

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 4 June 2024

DOCKET NUMBER: AR20230010914

APPLICANT REQUESTS: reversal of the decision by the Army Decorations Board (ADB) at the U.S. Army Human Resources Command (AHRC) that denied him an upgrade of his Distinguished Service Cross (DSC) to the Medal of Honor (MOH).

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

- DD Form 149 (Application for Correction of Military Record), 28 August 2023
- Narrative of Events (five pages), undated
- General Orders (GO) Number 2735, Headquarters (HQ), U.S. Army Vietnam (USAV), 7 June 1968
- nine captioned color photographs, 1-2 January 1968
- DD Form 149, dated 3 November 2013
- proposed MOH citation
- letter, Lieutenant Colonel (LTC) Retired (Ret) PWO____, Department of Defense, Veterans and Emergency Management, Bureau of Veteran's Services, State of Maine, 30 October 2013
- letter, Archives Technician, National Archives, dated 29 April 2014
- letter, LTC (Ret) PWO____, Department of Defense, Veterans and Emergency Management, Bureau of Veteran's Services, State of Maine, 24 June 2014
- letter, ADB, AHRC, 6 April 2021
- letter (six pages), JE____, 19 August 2022
- affidavit (two pages), MGB____, National Archives, 14 September 2022
- letters, LTC (Ret) PWO____, 13 October 2022 and 14 October 2022
- letter, ADB, AHRC, 1 December 2022
- Statement, LTC (Ret) PWO____, 15 August 2023

FACTS:

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. The applicant states, in effect, his original request for an upgrade of his DSC to the MOH was sent to ADB (Army Decorations Board), AHRC on 3 November 2013. He has provided all the requested information to AHRC since then. The ADB has denied forwarding his request for an upgrade because he was unable to locate the original DSC recommendation package. He feels he is being penalized as the Army placed the burden upon him to locate and send the original recommendation. He has included copies of all his requests and responses from the National Archives indicating they were unable to locate the original documents.

3. The applicant provided copies of:

a. A narrative of the events of 27 December 1967 to 2 January 1968 outlining combat actions the applicant took at Fire Support Base (FSB) Burt while assigned as the Infantry Platoon Leader, 2nd Platoon, Charlie Company, 2nd Battalion (Mechanized), 22nd Infantry 3rd Brigade, 25th Infantry Division.

(1) The five-page narrative highlights the applicant's heroic actions that were not specifically identified in the DSC citation and as such it is not fully comprehensive. The narrative was assembled from after action reports of the units involved in the battle and statements and accounts from individuals that were at FSB Burt during 1 January 1968 to 2 January 1968.

(2) The mission during Operation Yellowstone was to move the Northern War Zone C and conduct offensive operations to destroy Viet Cong and North Vietnamese Army forces (VC/NVA) and installations; open land line of communication for friendly forces, and interdict VC/NVA lines of communication. The battle of FSB Burt was one of the most significant actions during Operation Yellowstone.

(3) The weather was dry during the battle and the terrain was fairly flat with heavy jungle and dense vegetation.

(4) The enemy consisted of a multi-battalion, night attack by the 271st and 272nd NVA Regiments at FSB Burt near Suoi Cut. The attack was part of the TET Offensive. The NVA used an ongoing truce to move six battalions of the 271st and 272nd Regiments into position days before the attack.

(5) Between 1800 and 2400 hours on 1 January 1968, the VC/NVA snuck attacked FSB Burt with intense night mortar barrage supported with machinegun fire and rocket propelled grenades (RPGs). The 2nd Battalion sector received well over 100 60 mm mortars in a short period of time. The vanguard of the assault hit the applicant's platoon position directly.

(6) Action 1. The applicant placed a 2nd Platoon listening post (LP) 170 meters in front of his sector with two Soldiers, PFC M___ and PFC H___ manning the LP. The Soldiers in the LP radioed they could hear enemy speaking Vietnamese and coming their way. The applicant told them to get low in their hole because the VC had already passed their position along the side of the road to their left. He said to them the 2nd Platoon could open fire if the Soldiers stayed in their hole. Then, PFC M___ radioed he was returning to FSB Burt although the applicant tried to dissuade him no to return as the enemy was already past his point.

