

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20230011768

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)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Photo
- Court document reflecting name change

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 while serving as an infantry Soldier in Vietnam, he incurred a shrapnel wound to his leg below the knee. Because he was directly injured by the enemy, and the wound was in the line of duty, he is entitled to the Purple Heart. Along with a photo of his leg, the applicant offers the following statement on a VA Form 21-4138:

a. The applicant states, after the Tet Offensive, he boarded a helicopter and, as the helicopter approached the landing zone (LZ), he saw the LZ was under attack with heavy shelling.

b. The pilot landed the helicopter right in the middle of the LZ, and the applicant was told to run for cover. He took off running and suddenly felt a pain in his leg, as if he had fallen into a hole. As he got up and started running again, he realized his leg was bleeding, and he knew he had been hit by shrapnel.

c. The applicant kept asking one of the helicopters to medically evacuate him but was told their mission was simply to drop off Soldiers; another helicopter would come to evacuate him and any other wounded. They eventually took him to a MASH (Mobile Army Surgical Hospital) unit and, after performing exploratory surgery, the doctors decided to send him home due to significant nerve damage.

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

a. On 13 November 1969, the Army of the United States (AUS) inducted the applicant for a 2-year term of active duty. Upon completion of initial entry training, the award of military occupational specialty 11C (Infantry Indirect Fire Crewman), and attendance at a Noncommissioned Officer Candidate Course, orders transferred the applicant to Vietnam.

b. On 30 October 1970, the applicant arrived in country and further assigned him to the 2nd Battalion, 12th Cavalry Regiment, 1st Cavalry Division (Airmobile). The applicant's DA Form 20 (Enlisted Qualification Record) indicates, on 18 November 1970, he departed Vietnam, and was in a patient status at Fitzsimmons General Hospital, Denver, CO, effective 19 November 1970.

c. A DA Form 2496 (Disposition Form), dated 22 February 1971, shows that the supporting military personnel branch asked the Fitzsimmons General Hospital to verify whether the applicant had been evacuated as a result of wounds caused by an enemy.

(1) The military personnel branch needed the information to determine whether the applicant would receive credit for completing his overseas tour; if wounded, the military personnel office required a brief description of the wound(s), the date the wound(s) were sustained, and a copy of the applicant's Purple Heart General Orders.

(2) On 25 February 1971, the ward officer (an Army doctor) responded, "EM was evac (evacuate) from RVN (Republic of Vietnam) as result of injury during service in RVN. LOD (line of duty) Yes."

d. On 10 March 1971, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for absenting himself from a required formation and disobeying a sergeant first class' order to "straighten (his) area and spread (his) bed." Punishment consisted of a forfeiture of \$50 per month for one month, with half of that amount suspended for 30 days.

e. On 10 August 1971, the AUS honorably discharged the applicant, based on an early release policy, and transferred him to the U.S. Army Reserve. His DD Form 214 shows he completed 1 year, 8 months, and 28 days. Item 24 (Decorations, Medals,

Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) lists the following:

- Vietnam Service Medal with one bronze service star
- National Defense Service Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)

f. The applicant's DA Form 20 reflects the following additional information:

(1) Item 33 (Appointments and Reductions): The applicant's leadership progressively promoted him until he attained the rank of SGT; no reductions in rank are indicated.

(2) Item 38 (Record of Assignments – Conduct – Efficiency): the applicant received "Excellent" conduct and efficiency ratings throughout his term of active duty service.

(3) Item 41 (Awards and Decorations): the Purple Heart is not listed.

g. The applicant's service record is void of any General Orders awarding him the Purple Heart; in addition, there are no courts-martial convictions and, apart from the aforementioned NJP, there are no other disciplinary actions.

4. 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.

5. 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, failed to reveal orders pertaining to the applicant for the Purple Heart.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 evidence of record shows the applicant enlisted in the Army on 13 November 1969 and subsequently deployed to Vietnam. His record contains a disposition form which shows he was wounded, received the Purple Heart and was evacuated from the

Republic of Vietnam as a result of injury during service in Vietnam. The Board determined the applicant met 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 Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- awarding him the Purple Heart for injuries sustained in action on 22 February 1971
- adding to his DD Form 214, for the period ending 10 August 1971 the Purple Heart

5/12/2025

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):

1. The applicant served in Vietnam, from 30 October to 18 November 1970. Department of the Unit General Orders Number 8, dated 1974, awarded all units that served in Vietnam the Republic of Vietnam Gallantry Cross with Palm Unit Citation.
2. Amend the applicant's DD Form 214 by adding the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

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 (AR) 600-8-22 (Military Awards), currently in effect, prescribes policies and procedures for military awards. Paragraph 2-7 (Purple Hearts) 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 672-5-1 (Awards), in effect at the time, prescribed policies and procedures for military awards. In chapter 1 (Medals), section III (Good Conduct Medal), it stated:

a. The Army Good Conduct Medal was awarded for each 3 years of continuous enlisted active Federal military service completed on or after 27 August 1940.

b. For the first award only, commanders could award the Army Good Conduct Medal, upon termination of the Soldier's service on or after 27 June 1950, if he or she had served less than 3 years but more than 1 year. Additionally, the Soldier had to have had all "Excellent" conduct and efficiency ratings and no court-martial convictions.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) 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).

(2) 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.

//NOTHING FOLLOWS//