

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230009641

APPLICANT REQUESTS: reconsideration of his prior request for award of the Purple Heart to his deceased brother, a former service member (SM)

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

- self-authored statement
- partial Record of Proceedings for Army Board for Correction of Military Records (ABCMR) Docket Number AR20220008986, dated 23 May 2023
- ABCMR letter, dated 23 May 2023
- four witness statements

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220008986 on 23 May 2023.

2. The applicant states:

a. Per an ABCMR letter, dated 23 May 2023, wherein he was advised that his prior application to the Board requesting award of the Purple Heart to his deceased brother was denied, he was informed he may request reconsideration if he were able to submit new information.

b. He was able to locate the children, now in the 60s, of the copilot of the crashed helicopter and they provided a photograph of a signed statement of the crash, dated 19 September 1967, prepared by their father, P\_\_\_\_ L\_\_\_\_ after recovering from his injuries. The statement was found in a box their mother had kept.

c. The Board will note the terminology used in the statement by P\_\_\_\_ L\_\_\_\_ is consistent with the other statements made by the passenger, Chief Warrant Officer Three (CW3) C\_\_\_\_ L\_\_\_\_ and gunner S\_\_\_\_ H\_\_\_\_. P\_\_\_\_ L\_\_\_\_ says, "I heard a sharp report, and the aircraft started leaping through the air."

d. If you consider the written words of the statement in proper context and understand that a military man wrote it, the words take on a more exacting meaning. "Report" is used as a noun, implying a gunshot/explosion, causing the aircraft to lose control and crash. Macmillan Dictionary.com shows report as a noun is defined as, "a sudden loud noise caused by a gun or an explosion." Dictionary.com show report as a noun defined as, "a sharp loud noise, especially one made by a gun."

e. The accounts of three eyewitnesses on the aircraft have never stated the crash was caused by a mechanical failure. All stated an impact consistent with a projective hitting the aircraft caused the crash.

f. He is concerned with the total disregard for the root cause and specific timeline. The accident report was completed without the input of those on the aircraft, thereby not putting more validity into the statements made by those who were involved in the crash and leading to overspeculation as to what may have caused the crash, such as mechanical failure. This resulted in a hastily written incident report, written by others who did not see or have direct knowledge of the crash, but were completing the required administrative process without regard to eyewitness accounts of those involved in the crash.

g. The argument as to what degree the enemy cause the crash is obvious; the aircraft was hit by enemy fire, causing the crash. Regardless of the route or mission of the aircraft, the area where the crash occurred was in the vicinity of the Iron Triangle, which was constantly exposed to enemy ground fire and hostile activities in 1967.

h. He respectfully requests the Board reconsider the statements made by P\_\_\_\_ L\_\_\_\_, the copilot, C\_\_\_\_ L\_\_\_\_ a passenger (the applicant took his statement in 2003) and that of S\_\_\_\_ H\_\_\_\_, both a written statement and his words to the applicant. These statements should be considered as proof of the cause of the crash, namely enemy fire.

i. The official version of the crash states the causes were mechanical. He submits that no formal inspection of the downed aircraft was conducted to confirm it was a mechanical issue, as it was a total loss after the fire and explosion. In fact, if you consider the eyewitness accounts of the survivors and their personal circumstances, they show the cause of the crash to have been enemy ground fire and hostile action.

j. By not considering this eyewitness testimony in granting award of the Purple Heart, the Army is doing a grave injustice, not only to his brother, who lost his life, but to those other Soldiers involved in the crash and the permanent damage it inflicted upon them. Kindly reconsider your position and correct the error in the original classification of the crash as a mechanical failure to that of caused by hostile ground fire and award the Purple Heart.

