

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 February 2024

DOCKET NUMBER: AR20230008736

APPLICANT REQUESTS: The applicant, spouse of a deceased former service member (FSM), requests the following:

- Correction of her husband's DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show his service in Vietnam
- Award of the Purple Heart

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)
- Death Certificate
- Marriage Certificate
- Two DD Forms 214
- Photo of FSM's ribbons, badges, unit patches, and insignia
- Two DA Forms 1811 (Physical and Mental Status on Release from Active Duty)
- Headquarters, Fort Riley General Orders
- Four 10th Ordnance Company Orders
- North Atlantic Treaty Organization Travel Order
- Letter of Commendation

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, in effect, she is asking that the Army acknowledge her husband's Vietnam service and to award him the Purple Heart for a hip wound he sustained while in combat.

a. The FSM told her the Army assigned him to Fort Campbell, KY, and, at some point, he underwent airborne training and received the Parachutist Badge. Subsequently, his leadership sent him on temporary duty with the U.S. Air Force, and he was in Vietnam before the start of the war and as a part of an advisory force.

b. The FSM had a scar, and he explained that he had been shot in the hip; he told her, when he was shot, the force threw him up into a tree, and he was going one way and his leg another. Although the applicant is unsure where exactly the FSM sustained his wounds, the FSM told her medical authority later sent him to Australia for rehabilitation.

c. The applicant provides proof of the FSM's death, their marriage, and offers documents from the FSM's service record and a photo of ribbons and badges.

3. A review of the FSM's service record reveals the following:

a. On 3 June 1959, after obtaining his parents' permission, the FSM enlisted into the Regular Army for 3 years. Upon completion of initial entry training and the award of military occupational specialty 635.00 (Automotive Repairman), orders assigned him to an Ordnance Company at Fort Campbell, KY; he arrived at his new unit, on 4 September 1959.

b. In or around December 1959, the FSM received reassignment instructions for Germany, and he departed Fort Campbell, on or about 21 January 1960. On 6 March 1960, the FSM arrived in Germany, and effective 8 March 1960, orders assigned him to an Ordnance Company in the vicinity of Giessen (Army Post Office (APO) New York (NY) 169).

c. On 8 May 1960, the FSM's unit sent him on temporary duty (TDY) to an Engineer/Ordnance School located in or around Garmisch, Germany (APO NY 172); after one week, he returned to his unit.

d. On 7 June 1960, the FSM's unit sent him TDY to the Post Stockade in Frankfurt, Germany (APO NY 757) to serve as a prisoner guard; on or about 27 June 1960, he returned to his unit, but, on 13 September 1960, they sent him TDY again to perform prisoner guard duties at the Frankfurt Post Stockade. The FSM remained in Frankfurt until he returned to his unit, on 30 June 1961.

e. On 29 March 1962, the FSM underwent a separation physical at his supporting medical dispensary.

(1) The FSM's Standard Form (SF) 89 (Report of Medical History) shows the FSM declared himself in good health and affirmed he had had no operations and no injuries or illnesses that required hospitalization.

(2) The SF 88 (Report of Medical Examination) reflects a normal clinical evaluation and his physical profile indicated that he had mild deafness in his right ear and needed glasses.

f. On 22 May 1962, the Army honorably released the FSM from active duty and transferred him to the U.S. Army Reserve to complete the remainder of his military service obligation. His DD Form 214 shows he completed 2 years, 11 months, and 20 days of net active duty service with 2 years, 2 months, and 18 days spent overseas in U.S Army, Europe (USAREUR). Item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Award or Authorized) states, "None" and Item 27 (Wounds Received as a result of Action with Enemy Forces) shows, "None."

g. A review of the FSM's available service record for his first period of service reflects the following:

(1) DA Form 24 (Service Record):

- Section 5 (Service Outside Continental United States) – departed McGuire Air Force Base (AFB), on 5 March 1960; arrived in Frankfurt, Germany, on 6 March 1960; departed Germany for the U.S., on 22 May 1962
- Section 7 (Combat Record) – no entries
- Section 8 (Wounds Received through Enemy Action) – no entries

(2) DA Form 20 (Enlisted Qualification Record):

