

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011738

APPLICANT REQUESTS: award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of The United States Report of Transfer or Discharge), for the period ending 16 June 1971

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 on or about March 1970, he received a shrapnel wound above the right eye, which resulted in treatment at a medical facility. He discovered the injustice in his record in 1999 but was too busy in his career to pursue the matter.
4. A review of the applicant's service record shows:
 - a. He was inducted into the Army of the United States on 17 June 1969.
 - b. His DA Form 20 (Enlisted Qualification Record) shows in:
 - item 31 (Foreign Service): service in Vietnam from 16 November 1969 to 31 October 1970
 - item 38 (Record of Assignments): assigned to Bravo Company, 2nd Battalion (Airmobile), 501st Infantry from 2 December 1969 to 26 October 1970
 - item 40 (Wounds): no entry

- item 41 (Awards and Decorations): does not reflect the award of the Purple Heart

c. He was honorably released from active duty on 16 June 1971. He completed 2 years of active service. His DD Form 214 shows in:

- item 22c (Foreign and/or Sea Service): 11 months and 15 days
- item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):
 - National Defense Service Medal
 - Vietnam Service Medal with two bronze service stars
 - Republic of Vietnam Campaign Medal
 - Combat Infantryman Badge
 - Good Conduct Medal
 - Army Commendation Medal
 - Bronze Star Medal
 - Air Medal
 - Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
 - Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- item 30 (Remarks): service in Vietnam from 16 November 1969 to 31 October 1970

5. 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.

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 maintained by the U.S. Army Human Resources Command Military Awards Branch, failed to reveal any orders for the Purple Heart pertaining to the applicant.

7. 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
- he wound must have required treatment by medical personnel
- the medical treatment must have been made a matter of official record

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. Based on the evidence, the Board determined the applicant does not meet the criteria for award of the Purple Heart.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

[REDACTED]

[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):

A review of the applicant's records shows he is authorized additional awards not listed on his DD Form 214. As a result, amend his DD Form 214 by:

- a. Deleting the Vietnam Service Medal with two bronze service stars;
- b. Adding:
 - Republic of Vietnam Civil Actions Honor Medal, First Class
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation
 - Vietnam Service Medal with three bronze service stars

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. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

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:

(1) In any action against an enemy of the United States.

(2) 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.

(3) 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.

(4) As the result of an act of any such enemy or opposing Armed Forces.

(5) As the result of an act of any hostile foreign force.

(6) After 7 December 1941, pursuant to Title 10, United States Code, section 1129, as a result of friendly fire provided the member was killed or wounded in action by friendly weapon fire while directly engaged in armed conflict, other than the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of the willful misconduct of the member.

(7) On or after 7 December 1941, to a member who is killed or dies while in captivity as a Prisoner of War under circumstances establishing eligibility for the Prisoner of War Medal, unless compelling evidence is presented that shows the member's death was not the result of enemy action.

b. To qualify for award of the Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer. 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.

(1) Treatment of the wound will be documented in the member's medical and/or health record.

(2) Award may be made for a wound treated by a medical professional other than a medical officer provided a medical officer includes a statement in the member's medical record that the severity of the wound was such that it would have required treatment by a medical officer if one had been available to provide treatment.

(3) 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 (to include Special Forces medics). Medics (such as combat medics – military occupational specialty 68W) are not physician extenders.

(4) A medical officer is defined as a physician with officer rank. The following are medical officers:

- An officer of the medical corps of the Army.
- An officer of the medical corps of the U.S. Navy.
- An officer in the U.S. Air Force designated as a medical officer in accordance with Title 10, United States Code, section 101.

c. 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

3. 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 campaigns:

- Vietnam Winter-Spring 1970, 1 November 1969 – 30 April 1970

- DA Sanctuary Counteroffensive, 1 May 1970 – 30 June 1970
- Vietnam Counteroffensive, Phase VII, 1 July 1970 – 30 June 1971

b. 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. Army Vietnam, and its subordinate units for the period 20 July 1965 to 28 March 1973.

c. Table 9, 501st Infantry, 2nd Battalion reflects the unit was awarded the Republic of Vietnam Civil Actions Honor Medal, First Class for the period 18 March 1968 to 2 May 1970, pursuant to Department of the Army General Order 48, dated 1971.

//NOTHING FOLLOWS//