3. The SM enlisted in the Regular Army on 18 October 1965 and was initially awarded the Military Occupational Specialty (MOS) 67A (Aircraft Maintenance Crewman) along with multiple additional related MOSs in the 67 job series pertaining to the maintenance and repair of various helicopters.
4. The SM's DA Form 20 (Enlisted Qualification Record) shows he served in Vietnam from 13 December 1966 through 20 August 1967.
5. An Incident Report shows:
  - a. On 20 August 1967, a U.S. Army UH-1C helicopter, with four crew members onboard (CW3 F\_\_\_\_ H\_\_\_\_, CW3 P\_\_\_\_ L\_\_\_\_, specialist five (SP5) R\_\_\_\_ T\_\_\_\_ [the SM], specialist four (SP4) S\_\_\_\_ H\_\_\_\_ ) and one passenger (CW3 P\_\_\_\_ L\_\_\_\_ ) was involved in an crash in Vietnam.
  - b. The accident summary shows severe vibrations resulting in limited loss of control was caused by material failure of unknown origin and the aircraft crashed into the jungle. The short summary shows the aircraft experienced a mechanical problem and crashed in the jungle.
  - c. The SM was killed in action (KIA) while performing the duty of crew chief. The casualty type shows non-hostile; died of other causes. The category of casualty as defined by the Army shows non-battle dead.
  - d. The other personnel onboard were injured, but survived the crash.
6. An immediate priority official Army casualty message was dispatched from Commanding General, U.S. Army Vietnam, on 22 August 1967, to The Adjutant General, and other subordinate commanders indicating the SM was killed on 20 August 1967 at 1630 hours while a crew chief on a UH-1C helicopter on combat support operations in Vietnam when the aircraft crashed and burned.
7. A Western Union Telegram was dispatched from The Adjutant General to the SM's parents informing them that the Secretary of the Army expressed his deep regret that the SM died on 20 August 1967, as a result of injuries received while a crew chief on a helicopter on a combat support operation when the aircraft crashed and burned.
8. A DA Form 2173 (Statement of Medical Examination and Duty Status) dated 22 August 1967, shows on 20 August 1967, the SM was performing his assigned duties as a gunner on an aircraft enroute from Saigon to Lai Kai, Republic of Vietnam (RVN). One and one half miles south of Lai Kai, the helicopter went out of control and crashed. The SM was killed instantly and his remains were removed to Saigon, RVN. An accident investigation board is currently conducting an inquiry into the cause of the crash.

9. A DD Form 1300 (Report of Casualty) shows on 30 August 1967, the Army issued a final casualty report indicating the SM died on 20 August 1967 in Vietnam as the result of injuries received while crew chief aboard UH-1C helicopter, when the aircraft crashed and burned.

10. During August and September 1967, the SM's parents received multiple condolence letters from the Commanding General, Vietnam; The Adjutant General; the Chief of Staff, Army; the Commander, 34th General Support Group, Vietnam; and the Commander of 765th Transportation Battalion, Vietnam,

11. A U.S. Army Reserve Personnel Center memorandum, dated 9 August 1996, responded to the applicant's request for award of the Bronze Star Medal and Purple Heart for his brother. The response shows the Purple Heart is awarded to individuals wounded or killed in action against an enemy of the United States. A review of the SM's military and medical records failed to show that his death was the result of enemy action and the Report of Casualty shows non-battle. Therefore, there is no authority whereby the Purple Heart may be authorized. A review of the SM's records failed to reveal a recommendation or general order for the Bronze Star Medal.

12. The applicant resubmitted his request for awards pertaining to his brother and included the following witness statements:

a. The statement submitted by A\_\_\_\_ B\_\_\_\_, dated 28 May 2001, [also submitted by the applicant in his current request before the Board] shows he served with the SM in the 56th Trans and had day to day contact with him. He was a crew chief and flew quite a number of missions. He did not get to know him very well as they did not share the same hooch, but from what he knew of him he liked him very much. They shared some good times, but he remembers most his dedication to the work. He never had second thoughts about working along beside him. He knows many of the guys mourned his death for quite a while.

b. The statement submitted by S\_\_\_\_ H\_\_\_\_, dated 2 March 2002, [also submitted by the applicant in this current request before the Board] shows he stated it was raining hard. The SM sprinted to the revetment and slung open the door of the helicopter. "I need a gunner for a Medivac", he yelled over the roar of the chopper behind him on the flightline. Minutes later, they were tracking toward Tay Ninh, passing Black Widow Mountain, an extinct volcanic cone rising out of the landscape. The Viet Cong "owned" the old French, overgrown, rubber plantation at the mountain's base. Suddenly the radio crackled a Mayday call from an Army fixed-wing going down. They diverted midflight and flew over the plantation to answer the distress call. Almost immediately they were hit with a crashing midair impact. The tail boom snapped off and the fuselage ripped apart midship. The aft section with the SM in it blazed through the triple-canopy and exploded on impact. The SM did not survive. But his memory lives on; his bounding

energy, his force of will, and his demanding dedication to duty. They who knew him at the 56th Recovery Helicopter Company, will not soon forget him.

