

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230008558

APPLICANT REQUESTS: award of the Purple Heart and a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- 2 X DD Form 214, Armed Forces of the United States Report of Transfer or Discharge, ending on 10 December 1967 and 23 November 1969
- DDForm215, Correction to DD Form 214, 24 May 2000
- Congressional Correspondence
- Personal Statement, 28 October 2022
- Buddy Statement, 20 November 2021
- Clinical Record, 2 January 1968
- Adjutant General denial of the Purple Heart, 20 October 1975

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 the Purple Heart should have been awarded in 1968 due to chemical burns as a result of search for enemy in tunnel that was fraged and smoked causing whatever chemical that was in the tunnel to be activated before he went into the tunnel looking for the enemy. When he joined his platoon, he told them that he would not ask them to do anything he wouldn't do himself. On his first mission through the A Chau Valley, one of his sergeants found an entrance to a tunnel. He asked him (the applicant) if he had been down a tunnel yet. At that point he had no choice but to go down. He "smoked" it and "fraged" it and went down with a 45 and flashlight. He was semiconscious within minutes. After they pulled him out, his medic poured water on him to wash off the white powder covering his face and exposed skin. The water activated whatever the powder was, and his face, neck, arms and hands instantly became inflamed. He had trouble talking and his eyes were swollen. He was sent to the

M.A.S.H. at Camp Evans for triage. They medevac'd me to the USS Sanctuary, a Naval hospital ship for treatment. He was denied the award in 1975. The denial stated that a "wound" is defined as an injury to any part of the body from an outside force or agent.: That is exactly what happened to him, chemical burns (see USS Sanctuary hospital report where he was medically evacuated) while in pursuit of the enemy in the A Shau Valley. He has included a witness statement. In this statement, the witness, a former sergeant, states:

a. He and the applicant arrived in Vietnam in November of 1968. They were assigned to A Company, 1st Battalion, 506th Infantry, 101st Airborne Division. On December 27, 1968, the applicant entered a tunnel in the A Shau Valley in order to see if enemy combatants were hiding in the tunnel. He could have sent any of his men into the tunnel, but being the leader he was, he chose to go in himself. Upon entering the tunnel, he encountered a trip wire that detonated a release of chemical agent that filled the tunnel and rendered him unconscious. His men were able to extract him, but he was in serious condition and had to be medevacked to Camp Evans. At Camp Evans he was told he probably would not survive his injuries and was sent to a hospital ship in the Tonkin Gulf. He was treated for serious wounds that still impact him to this day.

b. The applicant was a dedicated combat soldier who served bravely and survived Hamburger Hill as well as many other engagements. For the purpose of considering the Award of the Purple Heart, a wound is defined as an injury to any part of the body from an outside force or chemical, biological, or nuclear agent. Accidental injuries received in combat are not considered as wounds received in action. As a Purple Heart Veteran himself, he feels the Department of the Army was very negligent in not awarding the Purple Heart in 1968. By the Army's own standards, this Purple Heart cannot be denied. The applicant was a loyal and honorable soldier. He deserves this award for his sacrifice, leadership, and service to his country.

3. The applicant's complete service records are not available for review. An exhaustive search was conducted to locate his records, but they could not be found. However, there were sufficient documents remaining in a reconstructed record, in addition to those provided by the applicant, to conduct a fair and impartial review of this case.

4. Review of the applicant's available service records shows:

a. He enlisted in the Regular Army on 30 October 1966. He was trained in and held military occupational specialty 11F, Infantry Operations and Intelligence Specialist. He also completed Officer Candidate School.

b. He was honorably discharged from active duty as an enlisted Soldier on 10 December 1967 to accept a commission. His DD Form 214 for this period of service

shows he was awarded or authorized: National Defense Service Medal, Army Good Conduct Medal, and Sharpshooter Badge with Rifle Bar (M-14).

c. He was appointed an Infantry Reserve commissioned officer of the Army on 11 December 1967 and continued active duty, as a commissioned officer. He also completed airborne school.

d. He served in Vietnam from on or about 12 December 1968 to on or about 15 November 1969. He was assigned as follows:

- from on or about 12 December 1968 to 19 August 1969, Company A, 1st Battalion, 506th Infantry
- from 20 August 1969 to on or about 15 November 1969, Headquarters and Headquarters Company, 3rd Brigade, 101st Airborne Division

e. He was honorably released from active duty on 23 November 1969, after completing 1 year and 11 months of active (commissioned) service. His DD Form 214 for this period show she was awarded or authorized:

- National Defense Service Medal
- Army Commendation Medal (ARCOM)
- Combat Infantryman Badge
- Vietnam Campaign Medal
- Vietnam Service Medal
- Bronze Star Medal
- Air Medal (1st award)
- Parachute Badge
- 2 overseas service bars

3. On 20 October 1975, Office of The Adjutant General, U.S. Army Reserve Components Personnel and Administration Center informed the applicant that "For the purpose of considering the award of the Purple Heart, a "wound" is defined as an injury to any part of the body from an outside force or agent. Accidental injuries received in a combat zone are not considered as wounds received in action. Since you were wounded accidentally, there is no authority whereby you may be issued the Purple Heart."

