

IN THE CASE OF: ██████████

BOARD DATE: 14 June 2024

DOCKET NUMBER: AR20230009485

APPLICANT REQUESTS:

- award of the Purple Heart
- correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show:
 - Purple Heart
 - Army Commendation Medal
 - in item 23a (Specialty Number and Title): 11B (Combat Infantryman)

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

- DD Form 149 (Application for Correction of Military Record), 2 August 2023
- Veteran Affairs (VA), Board of Veterans Appeals (BVA) Decision, 11 July 2023
- Congressional Correspondence

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 he is eligible for VA service-connected benefits based on a shrapnel wound on his knee which he received in Vietnam. He received the Army Commendation Medal for meritorious service. His MOS was changed from 72B to 11B20 when he was transferred to the 196th Light Infantry Brigade.
3. The applicant's records contain sufficient evidence to support administrative corrections to his DD Form 214 and will be listed in the administrative notes section. The Board will consider the applicant's request for award of the Purple Heart and his request to amend his MOS.
4. The applicant provides:

a. A VA, BVA Order, reflecting he was granted service-connected disabilities. This order further shows the veteran was granted service connection for right knee fragmentation-wound scar.

(1) The BVA Order noted the veteran's service treatment records reflected no evidence of treatment for a right knee injury.

(2) The veteran testified at a VA BVA hearing he sustained a shrapnel wound of the right knee due to rocket attacks that came through his barracks while he was stationed in Vietnam. He sought treatment from a military medic following the shrapnel injury.

(3) In its finding, the BVA resolved reasonable doubt in the favor of the veteran based on the VA examiners medical opinion which was not available for review.

b. A Congressional Privacy Release Form, granting his representative access to his records and support of his issues.

5. A review of the applicant's service records show:

a. On 29 November 1968, he enlisted in the Regular Army and was awarded MOS 70A (Clerk).

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

(1) item 22 (Military Occupational Specialties) –

- Primary MOS – 44C20 (Welder), 29 August 1973
- Secondary MOS – 71B20 (Clerk Typist), 29 August 1973
- Duty MOS – 12B20 (Assistant Squad Leader), 19 June 1977

(2) item 29 (Qualification in Arms) – Expert Marksmanship Qualification Badge with Rifle Bar (M-16);

(3) item 31 (Foreign Service) – 11 August 1970 to 10 August 1971, Vietnam;

(4) item 38 (Record of Assignments) – During his service in Vietnam, he participated in two campaigns, he was assigned to:

- Headquarters and Headquarters Company (HHC), 523d Signal Battalion in the principal duty of clerk (MOS 70A) from 9 September 1970 to 17 December 1970

- HHC, 1230 Aviation Battalion in the principal duty of clerk (MOS 70A) from 18 December 1970 to 8 April 1971
- HHC, 1st Battalion, 46th Infantry, in the principal duty of clerk typist (MOS 71B) from 9 April 1971 to 7 August 1971;

(5) item 40 (Wounds) – no entries;

(6) item 41 (Awards and Decorations) – he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with device (1960)
- two overseas bars

c. General Orders Number 8902 issued by HQ, 23D Infantry Division, awarded him the Army Commendation Medal for meritorious service during the period 1 September 1970 to 31 July 1971.

d. On 11 August 1971, he was honorably released from active duty and transferred to control of the U.S. Army Reserve (Reinforcement). His DD Form 214 shows in:

(1) Item 23a (Specialty Number and Title) – 71B20 (Clerk Typist).

(2) In item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized) –

- National Defense Service Medal
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16 and M-14)
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- two overseas bars

e. On 17 October 1976, he enlisted in the U.S. Army Reserve. His DA Form 2-1 (Personnel Qualification Record - Part II) shows in:

(1) Item 6 (Classification and Assignment Data) he was awarded:

- Secondary MOS 44C (Welder) on 29 August 1973
- Primary MOS 62E (Heavy Construction Equipment Operator) on 22 March 1977

(2) Item 9 (Awards), no entries for the Purple Heart or Army Commendation Medal;

(3) Item 38 (Duty MOS code), in part, he was assigned the duty MOS 12B (Demolition Specialist) on 28 May 1978.

f. On 22 October 1979, he was honorably discharged from the U.S. Army Reserve (Ready).

6. His records are void of general orders awarding him the Purple Heart and void of special orders awarding him MOS 11B.

7. 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 Military Awards Branch, failed to reveal any orders for the Purple Heart and the Army Commendation Medal pertaining to the applicant.

8. 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 1 January 1961 through 30 June 1973, a battle and non-battle listing of Soldiers who were killed, wounded, sick, captured, or missing during their service in Vietnam.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board determined to be awarded the Purple Heart, the regulatory guidance 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. The Board the Department of Veterans Affairs service connection for right knee fragmentation wound scar clearly shows criteria for award of the Purple Heart. Based on the evidence, the Board determined relief was warranted and granted the applicant award of the Purple Heart.

2. The Board found that relief was not warranted as it pertains to the applicant's request to amend his military occupational specialty (MOS). The evidence of record shows the applicant held MOS 44C (Welder), 71B (Clerk Typist), and 12B (Assistant Squad Leader). The Board determined he does not meet the criteria for award of the 11B (Combat Infantryman) MOS due to not being trained or awarded the MOS and not serving as the principal duty in that MOS.


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 Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by awarding him the Purple Heart for wounds received while in Vietnam and adding the medal to his DD Form 214 for the period ending 11 August 1971.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to award of the MOS 11B.

7/1/2024

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: the applicant's records contain sufficient evidence to support additional awards not shown on his DD Form 214 and should be administratively corrected to show:

- Army Commendation Medal
- two 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 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 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.

3. 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 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.

b. The Army Commendation Medal is awarded to any service member of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941, distinguishes himself or herself by heroism, meritorious achievement, or meritorious service. Award may be made to a member of the armed forces of a friendly foreign nation who, after 1 June 1962, distinguishes himself or herself by an act of heroism, extraordinary achievement, or meritorious service, which has been of mutual benefit to a friendly nation and the United States. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

4. Army Regulation 635-5 (Separation Documents), effective 1 February 1967, prescribed the separation documents that would be furnished each individual who was separated from the Army including Active Duty Training personnel and established standardized procedures for the preparation and distribution of these documents. All

available records would be used as a basis for the preparation of the DD Form 214, including DA Form 20, DA Form 66, and orders.

a. A DD Form 214 would be furnished at the time of separation to each member of the Regular Army.

b. In item 23a (Specialty Number and Title), enter primary MOS code number and title. If the specialty represented by the MOS has a related civilian occupation, enter in item 23b the appropriate job title and code number from the dictionary of occupational titles. If not applicable enter "NA."

c. In item 24, enter from item 21, DA Form 66 (Officer Qualification Record), or section 9, DA Form 20 (Enlisted Qualification Record) all decorations, service medals, campaign credits, and badges awarded or authorized, omitting authorities cited therein.

5. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register (January 1960 - February 1986)), in effect at the time, shows:

a. 523d Signal Battalion, was awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation by DAGO Number 42, 1972 for the period 31 March to 30 June 1970;

b. 46th Infantry was awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation by DAGO Number 42, 1972 for the period 31 March to 30 June 1970; and

c. he participated in two campaigns:

- DA Sanctuary Counteroffensive, 1 May 1970 – 30 June 1970
- Vietnam Counteroffensive, Phase VII, 1 July 1970 – 30 June 1971

//NOTHING FOLLOWS//