c. The statement submitted by C\_\_\_\_ L\_\_\_\_, undated, as dictated to the applicant, [also submitted by the applicant in this current request before the Board] shows he was a passenger on the chopper and they were some 1.5 to 2.5 miles southwest of Lai Khe then the chopper was hit by a round that was heard by both the passenger and the gunner. The midair impact knocked off the stabilizer bar and it came flying off the aircraft, putting it into a violent rotating attitude, dropping to the ground in a gyrating motion, like the flutter of an oak leaf seed. The g-force was so strong it was ripping equipment from the chopper. The windshield came off and the aircraft started to disintegrate while falling. Neither the pilot nor the copilot working together could control the aircraft. The tail section broke off, slamming into the right side of the aircraft during the decent into the trees. The transmission and engine crashed to the ground and exploded. The SM was with this part of the aircraft and was killed on impact. All surviving personnel sustained multiple injuries, including severe cuts, bruises, burns, and broken bones and were taken to a nearby field hospital for immediate treatment. None of the aircraft crew personnel were asked to file their report on the incident, as all were suffering multiple injuries and hospitalized. The official incident report stated a "mechanical" problem with the aircraft and the vibration caused the crash. This is a point of contention. The personnel aboard the aircraft believe that a large caliber round hit the stabilizer and caused the ensuing crash, but they were not consulted in the accident report details. He submits that hostile action was responsible for the crash on 20 August 1967.

13. A U.S. Army Personnel Command, Military Awards Branch memorandum for the National Personnel Records Center, dated 10 June 2002, shows they verified the SM's entitlement to award of the Bronze Star Medal. Enclosed are permanent orders announcing the award. A DD Form 215 (Correction to DD Form 214 (Certificate of Release or Discharge from Active Duty) was not issued due to the lack of a DD Form 214. The SM's records contain corresponding permanent orders awarding the SM the posthumous Bronze Star Medal on 7 June 2002, for meritorious achievement in active ground combat during the period from 13 December 1966 through 20 August 1967, and revoking the 17 September 1967 orders awarding him the posthumous Army Commendation for the same period of service.

14. A letter from the U.S. Army Human Resources Command (AHRC), Awards and Decorations Branch, dated 29 March 2021, responded to the applicant's Member of Congress in response to an inquiry regarding the applicant's desire for his deceased brother to be awarded the Purple Heart. Based on review of the provided documentation and the resources available, AHRC officials were unable to take favorable action. The statutory and regulatory criteria governing this award require it to be authorized to Soldiers who are wounded as a direct result of enemy action. AHRC

officials understand that the applicant believes his brother's death was the result of direct enemy action; nevertheless, as the circumstances around the SM's death are officially listed as non-hostile, and they are unable to authorize award of the Purple Heart.

15. The applicant previously applied to the ABCMR in May 2022, requesting recharacterization of the cause of the helicopter crash which occurred on 20 August 1967, allowing for subsequent award of the Purple Heart for his deceased brother.

16. In a follow-up letter to the applicant's Member of Congress, dated 16 November 2022, the AHRC Awards and Decorations Branch advised they were unable to completely facilitate the applicant's forwarded further request for awards for his deceased brother. With respect to the Purple Heart, officials at the Awards and Decorations Branch have confirmed the applicant had an ongoing application with the ABCMR concerning his brother's entitlement to this award. As the highest adjudicating authority for the Army, the ABCMR has final authority over matters of this nature and AHRC cannot act upon cases that are either pending ABCMR review or have had a formal determination rendered by that Board. Based upon review of the historical resources available to their office, they verified the FSM's entitlement to the following awards and decorations:

- Bronze Star Medal
- Air Medal with Numeral "4"
- Army Good Conduct Medal (permanent order enclosed)
- National Defense Service Medal
- Vietnam Service Medal with two Bronze Service Stars
- Meritorious Unit Commendation
- Aviation Badge-Basic (formerly Aircraft Crew Member Badge)
- Expert Badge with Rifle bar
- Republic of Vietnam Campaign Medal with "60" device
- Republic of Vietnam Gallantry Cross Unit Citation with Palm device

17. An AHRC Awards and Decorations Branch memorandum to be placed in the SM's record, likewise, dated 16 November 2022, shows his entitlement to the above-listed awards and decorations, medals, and badges.

18. On 23 May 2013, the Board denied the applicant's request, determining the evidence presented does not demonstrate the existence of a probable error or injustice and the overall merits of the case are insufficient as a basis for correction of the SM's records. The applicant highlighted the Board Discussion portion of the Record of Proceedings in that prior 23 May 2023 case with Docket Number AR20220008986, that states: "Additionally, during Vietnam, the rule that was applied in helicopter or aircraft accidents is that the cause of the accident must be directly attributable to action by the

enemy, rather than merely the presence of the enemy. The enemy fire on the aircraft must have caused or directly contributed to the accident.”

