

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008945

APPLICANT REQUESTS: reconsideration of his previous requests to be awarded the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Printout (unknown source) list of Company B, 1st Battalion, 52nd Infantry Casualties from the detonation of an Enemy Bouncing Betty Land Mine
- Printout: Basic Information for Retroactive Award of the Purple Heart
- Department of Veterans Affairs (VA) Letter in Support of Purple Heart, dated 19 May 2021
- VA Progress Notes
- VA Certification Letter, dated 9 April 1997
- Self-Authored Statement

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number:

- AC96-10112, 12 February 1997
- AC96-10112A, 19 August 1998
- AR2000042079, 18 January 2001
- AR2002070939, 18 June 2002
- AR2003093889, 3 February 2004
- AR20190006912, 3 November 2020
- AR20210016587, 22 April 2022

2. The applicant states he received a wound as a direct result of enemy action in Vietnam. His first sergeant stepped on a bouncing betty landmine, which detonated immediately and was killed instantly. The applicant was the radio-telephone operator and right in front of him when the landmine detonated. He received shrapnel wounds to his head above his left eye. He was transported in the field by their combat medic and

did not require medical evacuation. Mr. Gr__ was killed in action the next week. The applicant still suffers with head trauma due to this shrapnel still logged in his head above his left eye. This is supported by recent VA left eye X-Ray on 19 May 2021. He was treated out in the field by a person who was killed in action. He stepped on a bouncy betty. He is a combat veteran who served in the jungles of Vietnam. The shrapnel in his head, above the left eye resulted from enemy action on 7 August 1970. The attached Americal Division Casualty Report lists his name.

3. The applicant provides:

- a. VA letter, dated 9 April 1997, certifying that he is 100% service connected.
- b. VA Progress Note, dated 5 August 2020, that contains the entry “shrapnel injury/left head, per history provided, no objective data, patient plans to pursue addition of condition to service-connection.”
- c. Statement from Dr. M, VA Medical Clinic, dated 19 May 2021, that reads [Applicant] has requested a letter in support for his Purple Heart claim. He provides a history for shrapnel injury to left eye orbit during combat duties in Vietnam, 1970. He obtained a facial X-ray to document metallic fragments with the results positive for two linear metallic foreign bodies lateral to the left orbit. This finding supports his history for shrapnel injury. Please refer to x-ray documentation which was ordered by this VA physician and dated 20 August 2020.
- d. Printout, of an unknown source, dated 7 August 1970, and is titled: Company B, 1st Battalion, 52nd Infantry Casualties from the detonation of an enemy Bouncing Betty land mine. It reads “[Applicant’s name] received a shrapnel wound to his head on the left side near his eye during the blast from the Bouncing Betty land mine on 7 August 1970. This shrapnel remains lodged in his head today. He did not receive the Purple Heart award that he should have received for this wound. It would seem that a letter from a VA doctor documenting the existence of the shrapnel would be a powerful fact in support of his request to receive the Purple Heart. Further to the shrapnel existence, this might also support the position that going blind in the left eye is a service-connected condition.”

4. A review of the applicant’s service records show:

- a. The applicant was inducted into the Army of the United States on 25 June 1969. He completed training and was awarded military occupational specialty 11B, Light Weapons Infantryman.
- b. The applicant’s DA Form 20 (Enlisted Qualification Record) shows in items 31 (Foreign Service) and 38 (Record of Assignments) he served in the Republic of

Vietnam from 31 January 1970 to 6 September 1970, he participated in three campaigns, and was assigned to:

- Company B, 1st Battalion, 52nd Infantry, 198th Infantry Brigade, from 21 February 1970 to 25 August 1970, as a rifleman
- Medical Holding Company, 249th General Hospital, Republic of Vietnam from 26 August 1970 to 2 September 1970, as a patient
- Medical Holding Company, El Paso, Texas, from 6 September 1970 to 5 November 1970, as a patient

c. He was honorably released from active duty on 24 June 1971. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 2 years of active service, of which 7 months and 6 days was foreign service. His DD Form 214, as amended by DD Form 215 (Correction to DD Form 214), shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal, with three bronze service stars
- Republic of Vietnam Campaign Medal
- Combat Infantryman Badge
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Army Commendation Medal
- Sharpshooter Marksmanship Qualification Badge with Machine Gun Bar
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

5. There is no evidence in the applicant's records which show he was injured or wounded as a result of hostile action or that he was awarded the Purple Heart:

a. 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.

b. 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.

