

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009745

APPLICANT REQUESTS: in effect, the award of the Purple Heart and its addition to his DD Form 214 (Certificate of Release or Discharge from Active Duty).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3713 (Data for Retired Pay)
- DD Form 214

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, he believes he is entitled to the Purple Heart because item 36 (Remarks) on his DA Form 3713 states his disability resulted from a "combat-related injury."

3. A review of the applicant's service record reveals the following:

a. On 13 November 1984, the applicant enlisted into the Regular Army for 3 years. Upon completion of initial entry training and the award of military occupational specialty 19K (Armor Crewmember), orders assigned him to a cavalry regiment at Fort Bliss, TX; he arrived at his new unit, on 9 July 1985.

b. On 30 July 1985, at Fort Bliss, the applicant's left elbow was crushed after getting caught between the turret of an M-1 tank and an air vent; he remained hospitalized until October 1985, when medical authority returned him to duty. Because he began to gradually lose strength in his left forearm and hand, he underwent surgery in June 1987, but his medical condition did not improve. In September 1987, medical authority issued a permanent physical profile, and, on 6 May 1988, a medical evaluation board

concluded the applicant failed medical retention standards and referred him to a physical evaluation board (PEB) for a fitness determination.

c. On 10 May 1988, a PEB found the applicant unfit for continued military service and recommended his placement on the Temporary Disability Retired List (TDRL) with a combined disability rating of 40 percent; on 11 May 1988, the applicant concurred.

d. On 21 July 1988, the supporting personnel office completed a DA Form 3713; item 36 states, "The disability did result from a combat-related injury."

e. On 11 August 1988, the Army retired the applicant due to physical disability and, effective 12 August 1988, placed him on the TDRL. His DD Form 214 shows he was awarded or authorized: Army Service Ribbon, Army Good Conduct Medal, Pistol Marksmanship Qualification Badge, Expert Marksmanship Badge with Grenade Bar, NCO Professional Development Ribbon, and Army Achievement Medal (1st Oak Leaf Cluster).

f. On 21 February 1990, a PEB determined the applicant's medical conditions had sufficiently stabilized to find he should be placed on the Permanent Disability Retired List (PDRL) with a combined 30 percent disability rating. Effective 27 February 1990, U.S. Total Army Personnel Command orders removed the applicant from the TDRL and placed him on the PDRL at a combined disability rating of 30 percent.

4. Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, implemented Federal law provisions for Soldiers determined to be unfit for continued military service due to physical disability. Appendix C (Counseling) of the regulation explained that, by law, if a Soldier was in a uniformed service on or after 24 September 1975 and later retired due to physical disability, that portion of his/her retired pay which was attributable to a combat-related injury would be nontaxable.

5. Title 26 (Internal Revenue Code), section 104 (b) (3) (Compensation for Injuries or Sickness – Special Rules for Combat-Related Injuries) states, for the purposes of this subsection, the term "combat-related injury" means a personal injury or sickness that occurred as a direct result of armed conflict; or while engaged in extra-hazardous service; or under conditions simulating war; or was caused by an instrumentality of war.

6. The Department of Defense Financial Management Regulation 7000.14-R, Volume 7B (Military Pay Policy – Retired Pay), chapter 63 (Combat Related Special Compensation), currently in effect, includes a definitions combat-related injury determinations:

a. Direct Result of Armed Conflict.

(1) The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination it is not sufficient to only state the fact that a member incurred the disability during a period of war, or in an area of armed conflict or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting liability.

(2) Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

(3) Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

b. While Engaged in Hazardous Service. Such service includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of such hazardous service requires that the injury or disease be the direct result of actions taken in the performance of such service.

c. In the Performance of Duty Under Conditions Simulating War. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses.

d. Instrumentality of War.

(1) Incurrence during an actual period of war is not required. There must be a direct causal relationship between the instrumentality of war and the disability. The disability must be incurred incident to a hazard or risk of the service.

(2) An instrumentality of war is a vehicle, vessel, or device designed primarily for Military Service and intended for use in such Service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for Military Service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to Military Service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

(3) A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat

vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

7. AR 600-8-22 (Military Awards), currently in effect, prescribes policies and procedures for military awards. Regarding the Purple Heart, the regulation states:

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:

- In any action against an enemy of the United States
- 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
- 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
- As the result of an act of any such enemy or opposing Armed Forces
- As the result of an act of any hostile foreign force
- 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

b. To qualify for the Purple Heart, the wound must have been of such severity that it required treatment, not merely examination, by a medical officer.

- 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
- 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.
- Additionally, the wound's treatment must be documented in the Soldier's medical records

c. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider is the degree to which the enemy or hostile force caused the wound and was the wound so severe that it required treatment by a medical officer. Some examples of enemy-related actions which justify eligibility for the Purple Heart include injuries caused by enemy bullet, shrapnel, or other projectile created by enemy action.

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. By regulation (AR 600-8-22), to be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; (1) there must be proof a wound was incurred as a result of enemy action, (2) that the wound required treatment by medical personnel, and (3) that the medical personnel made such treatment a matter of official record. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider is the degree to which the enemy or hostile force caused the wound and was the wound so severe that it required treatment by a medical officer. The applicant does not provide evidence he meets any of the three criteria 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 for correction of the records of the individual concerned.2.

[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. Title 10, USC, 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. AR 635-40, in effect at the time, implemented Federal law provisions for Soldiers determined to be unfit for continued military service due to physical disability. Appendix C (Counseling) of the regulation explained that, by law, if a Soldier was in a uniformed service on or after 24 September 1975 and later retired due to physical disability, that portion of his/her retired pay attributable to a combat-related injury was nontaxable.

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//NOTHING FOLLOWS//