

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 June 2024

DOCKET NUMBER: AR20230011388

APPLICANT REQUESTS:

- Award of the Purple Heart and its addition to his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Permission to appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Standard Form (SF) 600 (Chronological Record of Medical Care)
- Letter of Support

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 he incurred wounds and injuries while in Vietnam; he was a young kid just doing his job, and he can still feel the effects of the rocket attack that injured him. He maintains the wounds and injuries incurred entitled him to the Purple Heart; he just wants his records to accurately reflect what he is entitled to.

3. In support of his request, the applicant provides his DD Form 214 and:

a. SF 600, covering the period 28 November to 2 December 1968; an entry shows he required stitches to repair a cut upper lip; the record does not state how the applicant sustained his wound, nor does it affirm the wound resulted from enemy action.

b. Letter of Support, from the applicant's Veterans' Service Officer, Mr. D__ K. K__; Mr. K__ identified the dates of the applicant's Army service and that he was in Vietnam

from 3 May 1968 to 2 May 1969. His units of assignment were the 65th Engineer Battalion and the 148th Ordnance Company.

(1) While stationed in the vicinity of Củ Chi and Vũng Tàu, Vietnam, the enemy rocket attack wounded the applicant. The Viet Cong attack downed a Chinook helicopter, and the applicant received cuts to his face and lost consciousness; he also dislocated his shoulder.

(2) On 28 November 1968, the supporting medical unit treated the applicant's wounds, but the medical record did not include the circumstances surrounding the applicant's injuries. With regard to the applicant's dislocated shoulder, "the treatment was casual and not documented. [Applicant] stated the doctor he saw performed the 'dirty sock method' to pop his shoulder back into place."

(3) When the applicant separated from the Army, he did not receive a copy of his DD Form 214 and, as such, did not realize the Purple Heart was missing. He learned of this error decades later when the National Archives provided his DD Form 214.

(4) Mr. K__ argues, although the applicant's injuries might be considered "light" or "not serious," they nonetheless resulted from enemy action during a period when the applicant was serving our nation in a country far away from home. The applicant continues to suffer the after-effects of his wounds and is constantly reminded of what happened to him in Vietnam.

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

a. After obtaining his parents' permission, the applicant enlisted into the Regular Army for 3 years; he was 17 years old. Upon completion of initial entry training and the award of military occupational specialty 62A (Engineer Equipment Assistant), orders transferred him to Germany and, effective 27 December 1966, he arrived in his newly assigned unit, an engineer battalion.

b. In or around February/March 1968, the applicant received reassignment instructions for Vietnam; on his departure, he had completed 1 year and 3 months in Germany. On 3 May 1968, the applicant arrived in Vietnam, and orders assigned him to Company E, 65th Engineer Battalion. On 3 July 1968, intratheater orders transferred the applicant to the 148th Ordnance Company.

c. On or about 3 May 1968, orders reassigned the applicant to the U.S. Army Personnel Center, Oakland, CA for separation processing. On 3 May 1969, he underwent a separation physical and the examining physician noted no defects or diagnoses; the physician found the applicant qualified for separation.

d. On 3 May 1969, the Army honorably released the applicant from active duty and transferred him to the U.S. Army Reserve for the remainder of his military service obligation. His DD Form 214 shows he completed 2 years, 9 months, and 22 days of his 3-year enlistment contract, with 2 years, 3 months served overseas. The report reflects the following additional information:

- Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Good Conduct Medal (1st Award), Vietnam Service Medal, and Republic of Vietnam Campaign Medal with Device (1960).
- Item 30 (Remarks) does not list the dates of the applicant's Vietnam service.

e. His DA Form 20 (Enlisted Qualification Record) contains the following:

- Item 40 (Wounds) shows no entries indicating wounds to the applicant's face.
- Item 41 (Awards and Decorations) does not list the Purple Heart.

5. The Vietnam Casualty Roster identifies, by name, Soldiers who were casualties during the Vietnam War; it is commonly used to verify the entitlement to the award of the Purple Heart. The applicant is not listed on this roster.

6. A review of the Awards and Decorations Computer-Assisted Retrieval System, an index of general orders issued during the Vietnam era between 1965 and 1973 and maintained by the U.S. Army Human Resources Command Military Awards Branch, failed to reveal any general orders awarding the applicant the Purple Heart.

7. Army Regulation (AR) 15-185 (ABCMR) states applicants are not entitled to a hearing before the Board; however, a panel of the Board or by the Director of ABCMR may authorize a request for a hearing.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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. In order to be awarded the Purple Heart, 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. 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 applicant provides a Standard Form 600, covering the period 28 November to 2 December 1968; an entry shows the applicant required stitches to repair a cut upper lip; the record does not state how the applicant sustained his wound, nor does it affirm the wound resulted from enemy action. The Board determined the criteria for award of the Purple Heart is not met in this case.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.

[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.

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. AR 600-8-22, currently in effect, states 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 IV (2 April 1968 to 30 June 1968)
- Counteroffensive, Phase V (1 July 1968 to 1 November 1968)
- Counteroffensive, Phase VI (2 November 1968 to 22 February 1969)
- Tet 69/Counteroffensive (23 February 1969 to 8 June 1969)

3. 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 39, dated 1970, awarded the 148th Ordnance Company the Meritorious Unit Commendation for the period 1 May 1968 to 31 May 1969.

b. DAGO Number 51, dated 1971, awarded the 65th Engineer Battalion (less Company D) the Republic of Vietnam Civil Actions Honor Medal, First Class, for the period 13 March 1966 to 21 January 1970.

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

5. Based on the foregoing, amend the applicant's DD Form 214, ending 30 April 1971, as follows:

a. item 24: delete Vietnam Service Medal and add the following:

- Vietnam Service Medal with four bronze service stars
- Meritorious Unit Commendation
- Republic of Vietnam Civil Actions Honor Medal, First Class
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

b. Item 30 (Remarks): add, "Service in Vietnam, from 3 May 1968 to 2 May 1969.

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. 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

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). 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.

b. An applicant is not entitled to a hearing before the Board; however, a panel of the Board or by the Director of ABCMR may authorize a request for a hearing.

//NOTHING FOLLOWS//