- Item 26 (Military Education) – no entries
- Item 27 (Specialized Training) – no entries for airborne training
- Item 29 (Foreign Service) – no entries for Vietnam service
- Item 33 (Record of Assignments) – no entries for Vietnam service

h. On 14 August 1962, the FSM reenlisted into the Regular Army for 3 years, and he immediately reported to the U.S. Army Replacement Station at Fort Knox, KY; on 7 September 1962, orders transferred him to the U.S. Army Overseas Replacement Station at Fort Dix, NJ for further movement to Germany. On or about 13 January 1963, the FSM departed McGuire AFB and, on or about 4 February 1963, he arrived in Frankfurt, Germany. Orders subsequently assigned him to the 1st Battalion, 7th Infantry Regiment, stationed in Aschaffenburg, Germany (APO NY 162); he arrived at his new unit, on or about 5 February 1963.

i. On 3 November 1964, the FSM requested the command curtail his tour in Germany; he stated his wife had written him stating she was seeking a divorce, and the FSM felt a transfer would help preserve his marriage. On 6 November 1964, Headquarters, 3rd Infantry Division approved the FSM's request and directed his reassignment to Fort Riley, KS.

j. On 14 December 1964, the FSM departed Germany and, on or about 26 January 1965, he arrived at his unit of assignment (1st Squadron, 4th Cavalry Regiment, Fort Riley).

k. On 26 May 1965, the FSM underwent a separation physical at Fort Riley's Army Hospital.

(1) The FSM's Standard Form (SF) 89 (Report of Medical History) shows the FSM declared he was in good health and affirmed he had had no operations and no injuries or illnesses that required hospitalization.

(2) The SF 88 (Report of Medical Examination) reflected a normal clinical evaluation and his physical profile indicated no physical disqualifications.

l. On 13 August 1965, the Army honorably discharged the FSM based upon the expiration of his term of service; his DD Form 214 shows he completed 3 years of net active duty service, with 1 year, 10 months, and 23 days of foreign service in USAREUR. Item 26 lists the award of the Army Good Conduct Medal (1st Award) and a marksmanship qualification badge; item 27 shows, "None."

m. A review of the FSM's available service records for his second period of service reflects the following:

(1) DA Form 24 (Service Record):

- Section 5 (Service Outside Continental United States) – departed McGuire Air Force Base (AFB), on 31 January 1963; arrived in Frankfurt, Germany, on 4 February 1963; departed Bremerhaven, Germany, on 14 December 1964 and arrived in Brooklyn, NY, on 23 December 1964
- Section 7 (Combat Record) – no entries
- Section 8 (Wounds Received through Enemy Action) – no entries

(2) DA Form 20 (Enlisted Qualification Record):

- Item 26 (Military Education) – no entries
- Item 27 (Specialized Training) – no entries for airborne training
- Item 29 (Foreign Service) – no entries for Vietnam service

- Item 33 (Record of Assignments) – no entries for Vietnam service

4. During the FSM's era of service, Army Regulation (AR) 672-5-1 (Awards), prescribed policies and procedures for military awards; it stated the following:

a. The Purple Heart was awarded in the name of the President of the United States to any member of the Armed Forces or any civilian national 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, died or sustained wounds as a result of hostile action.

b. Substantiating evidence had to be provided verifying that the wound resulted from hostile action, the wound required treatment by medical personnel, and the medical treatment received had been made a matter of official record.

5. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an FSM's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

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. Based upon the assignment history reflected within the FSM's military record and a lack of documentation showing he was injured as a result of armed combat with an armed enemy, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

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 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.
2. Prior to closing the case, the Board did note the administrative note below from the analyst of record and recommended that change be completed to more accurately reflect the military service of the FSM.

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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):

1. AR 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all authorized awards and decorations.
2. AR 600-8-22 (Military Awards), currently in effect, states the National Defense Service Medal is awarded for honorable active service for any period between 1 January 1961 and 14 August 1974.

3. Based on the foregoing, amend the FSM's two DD Forms 214, respectively ending 22 May 1962 and 13 August 1965, by adding the National Defense Service Medal.

REFERENCES:

1. Title 10, USC, 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. AR 672-5-1 (Awards), prescribed policies and procedures for military awards; it stated the following:
 - a. The Purple Heart was awarded in the name of the President of the United States to any member of the Armed Forces or any civilian national 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, died or sustained wounds as a result of hostile action.
 - b. Substantiating evidence had to be provided verifying that the wound resulted from hostile action, the wound required treatment by medical personnel, and the medical treatment received had been made a matter of official record.
3. AR 635-5, in effect at the time, prescribed policies and procedures for the completion of the DD Form 214. Regarding foreign service, the regulation required preparers to report the number of years, months, and days of service completed outside the continental U.S. and to list the name of the major command. Effective change 15, dated 4 February 1972, the regulation added the requirement to show Vietnam service in the remarks section.
4. AR 15-185 (ABCMR), currently in effect, states:
 - a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).
 - b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//