

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230011225

APPLICANT REQUESTS:

- award of the Purple Heart
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief, with enclosures:
  - Exhibit A: - U.S. Army Human Resources Command (HRC) Awards and Decorations Branch Denial, dated 17 March 2023
  - Exhibit B: - Purple Heart Request to HRC, dated 11 January 2023
  - Exhibit 1: - Attorney Designation Letter, dated 31 August 2022, PII Release, and HIPAA Release Form
  - Exhibit 2: - DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 6 July 1973
  - Exhibit 3 – 31-pages of in service medical documents
  - Exhibit 4 – One-page narrative
  - Exhibit 5 – Corroborating Documents
  - Exhibit 6 – DA Form 20 (Enlisted Qualification Record)

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, through counsel, states the applicant sustained shrapnel wounds on 25 December 1971 as a result of an explosion by an improvised explosive device (IED) emplaced by enemy combatants in Vietnam. In a letter dated 17 March 2023, HRC Awards and Decorations Branch wrongfully denied him a Purple Heart. He should be awarded this award in recognition of his injuries.

3. Counsel states:

a. The ABCMR should overturn the decision of the Awards Branch to not award the applicant the Purple Heart for shrapnel wounds he sustained. See Exhibit 4, one-page Narrative; AR 600-8-22 (Military Awards) paragraph 2-8f(1) (stating, "Some examples of enemy-related actions which justify eligibility for the Purple Heart are as follows: (1) Injury caused by enemy shrapnel. The applicant's SF 600 (Chronological Record of Medical Care) which were taken the same day of the explosion described the wounds to his chest, shoulder, and right index finger.

b. However, on the morning of 26 December 1971, after road clearance teams had cleared routes of IEDs, the applicant was transported to a hospital in Phu Bai, Vietnam for a more thorough examination of his wounds from the IED. The doctor's notes from 26 December 1971 note that the wounds were caused by "frag," and go on to use the phrase "frag wound." These notations by the doctor bring the applicant's wounds within the categories of wounds that justify eligibility for the Purple Heart.

c. The applicant's wounds did require treatment in close proximity to the event as evidenced by (a) the need to quickly examine him on Camp Eagle shortly following the explosion and (b) the decision to transport him to the hospital in Phu Bai for further treatment as soon as possible. Transport to the hospital in Phu Bai was not available until the following morning because, as the applicant writes, he had to wait until "another unit cleared the path between Camp Eagle and the nearest hospital in Phu Bai."

d. The applicant did require treatment; however, the medical officer chose to leave the shrapnel inside applicant's body. This decision was made based on the circumstances at the time: removing the pieces of shrapnel could have done more damage to the applicant's body. Many years later, the pain caused by the shrapnel in the applicant's right index finger did necessitate removal. The pieces of shrapnel in the applicant's chest and shoulder remain in his body as evidence of the explosion from the enemy IED and the applicant's selfless service to the United States of America.

e. In conclusion, the applicant sustained shrapnel wounds from an enemy IED that were more than superficial abrasions and required immediate treatment by a medical officer. The Awards Branch wrongfully characterized the applicant's wounds and treatment, as explained above. Therefore, we pray that the ABCMR awards the applicant the Purple Heart to which he is entitled.

4. The applicant provides:

a. Exhibit 3: a 31-page of in-service medical records.

b. Exhibit 4: one page narrative from the applicant which states he arrived at Camp Eagle to await transportation out of Vietnam on or about 23 December 1971. The day of

the incident he arrived at the shower building, he pulled the door towards himself to the shower building and it set off an IED. The sound was extremely loud that it hurt his ears and he saw a bright flash that filled his entire vision as he fell back. Two Soldiers nearby rushed over and escorted him to the nearby orderly room. He was later taken to the first aid tent, his wounds were cleaned and bandaged. He was taken to the nearest hospital once the pathway had been cleared. The x-ray shows shrapnel in his right shoulder, chest, and hand. He was told that it would do more damage to remove it and it would work its way out.

c. Exhibit 5: 4-page surgical information that shows the applicant had surgery on 9 September 2003 to remove foreign body from his right index finger.

d. Exhibit 6: The Department of Veterans Affairs (VA) rating decision documents, dated 2 September 1987, 9 September 1998, 29 April 1999, and 23 April 1999. An x-ray was given which shows a small metallic foreign body in the axillary soft tissue which show an x-ray was given.

