16. He was honorably released from active duty on 27 January 1972. He completed 2 years, 6 months, and 18 days of net active service during this period, including 11 months and 5 days of foreign service.

a. Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) of his DD Form 214 for this period shows he was awarded or authorized the:

- National Defense Service Medal
- Army Commendation Medal (2nd Award)
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)

- Combat Infantryman Badge
- Marksman Marksmanship Qualification Badge with Rifle Bar

b. Item 30 (Remarks) of his DD Form 214 for this period contains the entry: "Vietnam 6Dec69-10Nov70 [6 December 1969 through 10 November 1970]; Indochina – Yes, Korea – No."

17. Following a break in service, he again enlisted in the Regular Army on 19 October 1972.

18. Department of the Army General Orders Number 8, dated 19 March 1974, confirmed award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, U.S. Military Assistance Command, and its subordinate units during the period 8 February 1962 to 28 March 1973 and to Headquarters, U.S. Army Vietnam, and its subordinate units during the period 20 July 1965 to 28 March 1973.

19. His Standard Form 88, 23 September 1975, for the purpose of separation shows the examining physician annotated stria (stretch marks) on his buttocks in item 39 (Identifying Body Marks, Scars, Tattoos). He was found qualified for separation.

20. Item 5 (Oversea Service) of his DA Form 2-1 shows he received overseas tour credit for service in Korea from 28 May 1974 through 14 October 1975.

21. His DA Form 3082, 15 October 1975, shows he marked "There has been no change in my medical condition."

22. Headquarters, Presidio of San Francisco, Special Orders Number 201, 15 October 1975, honorably discharged him effective 15 October 1975.

23. He was honorably discharged on 15 October 1975. He completed 2 years, 11 months, and 27 days of net active service during this period, including 1 year, 4 months, and 17 days of foreign service. Item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) of his DD Form 214 for this period shows he was awarded or authorized the:

- National Defense Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Vietnam Service Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Army Commendation Medal
- Combat Infantryman Badge
- Army Good Conduct Medal

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. 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. The applicant served in Vietnam from on or about 2 December 1969 to on or about 10 November 1970. The Board found no evidence that shows he was wounded/injured as a result of hostile action and/or medical treatment record to confirm if an injury occurred and if it required medical treatment. As a result, the Board determined he does not meet the criteria for award of the Purple Heart.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the corrections addressed in Administrative Note(s) below, 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.

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[REDACTED]

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[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.

ADMINISTRATIVE NOTE(S): The applicant is authorized administrative correction of his DD Form 214 for the period ending 27 January 1972 to show the following awards without Board action:

- three bronze service stars with his Vietnam Service Medal
- 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 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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.

3. Army Regulation 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 of the DA Form 20. The date the wound or injury occurred would also be entered in item 40.

4. 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 to members of the Armed Forces of the United States who, while serving under competent authority in any capacity with one of the U.S. Armed Services after 5 April 1917, have been wounded in any action against an enemy of the United States.

(1) While clearly an individual decoration, the Purple Heart differs from all other decorations in that an individual is not recommended for the decoration; rather, he/she is entitled to it upon meeting specific criteria.

(2) To qualify for award of the Purple Heart, 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. Treatment of the wound will be documented in the member's medical or health record. 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) When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider are 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.

(a) Some examples of enemy-related actions that justify eligibility for the Purple Heart are as follows:

- injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- injury caused by enemy emplaced trap, mine, or other improvised explosive device
- injury caused by chemical, biological, or nuclear agent released by the enemy
- injury caused by vehicle or aircraft accident resulting from enemy fire
- smoke inhalation injuries from enemy actions that result in burns to the respiratory tract
- perforated eardrum caused by enemy action (two critical factors to consider are 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)
- concussions or mild traumatic brain injury caused as a result of enemy-generated explosions that result in 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) Some examples of injuries that do not justify eligibility for 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
- exposure to chemical, biological, or nuclear agents not directly released by the enemy
- battle fatigue, neuropsychosis, and post-traumatic stress disorders
- 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
- first-degree burns
- airborne (for example, parachute or jump) injuries not caused by enemy action
- hearing loss and tinnitus (for example, ringing in the ears)
- mild traumatic brain injury that does not 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 or lacerations, unless of a severity requiring treatment by a medical officer
- bruises or contusions, 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)

b. The Vietnam Service Medal was awarded to all service members of the Armed Forces of the United States serving in Vietnam and its contiguous waters or airspace there over after 3 July 1965 through 28 March 1973. One bronze service star is authorized for each campaign under which a service member was assigned or attached to and present for duty with a unit during the period in which it participated in combat.

c. Appendix K (Campaigns, Service Requirements, and Inscriptions Prescribed for Streamers) shows participation credit was awarded for the following campaigns during the applicant's service in Vietnam:

- 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

5. 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//