

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230007923

APPLICANT REQUESTS: on behalf of her deceased husband, a former service member (FSM), correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 5 May 1972 to show award of the Purple Heart (PH).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, 5 May 1972
- Marriage Certificate, [REDACTED]
- SF 88 (Report of Medical Examination), 14 June 1974
- Certificate of Death, [REDACTED]
- Letter from the National Personnel Records Center (NPRC), 17 March 2023

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 her request for replacement of the FSM's lost PH was denied, because no record was found for wounds or injuries that he received in action. The FSM was injured on two occasions while deployed to Southwest Asia. She would like to give the medal to their son in memory of his dad and his service to this country.
3. His record indicates the FSM was awarded or authorized additional awards that are not shown on his DD Form 214 and will be listed in the administrative notes.
4. The applicant provides the following:
 - a. A copy of his DD Form 214 for the period ending 5 May 1972.

b. A marriage certificate showing the relationship to the FSM.

c. SF 88 dated 14 June 1974, which states the FSM received a gunshot wound in 1971 while in Vietnam. It was taped up with good results and he was hospitalized for two days for observation. He received a shrapnel wound in January 1972 in his right leg while in Vietnam. The wound was cleaned with good results.

d. A certificate of death dated [REDACTED]

e. A letter from NPRC dated 17 March 2023, which states no record was found to show that the FSM was given medical treatment for wounds or injuries received in action. In the absence of such records, the PH may not be authorized.

5. A review of the FSM's records show:

a. DD Form 4 (Enlistment Record – Armed Forces of the United States), shows he enlisted in the Regular Army on 11 August 1959.

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

- Item 31 (Foreign Service): service in Germany from 1960 to 1962 and in the U.S. Army Pacific - Vietnam (USARPAC) from 27 September 1971 to 4 May 1972
- Item 38 (Record of Assignments): he was assigned to the 225th Surveillance Airplane Company and the 201st Aviation Group in Vietnam.
- Item 40 (Wounds): None
- Item 41 (Awards and Decorations): does not list the award of the PH.

c. He was honorably released from active duty and transferred to the U.S. Army Reserve on 30 July 1962. His DD Form 214 shows he completed 2 years, 11 months, and 20 days of active service. This form does not list any awards.

d. DD Form 4 (Enlistment Contract – Armed Forces of the United States) shows he enlisted in the Regular Army on 21 December 1970.

e. He was honorably discharged on 5 May 1972. His DD Form 214 shows he completed 1 year, 4 months, and 15 days of active service this period. It shows in:

- Item 22b (Total Active Service): 4 years, 4 months, and 5 days
- Item 22c (Foreign and/or Sea Service): 7 months and 8 days (USARPAC)
- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): does not list the PH; it lists:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)

6. There are no documents or orders in the applicant's record that indicate he was recommended for or awarded the PH.

7. The applicant's name is not shown on the Department of the Army, Office of the Adjutant General Casualty Division Casualty Reference Name Listing for the period 27 September 1971 to 4 May 1972, a battle and non-battle listing of Soldiers who were killed, wounded, sick, captured, or missing during their service in Vietnam.

8. A review of the Awards and Decorations Computer-Assisted Retrieval System (ADCARS), an index of general orders issued during the Vietnam era, maintained by the U.S. Army Human Resources Command, failed to reveal any orders that show the applicant was awarded the PH.

9. Army Regulation 600-8-22 (Military Awards) contains the regulatory guidance pertaining to entitlement to the PH and 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.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Although there is medical documentation showing the applicant was wounded while in Vietnam (gun shot wound and shrapnel wound), the record was generated three years after the alleged incident. Additionally, the medical document in question shows the FSM serving as a MSGT in the Air Force at the time of the medical examination; therefore, the board questioned whether he may have received a Purple Heart during his Air Force service. As a result of these remaining questions, the Board found insufficient evidence showing the injuries were as a result of combat with an armed enemy. Therefore, the Board concluded there was insufficient evidence to award 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:

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.

5/14/2024

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 NOTE(S): A review of the applicant's records show he is authorized additional awards not listed on his DD Form 214 for the period ending 5 May 1972. As a result, his DD Form 214 should be amended in item 24 (Awards) as follows:

- a. Delete the Vietnam Service Medal
- b. Add:
 - 3 bronze service stars to his previously issued 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 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.

(1) 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.

(2) 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.

(3) 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 mTBI 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.

(4) Examples of injuries or wounds that clearly do not justify award of the Purple Heart include post-traumatic stress disorders, hearing loss and tinnitus, mTBI 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.

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 or was under orders in the combat zone and served at a normal post of duty. The applicant participated in three campaigns during his service in Vietnam.

3. Department of the Army General Orders Number 8, dated 19 March 1974, awarded Headquarters, United States Military Assistance Command and its subordinate units, the Republic of Vietnam Gallantry Cross with Palm Unit Citation for the period 8 February 1962 to 28 March 1973.

//NOTHING FOLLOWS//