(7) The applicant directed 50 caliber suppressive fire down the ditch line on the east side of the road to assist his bypassed LP that needed to return to the perimeter. PFC M___ ran down the west side of the road instead of coming through 3rd Platoon area (east side) as he was instructed. PFC M___ was struck by enemy fire. The only way the applicant could reach him was by low crawling down the ditch line on the west side of the road. Before he could reach PFC M___ three enemy were advancing and he neutralized them with his rifle. At this point the enemy fire was so intense the applicant could not make it the rest of the way to PFC M___. Photograph 7 is of the ditch line that ran on both sides of Highway 24 and South of 2nd Battalion, 22nd Infantry's position. He could see PFC M___ was deceased so he returned to his platoon sector. By then PFC H___ returned through 3rd Platoon sector and safely inside the company perimeter.

(8) Action 2. FSB Burt 2 January 1968, 0001 to 0330 hours. The applicant was on the radio when an RPG hit his command track armored personnel carriers (APC) and showered the 50 caliber gunner with shrapnel and he fell into the shaft. The explosion blew the shroud off, effectively disabling the weapon. A second RPG struck the APC, and both received shrapnel from the second explosion. The applicant knew the enemy was close, so he located his M-14 rifle and moved towards the front of the APC and neutralized two VCs attempting to load another RPG. He returned to the APC and carried the wounded gunner to the rear of 3rd Platoon for medical attention. He declined medical attention but instead immediately returned to his platoon. Later the medic would be killed assisting the wounded in the applicant's platoon (diagrams 4 & 5).

(9) Action 3. A few minutes later, the APC on his left flank was hit by an RPG round and burst into flames. The applicant again risked his life to rescue the gunner and assistant gunner from the burning APC and made sure they had medical attention. (diagram 6)

(10) Action 4. An APC from the Battalion Reconnaissance Platoon was sent to reinforce 2nd Platoon's perimeter. It was hit with an RPG and exploded in flames. The applicant again risked his life without regard to the burning ammunition and fuel in the APC. The APC driver was lost in the burning APC but the applicant was able to rescue the other crew member.

(11) Action 5. At approximately 0130 hours, an M-42 Duster, self-propelled anti-aircraft gun was sent to reinforce the South of the perimeter. The crew overshot the applicant's position and was immediately hit by enemy RPGs. The crew was wounded before they could fire a round. The applicant again risked his life as he rushed forward to the M-42 to remove the crew. Once the crew was safely on the ground, he had them taken to the closest aid station.

(12) Action 6. The applicant's position was close to the advancing enemy so Captain A___ gave him control of the Tactical Air. The applicant directed air strikes delivering bombs and napalm at times on his own position. Napalm strikes interrupted the enemy advance and pushed them back to the wood line. The applicant and SGT D___ went to retrieve PFC M___. With the napalm still burning, they low crawled down the ditch line to find PFC M___. The applicant retrieved PFC M___ and carried him back inside the perimeter line. SGT D___ would be killed in another battle (diagram 10).

(13) Action 7. The enemy began their counterattack after the napalm strikes. At least three times during this period, the applicant helped 2nd Platoon gunner replace the worn barrels on their guns. This required standing on top of the APC, removing the worn barrel, and replacing it with a new barrel. He was completely exposed to enemy fire.

(14) The southwest end of the FSB contact with enemy ended at 0640 hours. The left close to 400 dead and many wounded. The unit found graves days afterwards as they followed the enemy towards Saigon. The applicant's actions turned the course of the battle and most likely saved countless lives.

b. Nine color photographs with captions.

c. A letter of support from LTC (Ret) PWO___, dated 30 October 2013, in which he supports the applicant's request for upgrade of his DSC to the MOH. It reads, in part:

(1) If both Colonel (Col) (Ret) WCA___, his Company Commander and Col (Ret) AGN___, his Battalion Commander, had been aware of his actions during the battalion...they would have recommended that he be awarded the MOH at that time. During a conversation he had with the Col (Ret) AGN___, Col (Ret) WCA indicated he and the COL (Ret) AGN___ did not become aware of the full extent of the applicant's actions during the battle until later. While the battle ended and the enemy was not an immediate threat, the priorities for the moment was assessing the losses, regrouping, and preparing for the battles to come as they would continue their pursuit of the enemy forces until they were relieved of the mission at the end of January.