- residuals explosion wound right anterior shoulder with retained shrapnel and bursitis (major) 20%
- tinnitus 10%
- posttraumatic stress disorder 10%
- bilateral hearing loss 0%
- scar, explosion abrasion, right anterior chest 0%
- scar, explosion wound, right index finger (major) 0%
- gastric ulcer 0%

5. The applicant enlisted in the Regular Army on 8 July 1967.

6. His DA Form 20 shows in:

- item 31 (Foreign Service): service in Germany from 3 October 1964 to 26 July 1967 and service in Vietnam from 27 July 1968 to 8 July 1969
- item 40 (Wounds): none listed

7. On 6 July 1973, he was honorably released from active duty. His DD Form 214 shows he completed 5 years, 11 months, and 29 days of active service. It also shows in:

a. Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):

- National Defense Service Medal
- four overseas bars

- Army Commendation Medal with “V” Device
- Republic of Vietnam Campaign Medal with Device (1960)
- Vietnam Cross of Gallantry with Palm
- Civil Actions Medal
- Bronze Medal with one oak leaf cluster
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- Vietnam Service Medal with six bronze service stars

b. Item 30 (Remarks): service in Vietnam from 27 July 1968 to 8 July 1969.

8. An undated SF Form 513 (Consultation Report) noted that x-rays reveal a shell fragment which appears on the x-rays of the shoulder to be just below the shoulder joint. However, when given an x-ray in July 1985 of the chest, shows that the fragment is not anywhere near the shoulder joint, but is in the axillary fold.

9. By regulation (AR 600-8-22), the Purple Heart is awarded for a wound/injury sustained in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to:

- verify the wound was the result of hostile action
- the wound must have required treatment by medical personnel
- the medical treatment must have been made a matter of official record

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board determined to be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; there must be proof a 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. The Board did not find documentary evidence that clearly or explicitly shows criteria for award of the Purple Heart. The Board noted the applicant's x-ray that reflected a shell fragment; however, determined without the cause or evidence to show it was a result of enemy action, it did not meet the criteria for award of the Purple Heart.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

3. Prior to closing the case, the Board determined the applicant met the criteria for award of the Army Good Conduct Medal and voted to add the award to his DD Form 214, for the period ending 6 July 1973.

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:

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.

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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:

A review of the applicant's service record shows he is authorized an additional award on his DD Form 214. As a result, amend his DD Form 214, for the period ending 6 July 1973, to show award of the Army Good Conduct Medal (1st Award).

REFERENCES:

1. The Purple Heart is awarded for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify that 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. Awarded to any member of the Armed Forces who while serving under competent authority in any capacity with one of the U.S. Armed Services after 5 April 1917, has been wounded or killed, or who has died or may hereafter die after, being wounded:

- 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 U.S. are or have been engaged
- While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the U.S. is not a belligerent party.
- As the result of an act of any such enemy of opposing Armed Forces
- As the result of an act of any hostile foreign force

2. U.S. Army Vietnam (USARV) Regulation 672-5-1 (Decorations and Awards), prescribed policies, responsibilities, and criteria for awards in order to insure prompt and proper recognition of individuals. The regulation stated:

a. The Purple Heart may be awarded to U.S. personnel who are wounded or killed in action as a direct result of enemy action.

b. A wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received must have been made a matter of official record.

c. Authority to award the Purple Heart was delegated to hospital commanders. Further, it directed that all personnel treated and released within 24 hours would be awarded the Purple Heart by the organization to which the individual was assigned. Personnel requiring hospitalization in excess of 24 hours or evacuation from Vietnam would be awarded the Purple Heart directly by the hospital commander rendering treatment.

3. Army Regulation (AR) 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//