

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230011010

APPLICANT REQUESTS: the award of a second Purple Heart based upon incurring two separate wounds on the same date.

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters, 9th Infantry Division General Orders (GO) Number 2016, dated 28 June 1967
- Article addressing the number of Purple Hearts awards one can receive
- DA Form 3349 (Medical Condition – Physical Profile Record)
- Two DD Forms 214 (Armed Forces of the United States Report of Transfer or Discharge)
- DD Form 215 (Correction to DD Form 214)
- DA Form 2496 (Disposition Form)
- News Article titled, "Wounded Soldier Now Home"

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 incurred two gunshot wounds about two minutes apart, one to his left knee and the other to his right foot. He affirms he received only one Purple Heart for this incident, but he believes that his two separate wounds entitle him to a second Purple Heart. In support of his request, he provides the General Orders authorizing his first Purple Heart; his DD Forms 214 and a DD Form 215; a DA Form 3349, indicating the applicant suffered swelling and pain in his right foot and loss of motion in his left knee; and two news articles, one announcing the applicant's return home on convalescent leave and the other stating service members can receive multiple Purple Hearts.

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

a. On 9 May 1966, the Army of the United States (AUS) inducted the applicant for a 2-year term of active duty service. On or about 17 May 1966, the applicant arrived at Fort Riley, KS, and orders assigned him to the 3rd Battalion, 47th Infantry Regiment, 9th Infantry Division for initial entry training. On 27 September 1966, the Army awarded him military occupational specialty (MOS) 11B (Light Weapons Infantryman), and he remained assigned to the same unit.

b. On 10 January 1967, the applicant moved with his unit on permanent change of station orders to Vietnam.

- On 5 March 1967, Headquarters, 9th Infantry Division Special Orders (SO) awarded him the Combat Infantryman Badge (1st Award).
- On 21 April 1967, Headquarters, 9th Infantry Division GO awarded the applicant the Bronze Star Medal with "V" Device for heroism performed between 6 and 7 April 1967.

c. On 19 June 1967, the applicant sustained gunshot wounds to his left knee and right foot; on 25 June 1967, medical authority evacuated the applicant and ultimately transferred him to a military hospital at Fort Dix, NJ. On 28 June 1967, GO awarded the applicant the Purple Heart (1st Award).

d. Following his release from medical treatment, the applicant remained assigned at Fort Dix. On 29 February 1968, the AUS honorably discharged the applicant; his DD Form 214 shows he completed 1 year and 9 months of his 2-year AUS term. The report additionally indicates the following:

(1) item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized):

- Bronze Star Medal with "V" Device
- Purple Heart
- National Defense Service Medal
- Vietnam Service Medal
- Expert Marksmanship Qualification Badge with Rifle Bar (M-14)

(2) Item 30 (Remarks): the applicant's Vietnam service is not listed.

e. On 29 February 1968, the applicant immediately enlisted into the Regular Army for 4 years, and, following the completion of training in MOS 44C (Welder), orders assigned him to Fort Benning, GA (now renamed Fort Moore); he arrived at his new unit, on 18 April 1969.

f. On 3 August 1972, Headquarters, U.S. Army Infantry Center GO awarded the applicant the Army Commendation Medal for meritorious service for the period 10 October 1969 to 27 August 1972. On 28 August 1972, the Army honorably discharged the applicant based upon the expiration of his term of service. His DD Form 214 shows he completed 4 years and 6 months of net active duty. The report additionally reflects the following:

(1) Item 24:

- National Defense Service Medal
- Vietnam Service Medal with two bronze service stars
- Republic of Vietnam Campaign Medal with Device (1960)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-14)
- Bronze Star Medal with "V" Device
- Purple Heart
- Combat Infantryman Badge

(2) Item 30 (Remarks) lists the applicant's Vietnam service: 10 January to 25 June 1967.

g. On 23 February 1973, the Office of The Adjutant General issued the applicant a DD Form 215 adding the following awards: Army Good Conduct Medal (1st Award); Army Good Conduct Medal (2nd Award), and Army Commendation Medal.

h. On 7 July 1997, the applicant petitioned the ABCMR requesting the award of the Purple Heart based upon suffering a loss of hearing, in March 1967, following a concussion sustained in combat. On 4 November 1998, the Board denied the applicant's request citing a lack of evidence.

i. On 20 November 1999, the applicant requested reconsideration of his request for a second Purple Heart and added a request for the Army Commendation Medal with "V" Device.

