

IN THE CASE OF: ██████████

BOARD DATE: 17 April 2024

DOCKET NUMBER: AR20230009537

APPLICANT REQUESTS: award of the Purple Heart (PH) and correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show it.

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

- DD Form 149 (Application for Correction of Military Record), 13 June 2023
- Department of Veterans Affairs (VA) Rating Decision, 22 July 2008

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, in effect:
 - a. He should have been awarded the PH due to his battle injuries while deployed to Vietnam. His injuries were caused by hostile fire and hand to hand combat.
 - b. His unit did not submit requests for any its service members even though there were several injuries. He was assigned to the 1st Battalion, and 46th Infantry.
3. The applicant provided a copy of a VA Rating Decision, showing, in part, he was granted a service-connected 0 percent disability rating for residuals of a minor left forearm fragment wound.
4. The applicant's records contain sufficient evidence to support additional awards not shown on his DD Form 214 and will be listed in the administrative notes section.
5. The Board will consider the applicant's request for the PH and will consider as a separate and additional issue, his authorization for the Army Good Conduct Medal (First Award) for the period 22 July 1970 to 28 January 1972.

. A review of the applicant's service records shows:

a. On 24 August 1967, he enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) for a period of 6 years.

b. On 30 January 1968, he was ordered to military occupational specialty (MOS) training, he was subsequently awarded MOS 91A (Medical Corpsman), and was honorably released to the control of the [REDACTED] ARNG on 15 June 1968.

b. On 22 July 1970, he was involuntarily ordered to active duty from a U.S. Army Reserve status, at the grade/pay grade private 2/E-2.

c. Orders issued by Headquarters (HQ), U.S. Army Vietnam Transient Detachment, dated 27 February 1971, assigned him to 23rd Administrative Replacement Detachment.

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

(1) Item 29 (Qualification in Arms) – he was awarded:

- Expert Marksmanship Qualification Badge with Rifle Bar M-14 and M-16
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-1)

(2) Item 33 (Appointments and Reductions) – no reductions.

(3) Item 38 (Record of Assignments) he received all "excellent" conduct and efficiency ratings while in Vietnam, he participated in three campaigns, and was assigned to:

- 23rd Administrative Replacement Detachment from 3 March 1971 to 5 March 1971
- Headquarters and Headquarters Company, 1st Battalion, 46th Infantry, from 6 March 1971 to 21 January 1972

(4) Item 40 (Wounds) – none.

(5) Item 41 (Awards and Decorations) – he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Combat Medical Badge
- Republic of Vietnam Campaign Medal with Device (1960)
- Air Medal

e. His SF 88 (Report of Medical Examination), dated 24 January 1972, shows in:

- (1) Block 5 (Purpose of Examination) – Separation.
- (2) Block 18 through block 43 (Clinical Evaluation) – are marked normal.
- (3) Block 74 (Summary of Defects and Diagnosis) – no entries.
- (4) Block 75 (Recommendations-Further Specialist Examinations Indicated) – no entries.
- (5) Block 77 (Examinee) – the examining physician found him qualified for separation.

f. On 28 January 1972, he was honorably released from active duty and transferred to control of the U.S. Army Reserve Control Group (Reinforcement). His DD Form 214 for this period shows in:

- (1) Item 5 (Grade, Rate or Rank) – specialist 5/E-5.
- (2) Item 22a (Net Service This Period) – 1 year, 6 months, and 7 days.
- (3) Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – he was awarded or authorized:
 - National Defense Service Medal
 - Expert Marksmanship Qualification Badge with Rifle Bar M-14 and M-16
 - Republic of Vietnam Campaign Medal with Device (1960)
 - Vietnam Service Medal
 - Combat Medical Badge
 - Air Medal
 - Bronze Star Medal
 - One Overseas Bar
- (4) Item 26a (Non-Pay Periods Time Lost (Preceding Two Years)) – none.
- (5) Item 30 (Remarks) – in part, no record of court-marital convictions.

7. His records are void of any disciplinary actions or a commander's disqualification for award of the Army Good Conduct Medal for the period 22 July 1970 to 28 January 1972; void of orders or a commander's recommendation awarding him the PH and the Army Good Conduct Medal (First Award).

8. His 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.
9. 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 award of the purple heart pertaining and the Army Good Conduct Medal (First Award) pertaining to the applicant.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there was insufficient evidence that showed the applicant's name on the casualty listing or notification to his family that he had been wounded. There is no medical record showing the applicant received wounds caused by enemy forces that required treatment by medical personnel. Furthermore, the burden of proof rest on the applicant and he provided no evidence that was sufficient to support his claim for awarding him the Purple Heart.
2. Per the regulatory guidance on awarding the Purple Heart, the applicant must provide or have in his service records substantiating evidence to verify that he was injured, 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. However, the Board determined the applicant's service record did not reflect he was awarded the Army Good Conduct Medal (1st Award) and his record shows he received "excellent" conduct and efficiency ratings throughout his service for the period of 22 July 1970 to 28 January 1972. Based on this the Board granted partial relief to award the Army Good Conduct Medal.
3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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. In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 the Army records of the individual concerned be corrected by awarding him the Army Good Conduct Medal (1st Award) for exemplary service from 22 July 1970 to 28 January 1972 and adding the medal to his DD Form 214 for the period ending 28 January 1972.