d. A letter from LTC (Ret) PWO____, dated 24 June 2014, in which he requested AHRC review the applicant's request for upgrade of his DSC to the MOH.

e. A letter from ADB, AHRC, in response to a congressional inquiry, requesting more information in regard to his application for an upgrade to the MOH. It reads, in part:

(1) We would strongly encourage (Applicant) or his supporters to hire a private researcher to visit the National Archives to perform more thorough research and definitively determine whether the original award recommendation is available. While Archives staff can be helpful in basic research, their mission is not to perform excessive research which is required in a matter such as this.

(2) Objectively, obtaining the original! award recommendation is critical to determining whether there is a way ahead on this request as many of the actions credited to (applicant) in the new award narrative can be interpreted as having been already recognized in his Distinguished Service Cross citation. As the sole original account of his actions, the original citation provides only a high-level account which leaves much detail open to interpretation; nevertheless, much other specific actions recounted in the new documents can be seen in the original account. We cannot definitively say that not obtaining the original award recommendation would preclude favorable action, but it does make the burden of proof much more difficult to attain.

f. A six page narrative authored by JE, the applicant's radio operator during the battle of FSB Burt, dated 19 August 2022. His narrative provides a first person account and adds more detail to the battle as it unfolded during the night of 1 January to 2 January 1968, and is available for Board review.

g. A letter from LTC (Ret) PWO____, dated 14 October 2022, to his Senator, in which he provides more information as requested by ADB, AHRC, and requests his Senator to forward this information to HRC.

h. A response letter from ADB, AHRC, dated 1 December 2022, which reads, in part:

(1) Based on thorough review of all provided documentation and our past case files, we remain unable to act upon this request. As previously stated to another Member of the Senate and (Applicant) on multiple occasions, the paramount issues precluding consideration are two-fold: each of the actions attributed to (Applicant) in the award narrative are not supported by proof beyond a reasonable doubt, and the absence of the original award recommendation.

(2) With respect to the award narrative and the actions being attributed to (Applicant), we note there are three signed statements provided in the packet, those of

Col (Ret) WCA____, LTC (Ret) JEC____, PhD; and Mr. JE____. Each of these statements provide insight into (Applicant's) actions, however, it is difficult to determine what elements of each statement are definitive primary source accounts of a specific action.

(3) Col (Ret) WCA____ and LTC (Ret) JEC____, statements provide character reference for (Applicant) and illustrate aspects of his actions; however, they appear to stray between primary source accounts and retelling of what they heard he did. We would encourage these gentlemen to re-write their statements to exclude their character references and to only focus on specific actions that they witnessed (i.e. "I saw then (Applicant)..."). Similarly, Mr. JE____'s statement is written in the first person perspective and appears to be a primary source account of (Applicant's) actions; however, to be considered for inclusion in an award recommendation, all statements must be notarized.

(4) Objectively, obtaining the original award recommendation is critical to determining whether there is a way ahead on this request, as many of the actions credited to (Applicant) in the new award narrative can be interpreted as having been already recognized in his Distinguished Service Cross citation. As the sole original account of his actions, the original citation provides only a high-level account which leaves much detail open to interpretation; nevertheless, much of the specific actions recounted in the new documents can be seen in the original account. We cannot definitively say that not obtaining the original award recommendation would preclude favorable action, but it does make the burden of proof much more difficult to attain.

(5) As it appears all avenues have been exhausted, the (Applicant's) next course of action is to appeal to the highest appellate authority on personnel matters. He may contact the Army Board for Correction of Military Records (ABCMR) by completing a DD Form 149.

i. A letter of support for the applicant's upgrade to the MOH from LTC (Ret) PWO____, dated 15 August 2023.

4. The applicant's records contain sufficient evidence to support additional awards and administrative correction of his DD Form 214 and will be listed in the administrative notes section.