c. Item 40 (Wounds) of his DA Form 20 does not record any wounds sustained as a result of hostile action.

d. 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.

e. His records do not contain contemporaneous medical records showing he was wounded as a result of hostile action or treatment for such injury. Some of his available contemporaneous medical records show:

(1) The applicant was medically evacuated to William Beaumont General Hospital from the 249th General Hospital, Camp Drake, Japan. A Clinical Record/ Consultation Sheet (Standard Form Number illegible) prepared in the Office of the Battalion Surgeon, 1st Battalion, 52nd Infantry, shows the applicant was referred to the Orthopedics Section, 91st Evacuation Hospital for evaluation of a bony protuberance of the lateral aspect of the right foot. [In August 1970 he was hospitalized for a history of a painful lumps on his right foot which seemed to be gradually enlarging. He was later medically evacuated for surgical excision of a bony protuberance on his foot].

(2) The applicant was evaluated by the Orthopedics Section, 91st Evacuation Hospital, Chu Lai, Vietnam, over what appears to be 3 days - 19, 20, and 22 August 1970. A note was entered in the consultation report, "will admit and med-evac for treatment."

(3) DA Form 8-275-3 (Clinical Record Cover Sheet) shows that the applicant was admitted on 22 August 1970 to the 91st Evacuation hospital at Chu Lai, Vietnam, based on the diagnosis of "Osteoid osteoma (R)" [a benign tumor composed of bone tissue and atypical bone (right foot)."

(4) A Standard Form 502 (Clinical Record, Narrative Summary), dated 22 August 1970, diagnosed the bony protuberance as "Exostosis." This narrative summary also contains a statement that the applicant was to be evacuated out of country for elective surgery.

(4) The applicant underwent a separation physical wherein he indicated that there had been "no change" in his medical condition since his induction. His separation medical examination makes no reference to wounds sustained in Vietnam but does refer to the surgical removal of the bony projection from the applicant's right foot.

5. The Board considered his request to be awarded the Purple Heart multiple times over the years, and in each instance, the Board denied his request. The most recent denials include:

a. On 3 November 2020, the Board stated aside from the Administrative Notes and after review of the application and all evidence, the Board found insufficient evidence to grant relief and amend the decision of the previous cases. The Board acknowledges and is grateful for the applicant's wartime service in Vietnam from 31 January 1970 to 6 September 1970. Regrettably, the Board found no documentation within the official record showing the applicant was wounded in combat by enemy contact or as a result

of hostile action or was treated by military medical personnel. The records available do not indicate any wounds that the applicant had at the time of discharge. The Board's decision in no way minimizes the sacrifice, service, and recognized achievements of the applicant, but the Board is unable to grant relief based on the evidence provided.

b. On 22 April 2022, 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. The applicant did not provide evidence in the form of incident reports or eyewitness statements, to name a few, corroborating his contentions that he was wounded by enemy forces. The applicant is advised statements to medical officials approximately 50 years after the alleged incident is insufficient evidence to grant relief.

6. By regulation, the Purple Heart is awarded for a wound or wounds sustained in action against an enemy or as a result of hostile action. Substantiating evidence must be provided that verifies the wound resulted from hostile action, required treatment by medical personnel, and that treatment was made a matter of official record.

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 Board noted the applicant's contention that he was wounded during combat; however, found no evidence of error or injustice that would determine granting relief. The Board, by a preponderance of the evidence, including the applicant's DA Form 20, the Vietnam Casualty Roster, the lack of orders awarding the applicant the Purple Heart, denied the applicant's request. The Board also noted the applicant provided no additional information for consideration of his new/updated request for the 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:

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.

[REDACTED]

[REDACTED] [REDACTED]

[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.

REFERENCES:

1. Army Regulation (AR) 600-8-22 (Military Awards), prescribes policies and procedures for military awards and decorations, to include the Purple Heart. 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 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. 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 the award. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet/shrapnel/other projectile created by enemy action
- Injury caused by enemy-placed trap or mine
- Injury caused by enemy-released chemical, biological, or nuclear agent
- Injury caused by vehicle or aircraft accident resulting from enemy fire
- Concussion injuries caused as a result of enemy-generated explosions
- Mild traumatic brain injury 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

2. Army Regulation 600-200 (Enlisted Personnel Management System), Chapter 9, of the version 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 (Wounds) of the DA Form 20. This regulation further stated that the date the wound or injury occurred would also be placed in item 40.

3. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. 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.

//NOTHING FOLLOWS//