

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230008959

APPLICANT REQUESTS: with counsel, reconsideration of his previous requests to be awarded the Combat Infantryman Badge and a personal appearance hearing before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- 3-Page Letter from Counsel, 2 August 2023
- Special Orders Number 128, Headquarters, 5th Special Forces Group (Airborne), 1st Special Forces, 13 May 1969
- General Orders Number 168, Department of the Army, Letterman General Hospital, 3 December 1969
- DD Form 215 (Correction to DD Form 214), 7 March 2023
- 3-Page Declaration, LA, undated
- Orders 150-002, Headquarters, U.S. Army John F. Kennedy Special Warfare Center and School, 30 May 2023
- 1-Page Declaration, RES, 22 June 2023

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 Docket Numbers AR20190000763 on 31 October 2019 and AR20210017423 on 7 February 2023.

2. The applicant and counsel provide new evidence or argument which warrants consideration by the Board.

3. The applicant, through counsel states, in effect:

a. On 12 August 1969, the applicant was wounded by North Vietnamese Army (NVA) fire while serving as a Special Forces Combat Engineer with Detachment A-101, C Company, 5th Special Forces Group (Airborne) and a detachment of Montagnard tribesmen on an infantry patrol from Camp Mai Loc, Quang Tri Province, Republic of

Vietnam. The applicant was paralyzed by his wound and received the Purple Heart on 3 December 1969.

b. Due to the unusual circumstances of his emergency medical evacuation from a remote and austere environment to a Navy hospital ship, and a typographical error on his discharge paperwork, the applicant did not receive any Army awards and decorations to which he was and is entitled, including the Combat Infantryman Badge. On 19 October 2019, his discharge papers were corrected to show he held military occupational specialty (MOS) 12B3S (Special Forces Combat Engineer) during his service in Vietnam.

c. On 2 May 2023, the applicant obtained a declaration from the sole surviving officer of his detachment, First Lieutenant LA, setting forth their Special Forces role and mission. On 30 May 2023, the applicant received a Special Forces Tab, retroactive to 21 June 1968. On 22 June 2023, the applicant obtained a declaration regarding the circumstances of his wounding, from Sergeant RES, the teammate who replaced him on that patrol. On 31 July 2023, the applicant obtained a copy of the 5th Special Forces Group's Special Order 128, 13 May 1969, which awarded the Combat Infantryman Badge to other combat engineer Soldiers assigned to C Company's Detachment A-101 the day before he arrived in Vietnam.

d. The Board previously denied the applicant the Combat Infantryman Badge based upon its misunderstanding of the unconventional warfare nature of his unit's service with irregular forces in Vietnam, and their applicability to U.S. Army Vietnam (USARV) Regulation 672-1 (Decorations and Awards), Appendix V. This regulation provided, in pertinent part, that in 1969, an enlisted Soldier whose branch was other than Infantry was eligible for a Combat Infantryman Badge if personally present and under fire, while tactically advising an irregular infantry-type unit of regimental size or smaller and engaged in actual ground combat.

e. As set forth in Lieutenant LA's declaration, the detachment to which he and the applicant belonged advised a company-sized irregular force of Montagnard tribesmen. This force conducted platoon-sized infantry patrols to interdict NVA units, with which they engaged in infantry combat – such as the patrol on which the applicant received his wound, to which Sergeant RES attested.

f. The combination of the applicant's Purple Heart, his classification as a Special Forces Combat Engineer, the declarations of his unit's officer and his teammate, his retroactive award of the Special Forces Tab, and 5th Group's nearly contemporaneous award of the Combat Infantryman Badge to other combat engineers assigned to his detachment, makes it entirely clear that he was personally present and under fire, while tactically advising an irregular infantry-type company-size unit, engaged in ground combat when he was wounded. They again request the overdue award of the Combat

Infantryman Badge to a disabled seventy-three-year-old Green Beret as the time to meaningfully recognize this deserving old Soldier is limited.

