

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 June 2024

DOCKET NUMBER: AR20230011736

APPLICANT REQUESTS: award of the Purple Heart and issuance of all medals listed on his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 1361 (Recommended Findings of Physical Evaluation Board), 31 October 1968
- Two DA Forms 8-175-3 (Clinical Record Cover Sheet)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) period ending 4 December 1968
- Article on Veterans Diseases Associated with Agent Orange

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 states:

a. He should be awarded the Purple Heart because he meets the criteria according to his DA Form 1361, dated 31 October 1968. He was deemed physically unfit due to a gunshot wound he received. It was a direct result of armed conflict, and it was caused by an instrument of war. He required medical treatment at the time of injury. He was operated on in Vietnam and when he was well enough, he was transferred to a hospital in Japan. He still walks with a cane to this day; he has needed a hip replacement and required a suprapubic bladder catheter.

b. He has been treated for five different cancers in his life and some doctors have attributed it to being exposed to agent orange. He was only [REDACTED]-years old when he entered the military and was shot just after his [REDACTED] birthday. It was a difficult and painful

experience to talk about. He is older and looks back on the sacrifices and would like to receive the honors he qualifies for.

c. His DD Form 214 also indicates that he is authorized for the National Defense Service Medal, the Vietnam Service Medal, the Vietnam Campaign Medal, and the Good Conduct Service Medal. However, he never received these medals. Therefore, he is requesting a Purple Heart medal and the four aforementioned medals listed on his DD Form 214.

3. The applicant provides an article related to diseases associated with Agent Orange. The article is available for the Board in its entirety.

4. Regarding the issuance of medals listed on his DD Form 214, the applicant is advised that the ABCMR corrects records; the Board does not issue medals or badges. Requests for the issuance or replacement of military service medals, decorations, awards, badges, and corresponding accouterments should be directed to the specific branch of the military in which the veteran served. For Army personnel, the National Personnel Records Center will verify the awards to which a veteran is entitled and forward the request with the verification to the appropriate service department for issuance of the medals. Written requests with appropriate supporting evidence may be addressed to the National Personnel Records Center, 1 Archives Dr, St. Louis, MO 63138.

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

a. He was inducted into the Army of the United States on 6 September 1966.

b. He served in Vietnam from 10 January 1968 to 17 March 1968. He held military occupational specialty 63B, Wheeled Vehicle Mechanic.

c. His DA Form 20 (Enlisted Qualification Record) shows in:

- item 40 (Wounds): no entries
- item 41 (Awards and Decorations): National Defense Service Medal, Vietnam Service Medal, Sharpshooter Marksmanship Qualification Badge (MM-14) and Expert Marksmanship Qualification Badge with Rifle Bar (MM-16)

d. On 21 February 1968, he was evaluated at the 93rd Evacuation Hospital for a gunshot wound to the buttocks and abdomen with fractures (R) iliac crest and perforating ascending colon. The applicant was injured when allegedly hit by a stray bullet. The details of the accident state another Soldier was clearing his weapon when it accidentally fired hitting the applicant in the buttocks.

e. A medical board convened on 30 September 1968 to consider the present state of health of the applicant. The applicant was initially admitted to the sick list on 21 February 1968 in Vietnam with the diagnosis of a gunshot wound to abdomen and right hip. It was the recommendation of the board that the applicant be referred to the physical evaluation board (PEB).

f. On 31 October 1968, a PEB convened to consider the recorded diagnosis (osteomyelitis, chronic, right ilium). The board determined the injury was incurred or aggravated while entitled to basic pay and recommended the applicant be placed on the temporary disability retired list (TDRL) with a reexamination during November 1969. The applicant concurred with the findings and waived a formal hearing of his case.

g. On 4 December 1968, he was honorably retired and placed on the temporary disability retired list. His DD Form 214 shows he completed 2 years, 2 months, and 29 days of active service. It also shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal (VSM)
- Vietnam Campaign Medal
- Good Conduct Service Medal

h. Block 30 lists administrative entries but not his service in Vietnam.

i. On 28 July 1972, a PEB convened and considered the applicant's condition. The board found the applicant physically unfit and recommended a combined rating of 30% and that he be permanently retired from the service.

8. Review of the Awards and Decoration Computer Assisted Retrieval System (ADCARS), an index of general orders issued during the Vietnam era between 1965 and 1973 maintained by the Awards and Decorations Branch of the U.S. Army Human Resources Command, failed to reveal any orders for award of the Purple Heart pertaining to the applicant.

9. The applicant's name does not appear on the Vietnam Casualty Roster.

10. By regulation, the award of the Purple Heart requires the recipient to fulfill the following criteria: the wound or injury must be the result of hostile action with an enemy, the wound or injury must have required medical treatment, and the medical treatment must have been made a matter of official record.

11. Army Regulation 600-8-22 (Military Awards) provides for award of the Purple Heart to individuals wounded or killed as a result of "friendly fire" in the "heat of battle" as long

as the “friendly” projectile or agent was released with the full intent of inflicting damage or destroying enemy troops or equipment.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is not warranted.
2. A majority of the Board found the evidence shows the applicant’s gunshot wound was the result of an accident. Therefore, a majority of the Board determined the wound did not meet the criteria for the Purple Heart.
3. The member in the minority found the evidence shows the applicant’s wound did meet the criteria for the Purple Heart and determined he should be awarded this medal.
4. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

X

CHAIRPERSON

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 DD Form 214 is missing entries that may be addressed administratively. Please correct the DD Form 214 by adding to:

- item 24 –
 - 2 bronze service stars with the Vietnam Service Medal
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Item 30 -- Service in Vietnam 10 January 1968 to 17 March 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. Department of the Army General Orders Number 8, dated 1974, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, U.S. Military Assistance Command and its subordinate units during the period 8 February 1962 to 28 March 1973 and to Headquarters, U.S. Army Vietnam and its subordinate units during the period 20 July 1965 to 28 March 1973

3. 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.

4. 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

//NOTHING FOLLOWS//