19. As new evidence, the applicant provided an additional witness statement from CW3 P\_\_\_\_ L\_\_\_\_, dated 19 September 1967, which has been provided in full to the Board for review and in pertinent part shows this statement is regarding the UH1C aircraft crash on 20 August 1967. His duties about this flight were as co-pilot. He was in contact with Lai Khe control, receiving landing instructions, the aircraft was in level flight at 1500 feet altitude, airspeed was approximately 80 to 85 knots, and all instruments were in the green. He heard a sharp report, and the aircraft started leaping through the air. The cyclic control was following this movement and with the effort of both pilots, they regained control of the cyclic. Approximately 5 to 10 seconds later, the tail boom broke off and departed the aircraft. The aircraft pitched nose low and went into a near inverted dive though full aft cyclic was applied; this was followed by a steep spin to the right. This maneuver was repeated multiple times and the aircraft started to break up. They descended into the trees and upon reaching the ground, he, CW3 H\_\_\_\_, and CW3 C\_\_\_\_ L\_\_\_\_ went to the remainder of the wreckage in an effort to locate the other two crew members. Flames covered most of the wreckage and the ammunition had started to explode. They were able to assist SP4 H\_\_\_\_, who was trying to crawl from the wreckage, but the body of the FSM was pinned under the wreckage with only a portion of his legs visible and he appeared to have died on impact.

#### BOARD DISCUSSION:

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 Board reviewed the applicant's request and statements, together with the previous submission and the findings by AHRC. In June 1968, during the Vietnam War, the Army Chief, Casualty Division, provided additional guidance to the Commanding General, U.S. Army Vietnam, in the determination of hostile action casualties in addition to that provided in AR 600-10. Part of that guidance applied to helicopter incidents. "The rule that has been applied in helicopter or aircraft accidents is that the cause of the accident must be directly attributable to action by the enemy rather than merely the presence of the enemy." It goes on to state that enemy fire on the aircraft must have caused or directly contributed to the accident. The fact that an aircraft is on or returning from a combat mission when an accident occurs is not sufficient, alone, to classify as hostile. The Board noted that the official version of the crash states the causes were mechanical; not hostile. While the statement provided the co-pilot, CW3 PL sheds additional light on the event that took place on that day; however, it does not prove that enemy fire on the aircraft caused or directly contributed to the accident. Therefore, the Board affirms its previous decision that this incident does not qualify for 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 to amend the decision of the ABCMR set forth in Docket Number AR20220008986 on 23 May 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. A DD Form 173 (Joint Message Form) from the Chief, Casualty Division, Washington, DC, to the Commanding General, U.S. Army Vietnam, dated 20 June 1968, provided additional guidance in the determination of hostile action casualties in addition to that provided in Army Regulation 600-10 (The Army Casualty System), in effect at the time. Paragraph 3 of the DD Form 173 stated, "The rule that has been applied in helicopter or aircraft accidents is that the cause of the accident must be directly attributable to action by the enemy rather than merely the presence of the enemy." The message goes on to state that enemy fire on the aircraft must have caused or directly contributed to the accident. The fact that an aircraft is on or returning from a combat mission when an accident occurs is not sufficient, alone, to classify as hostile.

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 to any member who, while serving under competent authority in any capacity with one of the Army Services, has been wounded or killed or who has died or may hereafter die after being wounded:

(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 a result of an act of any such enemy of opposing armed forces;

(5) As a result of an act of any hostile foreign force;

(6) After 23 March 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate armed services concerned if persons from more than one service are wounded in the attack;

(7) After 28 March 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force; or

(8) Members killed or wounded by friendly fire.

b. Substantiating evidence must be provided to verify that 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.

c. When contemplating eligibility for the PH, the two critical factors commanders must consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer. Some examples of enemy-related actions that justify eligibility for the PH 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) Perforated eardrum caused by enemy action (two critical factors to consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer).

(7) Concussions 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 im-paired brain function for a period greater than 48 hours from the time of the concussive incident.

d. Some examples of injuries that do not justify eligibility for the PH 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, neuropsychosis, 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 or jump) injuries not caused by enemy action.
  - (12) Hearing loss and tinnitus (for example, ringing in the ears).
  - (13) 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).
- e. It is not intended that such a strict interpretation of the requirement for the wound to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must take into consideration the circumstances surrounding a wound.

//NOTHING FOLLOWS//