(1) In support of his request, the applicant provided the following:

(a) SF 600, covering medical treatments completed between 21 March and 1 April 1967. The entries state the applicant complained of a "severe earache" in his right ear and felt his ear was "plugged up." The entry additionally mentions the applicant was suffering from a cold. None of the entries indicated the applicant had sustained a concussion.

(b) GO awarding the Army Commendation Medal with "V" Device to a former fellow member of the applicant's unit. The applicant argued that, prior to his medical

evacuation, some of his friends told him his entire squad was to receive a medal for their valorous actions, on 19 June 1967; the GO provided by the applicant showed a member of his squad receiving recognition for which the applicant felt he should also have been given.

(2) On 2 May 2000, the ABCMR administratively closed the applicant's request, stating what the applicant had provided did not amount to new evidence.

j. On 1 June 2002, the applicant requested the award of the Army Commendation Medal with "V" Device.

(1) As evidence, the applicant provided a DA Form 2496, dated 15 November 1967 and addressed to the commander of a Fort Dix replacement center. The form requested the replacement center commander conduct an "appropriate ceremony" for presentation of an enclosed award (identified only as GO Number 108), and that, per SO Number 187, the applicant was now assigned to the replacement center.

(2) On 14 January 2003, the Board denied the applicant's request due to a lack of evidence and stated, "A review of 9th Infantry Division GO Number 108, dated 1 March 1967, show a captain assigned to Headquarters and Headquarters Company, 1st Brigade of the 9th Infantry Division was awarded the Air Medal. The applicant's name does not appear on these orders."

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 evidence shows the applicant was wounded in action in Vietnam on 19 June 1967 for which he received the Purple Heart (1st Award). To be awarded a second Purple Heart there must be proof that the applicant was injured/wounded and the 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. In order to determine such eligibility, medical documentation describing both diagnosis and treatment of injuries caused by the enemy immediately after, or close to the incident date and signed or endorsed by a medical professional, are required. The Board reviewed and did not find sufficient documentation to support a second award of the Purple Heart.

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):

1. AR 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all decorations, service medals, campaign credits, and badges awarded or authorized. Additionally, the regulation required entries in the remarks section to show the dates the Soldier served in Vietnam.
2. SO awarded the applicant the Combat Infantryman Badge.
3. AR 600-8-22, currently in effect, states:

a. The Vietnam Service Medal is awarded to all members of the Armed Forces of the United States based on their qualifying service in Vietnam after 3 July 1965 through 28 March 1973. A bronze service star will be awarded for wear on the Vietnam Service Medal for the Soldier's participation in each recognized campaign; Vietnam campaigns include the following:

- Counteroffensive, Phase II (1 July 1966 to 31 May 1967)
- Counteroffensive, Phase III (1 June 1967 to 26 January 1968)

b. The Government of Vietnam awarded the Republic of Vietnam Campaign Medal with Device (1960) to all members of the Armed Forces of the United States for qualifying service in Vietnam during the period 1 March 1961 through 28 March 1973. Qualifying service included assignment in Vietnam for 6 months or more; members serving less than 6 months were also eligible if they qualified for the Vietnam Service Medal and had been wounded as a result of hostile action.

4. Department of the Army Pamphlet (DA PAM) 672-3 (Unit Citation and Campaign Participation Credit Register) shows:

a. Department of the Army General Order (DAGO) Number 59, dated 1969, awarded the 3rd Battalion, 47th Infantry Regiment the Republic of Vietnam Civil Actions Honor Medal, First Class Unit Citation, for the period 19 December 1966 to 28 June 1969.

c. DAGO Number 8, dated 1974, awarded all units that served in Vietnam the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

4. Based on the foregoing, amend the applicant's DD Forms 214 as follows

a. DD Form 214, ending 29 February 1968, as follows:

(1) Item 24: delete Vietnam Service Medal and add the following:

- Vietnam Service Medal with two bronze service stars
- Combat Infantryman Badge
- Republic of Vietnam Campaign Medal with Device (1960)
- Republic of Vietnam Civil Actions Honor Medal, First Class
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

(2) Item 30: add, "Service in Vietnam 10 January 1967 - 25 June 1967."

b. DD Form 214, ending 28 August 1972: add the following to item 24:

- Republic of Vietnam Civil Actions Honor Medal, First Class Unit Citation
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

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 600-8-22, currently in effect, prescribes policies and procedures for military awards. Regarding the Purple Heart, the regulation states:

a. Paragraph 2-7 (Purple Hearts) states 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. Paragraph 2-7d states, "No 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."

3. AR 15-185, currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//