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

a. Following a period of enlisted active duty, the applicant accepted a commission as a Reserve officer in the Infantry Corps and completed an Oath of Office. His DD Form 214 for his enlisted period of service shows he was honorably discharged to accept a commission. It further shows he was awarded the National Defense Service Medal, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14) and Marksman Marksmanship Qualification Badge with Pistol Bar (.45 caliber).

b. On 25 April 1967, he was ordered to Vietnam and assigned to USARV Transient Detachment with a date of availability of 11 September 1967.

c. On 27 September 1967, he was assigned to Company C, 2d Battalion (Mechanized), 22d Infantry, 25th Infantry Division.

d. General Orders Number 2081, issued by HQ, 25th Infantry Division, dated 31 March 1968, awarded him the Bronze Star Medal with Device "V" for heroism on 25 November 1967.

e. General Orders Number 2735, HQ, USAV, dated 7 June 1968, awarded him the DSC for a date of action 2 January 1968 while assigned to Company C, 2d Battalion (Mechanized), 22nd Infantry, 3d Brigade, 25th Infantry Division. The citation reads, in part:

For extraordinary heroism in connection with military operations in the Republic of Vietnam, [Applicant] distinguished himself by exceptionally valorous actions on 2 January 1968 as platoon leader of an infantry unit defending against a massive enemy attack on Fire Base Burt. The insurgents struck the camp with a murderous night mortar barrage. [Applicant] personally insured that his men were under cover and that they were fully prepared for the ground attack which followed. The vanguard of the assault went directly into [Applicant's] platoon position. Throughout the ensuing eight hour battle, he moved from position to position to adjust his platoon's fire, relocate weapons, inspire his men, and supervise the treatment and evacuation of wounded personnel. Although pain-fully wounded by shrapnel, [Applicant] refused medical attention and repeatedly braved the relentless enemy fire to adjust air strikes and artillery to within fifty meters of his own position. These strikes and the well-directed fire from his superbly led infantry men repulsed the fanatic assault. [Applicant's] extraordinary heroism and devotion to duty were in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit, and the United States Army.

f. On 6 September 1968, he returned to the Continental United States.

g. His DA Form 66 (Officer Qualification Record) shows:

- his foreign service dates in Vietnam, 14 September 1967 to 8 September 1968
- he was awarded/authorized: National Defense Service Medal, Vietnam Service Medal, Combat Infantryman Badge, Republic of Vietnam Campaign

Medal with Device (1960), Bronze Star Medal with "V" Device, Distinguished Service Cross

h. On 22 January 1969, he was honorably released from active duty and transferred to control of the U.S. Army Reserve Control Group (Annual Training). His DD Form 214 shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal with two bronze service stars
- Combat Infantryman Badge
- Republic of Vietnam Campaign Medal with Device (1960)
- Bronze Star Medal with "V" Device
- Distinguished Service Cross

i. Permanent Orders 61-1, issued by U.S. Total Army Personnel Command, awarded him the Purple Heart for wounds received as a result of hostile action on 2 January 1968.

6. His records are void of U.S. Army Vietnam (USAV) Form 157-R (Recommendation For Decorations for Valor or Merit) showing the witness accounts and chain of command approvals for award of the DSC.

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 applicant served in Vietnam from 14 September 1967 to 8 September 1968. He received multiple valor/combat awards, including the Combat Infantryman Badge, Bronze Star Medal with "V" Device, Purple Heart, and Distinguished Service Cross. He requests the Distinguished Service Cross be upgraded to a Medal of Honor.

a. The highest awards for valor are, in descending order, the Medal of Honor, the Distinguished Service Cross, and the Silver Star. The Medal of Honor is awarded to a service member who distinguishes himself/herself conspicuously by gallantry and intrepidity at the risk of his or her life above and beyond the call of duty while engaged in action against an enemy of the United States. The Distinguished Service Cross is awarded to a Soldier who distinguishes himself or herself by extraordinary heroism not justifying the award of a Medal of Honor. The Silver Star is awarded to a Soldier who is cited for gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force.

b. As evidenced by the above descriptions, there exists a very fine distinction between "conspicuous gallantry and intrepidity," "extraordinary heroism," and "gallantry in action." Oftentimes, the degree of heroism required for a particular award is blurred and subject to personal interpretation. What is not subject to interpretation is the selfless sacrifice demonstrated by all recipients of these three highest awards for valor.