2. The Board further determined 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 purple heart.

4/19/2024

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CHAIRPERSON

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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):

A review of the applicant's records shows he was awarded or authorized the following awards not listed on his DD Form 214:

- three bronze service stars to his previously issued Vietnam Service Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-1)

REFERENCES:

1. Title 10, United States 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.

a. The Purple Heart is awarded in the name of the President of the United States to any member of an Armed Force of the United States under the jurisdiction of the Secretary of the Army, who, after 5 April 1917, has been wounded, killed, or who has died or may hereafter die of wounds received, under any of the following circumstances:

(1) In any action against an enemy of the United States.

(2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged.

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(4) As the result of an act of any such enemy or opposing Armed Forces.

(5) As the result of an act of any hostile foreign force.

(6) After 7 December 1941, pursuant to Title 10, United States Code, section 1129, as a result of friendly fire provided the member was killed or wounded in action by friendly weapon fire while directly engaged in armed conflict, other than the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of the willful misconduct of the member.

(7) On or after 7 December 1941, to a member who is killed or dies while in captivity as a Prisoner of War under circumstances establishing eligibility for the Prisoner of War Medal, unless compelling evidence is presented that shows the member's death was not the result of enemy action.

b. To qualify for award of the Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer. A wound is defined as an injury to any part of the body from an outside force or agent. A physical lesion is not required.

(1) Treatment of the wound will be documented in the member's medical and/or health record.

(2) Award may be made for a wound treated by a medical professional other than a medical officer provided a medical officer includes a statement in the member's medical record that the severity of the wound was such that it would have required treatment by a medical officer if one had been available to provide treatment.

(3) A medical professional is defined as a civilian physician or a physician extender. Physician extenders include nurse practitioners, physician assistants, and other medical professionals qualified to provide independent treatment (to include Special Forces medics). Medics (such as combat medics – military occupational specialty 68W) are not physician extenders.

(4) A medical officer is defined as a physician with officer rank. The following are medical officers:

(a) An officer of the medical corps of the Army.

(b) An officer of the medical corps of the U.S. Navy.

(c) An officer in the U.S. Air Force designated as a medical officer in accordance with Title 10, United States Code, section 101.

c. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

(1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(2) Injury caused by enemy emplaced trap, mine or other improvised explosive device.

(3) Injury caused by chemical, biological, or nuclear agent released by the enemy.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract.

(6) Concussions (and/or mild traumatic brain injury (mTBI)) caused as a result of enemy-generated explosions that result in 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.

d. Examples of injuries or wounds which clearly do not justify award of the Purple Heart are as follows:

(1) Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951).

(2) Trench foot or immersion foot.

(3) Heat stroke.

(4) Food poisoning not caused by enemy agents.

(5) Exposure to chemical, biological, or nuclear agents not directly released by the enemy.

(6) Battle fatigue, neuro-psychosis and post-traumatic stress disorders.

(7) Disease not directly caused by enemy agents.

(8) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

(9) Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.

(10) First degree burns.

(11) Airborne (for example, parachute/jump) injuries not caused by enemy action.

(12) Hearing loss and tinnitus (for example: ringing in the ears, ruptured tympanic membrane).

(13) Mild traumatic brain injury (mTBI) that does not result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function.

(14) Abrasions or lacerations (unless of a severity requiring treatment by a medical officer).

(15) Bruises or contusions (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer).

(16) Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).

f. One bronze service star is authorized with the Vietnam Service Medal for each campaign during which a member was assigned or attached to and present for duty with a unit during the period in which it participated in combat.

3. Army Regulation 672-5-1 (Awards), in effect at the time, stated the Army Good Conduct Medal (AGCM) was awarded for each 3 years of continuous enlisted active Federal military service completed on or after 27 August 1940; for the first award only, 1 year served entirely during the period 7 December 1941 to 2 March 1946; and, for the first award only, upon termination of service on or after 27 June 1950 of less than 3 years but more than 1 year. The enlisted person must have had all "excellent" conduct and efficiency ratings. Ratings of "unknown" for portions of the period under consideration were not disqualifying. Service school efficiency ratings based upon academic proficiency of at least "good" rendered subsequent to 22 November 1955 were not disqualifying. There must have been no convictions by a court-martial. However, there was no right or entitlement to the medal until the immediate commander made a positive recommendation for its award and until the awarding authority announced the award in general orders.

4. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register (January 1960 – February 1986)), in effect at the time, shows 31st Battalion, 46th Infantry Regiment, was awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation by Department of the Army General Orders Number 6, 1974, for the period 1 March 1971 to 9 October 1971.

//NOTHING FOLLOWS//