

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20230012139

APPLICANT REQUESTS: through counsel award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Counsel statement
- 101st Airborne Division Welcome letter
- Special Orders Number 149, dated 29 May 1969
- Special Orders Number 208 - dated 27 Jul 1969
- General Orders Number 4042 - 14 November 1969 with:
  - Silver Star Certificate, Command letter to family, newspaper article
- General Orders Number 1183, dated 2 February 1970 with Bronze Star Medal with V device award certificate
- 25th Infantry Division Citation for Bronze Star Medal (BSM) with 1st Oak Leaf Cluster (undated)
- Special Orders Number 250, dated 15 September 1971
- Command request for copy of General Order 4042 -- 25 Aug 1971
- General Orders Number 841, dated 19 March 1972 with BSM with V device certificate

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. A request to the National Archives and Records Administration for the applicant's records failed to result in locating his service records. The information provided below was obtained from the documents provided by the applicant .

3. The applicant states he was wounded in both shins on 26 September 1969, at the same time as his actions that resulted in his award of the Silver Star. He has experienced symptoms throughout the years from the shrapnel wound sustained in Vietnam. The symptoms he has felt from 1969-present is a sharp traveling pain that starts from my left toe.

4. Counsel states the military and federal government have indicated they do not have official records of the applicant's combat injury. Fortunately, he has been able to establish through first hand witness accounts, medical records, photographs, news reports and personal testimony that he did, in fact, sustain these injuries in combat, specifically during the 26 September 1969 military operation in which he rescued fellow servicemembers.

5. The applicant provided the following:

a. Two sets of reassignment orders.

b. Orders and award certificates for the Combat Infantryman Badge, Silver Star, Bronze Star Medal with 1st oak leaf Cluster and "V" device

c. DD Form 214 dated 31 May 1988 shows:

(1) Service this period from 27 April 1977 through 31 May 1988; 11 years, 1 month and 4 day with prior active duty service of 9 years, 5 months, and 8 days prior inactive service of 2 years, 11 months, and 1 day; 3 months and 25 days of foreign service (this period);

(2) service in the military occupational specialties 11B (Infantryman) for 22 years and 5 months and 51Z (General Engineering Supervisor) for 5 years and 9 months

(3) reenlistments on 127 April 1977 and 6 March 1983;

(4) retirement based on length of service;

(5) award of the:

- Silver Star
- Bronze Star Medal with one bronze oak leaf cluster and "V" device;
- Meritorious /Service Medal with one bronze oak leaf cluster
- Air Medal with Numeral 2
- Army Commendation Medal with one bronze oak leaf cluster
- Army Achievement Medal with one bronze oak leaf cluster
- Good Conduct Medal (6th award)

- Air Medal (2nd award)
- Army of Occupation Medal with Berlin Airlift Device
- National Defense Service Medal
- Vietnam Service Medal;
- Republic of Vietnam Campaign Ribbon with Device (1960)
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- NCO Professional Development Ribbon with Numeral 2
- Army Service Ribbon
- Combat Infantryman Badge
- Air Assault Badge
- Parachutist Badge - Basic
- Expert Qualification Badge with Rifle (for the M-1, M-14, and M-16)

d. Neither the applicant nor counsel provided copies of the documents alleged to supporting document of first hand witness accounts, medical records, photographs, and news reports in support of his request.

6. The available records do not contain any information of the dates or duration of his service in Vietnam or unit(s) the applicant served with during that period.

7. A review of the Vietnam Casualty List failed to locate any reference to the applicant.

8. Review of the Awards and Decorations Computer-Assisted Retrieval System (ADCARS) an index of general orders issued during the Vietnam era between 1965 and 1973 maintained by the Military Awards Branch of the United States Army Human Resources Command failed to reveal any orders for the Purple Heart.

#### BOARD DISCUSSION:

1. 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 through counsel carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review through counsel of the applicants petition and available military records the Board determined there is insufficient evidence of medical records showing the applicant received wounds caused by enemy forces that required treatment by medical personnel. The Board noted, per the regulatory guidance on awarding the Purple Heart, the applicant must provide or have in his service records substantiating evidence to verify that he was injured, the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record.

2. The Board found no evidence that showed the applicant's name on the casualty listing or notification to his family that he had been wounded. The burden of proof rest on the applicant and his counsel and neither provided any evidence to support his claim for award of the Purple Heart. Furthermore, as indicated in paragraph 2-8c of the current regulation states to qualify for award of the Purple Heart the wound must have been of such severity that it required treatment [at the location], not merely examination, by a medical officer, and treatment of the wound would be documented in the service member's medical and/or health record. Based on the absence of sufficient documentation to support the applicant and his counsel's contentions, the Board denied relief.

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.

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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.

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 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). Paragraph 2-9 states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Vietnam Regulation 672-1 (Awards) and Army Regulation 600-8-22 (Military Awards), as in effect at the time, state the Purple Heart is awarded for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record.

//NOTHING FOLLOWS//