4. The applicant and counsel provide a/an:

a. Declaration from former First Lieutenant LA who states, in effect, that the applicant was a member of a tactical advisory team advising a Montagnard force conducting an infantry patrol in their area of responsibility. The patrol unit was ambushed by NVA infantry, and the applicant was shot, wounded by the enemy, and subsequently medically evacuated from the area. He does not know why the applicant did not receive the Combat Infantryman Badge, but he disagrees with the Board's findings that the applicant only performed duties of a combat engineer. He attests that on and before 12 August 1969, the applicant was an enlisted Soldier whose specialty was other than Infantry; was assigned as an advisor to an Infantry-type unit of irregular forces of regimental or smaller size during a period such unit was engaged in actual ground combat; and was personally present and under fire while serving in an assigned primary role as a member of a tactical advisory team while the unit participated in ground combat. Based on his understanding of the pertinent regulation, he believes the applicant is eligible for the Combat Infantryman Badge.

b. Declaration from former Sergeant RES who states, in effect, that the applicant served in the U.S. Army Special Forces. He served with First Lieutenant LA and him in the Republic of South Vietnam with the 5th Special Forces Group (Airborne), Company C, Detachment A-101, at Mai Loc. When the applicant was wounded while on patrol in August 1969, he was sent out to replace him on the patrol.

c. Orders 150-002, Headquarters, U.S. Army John F. Kennedy Special Warfare Center and School, 30 May 2023, which retroactively awarded the applicant the Special Forces Tab effective 21 June 1968.

d. DD Form 215, 7 March 2023, which shows the applicant's DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) was corrected to show his service in Vietnam from 4 June to 12 August 1969; that he completed the Basic Airborne Course in February 1968; his MOS as 12B3S and the addition of two Overseas Service Bars.

e. General Orders Number 168, Letterman General Hospital, 3 December 1969, which awarded the applicant the Purple Heart for wounds received in connection with military operations against a hostile force.

f. Special Orders Number 128, Headquarters, 5th Special Forces Group (Airborne), 1st Special Forces, 13 May 1969, which appears to show (as written in next to their names), award of the Combat Infantryman Badge to MOSs other than Infantry.

5. The applicant's request for award of the Combat Infantryman Badge was previously considered by the ABCMR in Docket Numbers AR20190000763 on 31 October 2019 and AR20210017423 on 7 February 2023. The ABCMR denied the applicant's request in both considerations.
6. USARV Regulation 672-1, in effect at the time, provided for award of the Combat Infantryman Badge during the Vietnam era. Appendix V stated the Combat Infantryman Badge was awarded only to enlisted individuals who held and served in MOS 11B (Infantryman), 11C (Indirect Fire Infantryman), 11D (Armor Reconnaissance Specialist), 11F (Infantry Operations and Intelligence Specialist), 11G (Infantry Senior Sergeant), or 11H (Infantry Direct Fire Crewman).
7. Army Regulation 600-8-22 (Military Awards) states the eligibility for special forces personnel (less the special forces medical sergeant) accrues from 20 December 1989. Retroactive awards for special forces personnel are not authorized.
8. Army Regulation 15-185 (ABCMR) states an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal hearing appearance is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and applicable regulatory guidance. The Board noted that the applicant's assigned MOS was 12B (Combat Engineer). Documentation available for review does not reveal evidence showing that the applicant was awarded the MOS 11B nor was any provided for consideration by the Board. The Board further determined that as regulatory guidance does not allow for retroactive award of the CIB, there is basis upon which relief warrant relief. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief and award of the Combat Infantry Badge is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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 to amend the decision by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20190000763 on 31 October 2019 and AR20210017423 on 7 February 2023.

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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. Army Regulation 600-8-22 (Military Awards) states there are basically three requirements for award of the Combat Infantryman Badge:

a. The Soldier must be an infantryman satisfactorily performing infantry duties, he must be assigned to an infantry unit during such time as the unit is engaged in active ground combat, and he must actively participate in such ground combat. Specific requirements state, in effect, that an Army enlisted Soldier must have an infantry or special forces specialty and must have satisfactorily performed duty while assigned or attached as a member of an infantry, ranger, or special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat.

b. Appendix V of USARV Regulation 672-1 states that during the Vietnam era the Combat Infantryman Badge was awarded only to enlisted individuals who held and served in MOS 11B, 11C, 11D, 11F, 11G, or 11H.

c. During the Vietnam Conflict, subsequent to 1 March 1961, any officer, warrant officer, or enlisted Soldier whose branch was other than infantry will be eligible for award of the Combat Infantryman Badge provided all the below listed requirements have been met:

- Assigned as advisor to an Infantry unit, Ranger unit, Infantry-type unit of the civil guard of regimental or smaller size, and/or Infantry-type unit of the self-defense corps unit of regimental or smaller size of the Vietnamese government during any period such unit was engaged in actual ground combat.
- Assigned as advisor of an irregular force comparable to the above Infantry units under similar conditions.
- Personally present and under fire while serving in an assigned primary duty as a member of a tactical advisory team while the unit participated in ground combat.

d. Eligibility for special forces personnel (less the special forces medical sergeant) accrues from 20 December 1989. Retroactive awards for special forces personnel are not authorized prior to 20 December 1989.

2. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever

justice requires. 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//