

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011676

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)
- Department of Veterans Affairs (VA) Rating Decision
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 15 June 1972

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's records contain sufficient evidence to support additional awards not reflected on his DD Form 214 and will be listed in the administrative notes section below. The Board will consider the applicant's request for award of the Purple Heart.
3. The applicant states that he should be awarded the Purple Heart due to shrapnel wounds to his hand and arm received during his time in Vietnam (Late November 1971) due to enemy fire. He states he was accompanying two officers to another base and they endured an artillery attack. He does not remember receiving treatment for the wounds but upon his return to Vietnam from emergency leave; he states he was informed by a sergeant major that his Purple Heart was lost in the mail. He also states a different sergeant major told him that he did not deserve such an award. The applicant protests that the two officers he was with during the artillery attack received Purple Hearts and so he believes he should also be awarded the award for the injuries he sustained during the same artillery attack.

4. The applicant provides a portion of a medical report from the North Carolina Department of Military and Veterans Affairs (VA) that he states represents his VA rating.

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

a. He was inducted into the Army of the United States on 22 October 1969. He was honorably released on 26 October 1969 for the purpose of immediate enlistment. His DD Form 214, for the period ending 26 October 1969, shows he completed 5 days during this period of service.

b. He enlisted into the Regular Army on 27 October 1969.

c. He served in Vietnam from 27 May 1970 to 15 June 1972. His DA Form 20 (Enlisted Qualification Record) shows in:

- item 35 (Record of Assignments):
 - 30 May 1970 to 25 January 1972, Headquarters & Headquarters Battery, 23d Artillery Group
 - 26 January 1972 to 30 March 1972, Headquarters & Headquarters Battery, 5th Battalion, 42d Artillery Group
- item 40 (Wounds): no entry
- item 41 (Awards and Decorations):
 - National Defense Service Medal
 - Vietnam Service Medal
 - Republic of Vietnam Campaign Medal with Device 1960
 - three overseas service bars
 - Army Commendation Medal
 - Vietnam Civil Action Honors Medal

d. On 15 June 1972, he was honorably discharged from active duty. His DD Form 214 shows he completed 2 years, 7 months, and 19 days of active service. It also shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device 1960
- Army Commendation Medal
- Vietnam Civil Action Honors Medal

6. The applicant's record is void of entries of an injury or wound as a result of hostile action or that he was awarded the Purple Heart. Additionally, the Vietnam casualty roster is a listing of Vietnam-era casualties commonly used to verify entitlement to award of the Purple Heart; it does not show the applicant was wounded in action.

7. A review of the Awards and Decorations Computer Assisted Retrieval System maintained by the U.S. Army Human Resources Command, which is an index of general orders issued during the Vietnam era between 1965 and 1973, failed to reveal any orders for the Purple Heart pertaining to the applicant.

8. By regulation, 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

9. Also by regulation, an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

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 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 statement, service in Vietnam, and disability record that indicates residuals of shrapnel, but determined the disability criteria did not meet the criteria for award of the Purple Heart. Based on the evidence, the Board determined the applicant does not meet the criteria for 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:

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 records show he is authorized additional awards not annotated on his DD Form 214, for the period ending 15 June 1972. As a result, amend his DD Form 214 to show:

- one silver service star to his previously issued Vietnam Service Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)

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. U.S. Army Vietnam (USARV) Regulation 672-5-1 (Decorations and Awards), in effect at the time, prescribed policies, responsibilities, and criteria for awards to insure prompt and proper recognition of individuals. The regulation states, in part:

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. 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.

b. 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 more than 24 hours or evacuation from Vietnam would be awarded the Purple Heart directly by the hospital commander rendering treatment.

3. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It provides that the Purple Heart is awarded for a wound 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 a medical officer, and the medical treatment must have been made a matter of official record.

a. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy-placed trap or mine
- Injury caused by enemy-released chemical, biological, or nuclear agent
- Injury caused by vehicle or aircraft accident resulting from enemy fire
- Concussion injuries caused, as a result of enemy-generated explosions
- Mild traumatic brain injury or concussion severe enough to cause either loss of consciousness or restriction from full duty due to persistent signs,

symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident

b. Examples of injuries or wounds which clearly do not justify award of the Purple Heart are as follows:

- Frostbite
- Trench foot or immersion foot
- Heat stroke
- Food poisoning not caused by enemy agents
- Chemical, biological, or nuclear agents not released by the enemy.
- Battle fatigue
- Disease not directly caused by enemy agents
- Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.
- Self-inflicted wounds, except when in the heat of battle and not involving gross negligence
- Post-traumatic stress disorders
- Airborne (for example, parachute/jump) injuries not caused by enemy action.
- Hearing loss and tinnitus (for example: ringing in the ears)
- Mild traumatic brain injury or concussions that do not either result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function
- Abrasions and lacerations (unless of a severity to be incapacitating)
- Bruises (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer)
- Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth)
- First degree burns

4. Army Regulation 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.

5. Department of the Army Pamphlet 672-3 (Unit and Campaign Participation Credit Register) shows:

a. A bronze service star is worn on the appropriate service ribbon, to include the Vietnam Service Medal, for each credited campaign. During his service in Vietnam, the applicant participated in the following five campaigns:

- DA Sanctuary Counteroffensive, 1 May 1970 – 30 June 1970
- Vietnam Counteroffensive, Phase VII, 1 July 1970 – 30 June 1971
- Consolidation I, 1 July 1971 – 30 November 1971
- Consolidation II, 1 December 1971 – 29 March 1971
- Vietnam CEASE-FIRE, 30 March 1972 – 28 January 1973

b. Department of the Army General Order (DAGO) 54, issued in 1974, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation for service in Vietnam to Headquarters and Headquarters Battery, 23d Artillery Group during the period of 15 January 1971 to 30 August 1971.

//NOTHING FOLLOWS//