c. The applicant's record shows he was cited for extraordinary heroism in connection with military operations in Vietnam. He distinguished himself by exceptionally valorous actions on 2 January 1968 as platoon leader of an infantry unit defending against a massive enemy attack on Fire Base Burt. A decision was made to award him the Distinguished Flying Cross for his actions. The decision of whether to award an individual a decoration and which decoration to award is a judgment call made by the commander having award approval authority. Commanders at the time of the act, or shortly thereafter, determined the applicant's actions were so extraordinary and so noteworthy as to warrant award of the Distinguished Service Cross.

d. The applicant's award has since been reviewed and re-reviewed by the Army Decorations Board at the U.S. Army Human Resources Command for an upgrade to the Medal of Honor. However, the Army Decorations Board determined that in the absence of the original recommendation, the degree of action and service rendered by the applicant did not meet the criteria for award of the Medal of Honor and that the Distinguished Service Cross was the appropriate recognition for the applicant's actions.

e. This Board agrees with the Army Decorations Board that in the absence of the original recommendation coupled with notarized statements by witnesses describing what they saw and observed rather than retell what they heard, there is insufficient evidence that the applicant's actions did rise to the level of "conspicuous gallantry and intrepidity" in action necessary to merit an upgrade to the Medal of Honor. As such, after a thorough review, the Board affirms the decision that the Distinguished Service Cross remains the appropriate award and there is no reason to change it.

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:

Except for the correction addressed in Administrative Note(s) below, 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.



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): 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 in:

- a. Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized):
 - Purple Heart
 - two additional bronze service stars to his previously issued Vietnam Service Medal with two bronze service stars
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation
 - Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- Marksman Marksmanship Qualification Badge with Pistol Bar (.45 caliber)

b. Item 30 (Remarks): "Vietnam Service: 14 September 1967 to 8 September 1968."

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 Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Medal of Honor is awarded by the President in the name of Congress to a person who while a member of the Army distinguishes himself or herself conspicuously by gallantry and intrepidity at the risk of his or her life above and beyond the call of duty while engaged in an action against an enemy of the United States. The regulation provides that the deed performed must have been one of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his comrades and must have involved the risk of life. Further, the regulation requires that "incontestable proof" of the performance of the service will be exacted and each recommendation for this decoration will be considered on the standard of extraordinary merit.

b. The Distinguished Service Cross is awarded to a person, who while serving in any capacity with the Army, distinguishes himself or herself by extraordinary heroism while engaged in action against an enemy of the United States not justifying award of the Medal of Honor. The act or acts of heroism must have been so notable and have involved risk of life so extraordinary as to set the individual apart from his or her comrades.

c. The Vietnam Service Medal was awarded to all service members of the Armed Forces of the United States for qualifying service in Vietnam after 3 July 1965 through 28 March 1973. Qualifying service included attachment to or assignment for 1 or more days with an organization participating in or directly supporting military operations. 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 or was under orders in the combat zone and served at a normal post of duty.

4. DA PAM 672-3 (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. His unit, 2nd Battalion, 22nd Infantry, 25th Infantry Division, was awarded Republic of Vietnam Civil Actions Honor Medal for the period 1 August 1967 to 21 January 1970 in Department of the Army General Orders Number 48, 1971.

b. He participated in four campaigns:

- Vietnam Counteroffensive, Phase III, 1 June 1967 – 29 January 1968
- TET Counteroffensive, 30 January 1968 – 1 April 1968
- Vietnam Counteroffensive, Phase IV, 2 April 1968 – 30 June 1968
- Vietnam Counteroffensive, Phase V, 1 July 1968 – 1 November 1968

5. During the Vietnam War, U.S. Army Vietnam (USAV) Form 157-R (Recommendation For Decorations for Valor or Merit) was used for personal awards recommendations. The form included the chain of command authorities of the award, names of witnesses and other individuals involved in the actions, statements of witnesses, a narrative description detailing recipient's actions, and approval recommendations. The USAV Forms 157-R were generally not made a part of the permanent records once the awards were approved.

//NOTHING FOLLOWS//