4. On 10 July 1990, he was issued a DD Form 215 (Correction to DD Form 214) that added awards of the: Army Commendation Medal (2nd Award), Expert Badge with Auto Rifle Bar, and Republic of Vietnam Gallantry Cross with Palm Unit Citation

5. On 24 May 2000, as a result of his petition to this Board regarding the Presidential Unit Citation and a second award of the Air Medal, the Board granted relief. As a result,

on 15 January 2000, he was issued another DD Form 215 that amended his November 1969 DD Form 214 to add the following awards:

- Air Medal with Numeral 2
- Army Commendation Medal (2nd Award)
- Presidential Unit Citation
- Expert Badge with Auto Rifle Bar
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation

6. Nothing in several typical sources show he was injured or wounded as a result of hostile action or that he was awarded the Purple Heart:

(1) His name is not shown on the Vietnam casualty listing. This is a listing of Vietnam era casualties commonly used to verify entitlement to award of the Purple Heart.

(2) His available personnel records do not contain an official Army message or a Western Union telegram notifying his next of kin of an injury or wound sustained in action. This was generally the proper notification procedure for injuries at the time.

(3) A review of the Awards and Decorations Computer-Assisted Retrieval System, an index of general orders issued during the Vietnam era between 1965 and 1973 maintained by the U.S. Army Human Resources Command, failed to reveal any orders for the Purple Heart pertaining to the applicant.

(4) His medical records are available for review with this case. He provides a Clinical Record, dated 23 January 1968, Naval Hospital, USS Sanctuary, showing he was admitted on 27 December 1968:

(a) Admission Diagnosis: Dermatitis, Chemical, Line of duty, not due to own misconduct.

(b) History: 22 year old, 1LT, U.S. Army, noted marked irritation of exposed skin areas on 12/ about 1/2 hour after crawling in a cave. The face and hands were inflamed, reddened edematous. Various topical preparations were used without apparent benefit and he was admitted here.

(c) Past History: In Vietnam since 5 December 1968- 26 months active duty USA. No serious illness. Was bitten twice by a pigmy rattler in September or October 1967.

(d) Physical Examination: Revealed moderate rythema of the face, neck, hands and forehead. There was edema, tenderness, and increased warmth of the affected skin. The dorsal of of the hands was especially swollen. The remainder of the examination was normal.

(e) Hospital Course: The patient was given a topical, anesthetic cream. The inflammation changes grdually regressed. Some of the skin or the face and neck peeled. There was desquamation of some skin or the face and neck. The nature of the irritant is unknown, He is discharged to duty, fit for same.

7. By regulation (AR 600-8-22), the criteria for an award of the Purple Heart requires the submission of substantiating evidence to verify:

- the injury/wound was the result of hostile action
- the injury/wound must have required treatment by personnel
- the medical treatment must have been made a matter of official record

7. By regulation (AR 600-8-22), accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action, do not qualify for award of the Purple Heart.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

3. The applicant's statement, the witness statement he provides, and the medical records show he was wounded in action, as a result of hostile enemy action, when crawling through a cave, he tripped a booby trap wire. When he tripped the wire, he released a chemical agent, which sprayed on and burned his skin. His burn wounds required evacuation and treatment by a medical officer.

4. The Board determined the applicant is entitled to award of the Purple Heart and correction of his DD Form 214 to add this award.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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:

- award him the Purple Heart for wounds he sustained in action, as a result of hostile enemy action on 27 December 1968
- issue/ship him a certificate for award of the Purple Heart and a medal set
- correct item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized) of his DD Form 214 to add the Purple Heart

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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.

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. 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. 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. A Purple Heart is authorized for the first wound suffered under conditions indicated above; an oak leaf cluster is awarded to be worn on the medal or ribbon for each subsequent award. Not more than one award will be made for more than one wound or injury received at the same instant or from the same missile, force, explosion, or agent. One example of an enemy-related injuries which clearly justifies award of the Purple Heart is an injury caused by enemy-released chemical, biological, or nuclear agent.

3. U.S. Army Vietnam (USARV) Regulation 672-5-1 (Decorations and Awards), in effect at the time, prescribed policies, responsibilities, and criteria for awards in order to insure prompt and proper recognition of individuals. The regulation reads, in part:

a. The Purple Heart may be awarded to U.S. personnel who are wounded or killed in action as a direct result of enemy action.

b. A wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received must have been made a matter of official record.

c. Authority to award the Purple Heart was delegated to hospital commanders. Further, it directed that all personnel treated and released within 24 hours would be awarded the Purple Heart by the organization to which the individual was assigned. Personnel requiring hospitalization in excess of 24 hours or evacuation from Vietnam would be awarded the Purple Heart directly by the hospital commander rendering treatment.

4. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, states applicants do not have a right to a formal hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//