

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230012835

APPLICANT REQUESTS: reconsideration of his previous requests for award of the Purple Heart.

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Photos
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Five letters of support
- Applicant's letter to U.S. Representative

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers:

- AR1999028863, on 13 January 2000
- AR2003085612, on 10 July 2003
- AR20060015037, on 19 April 2007
- AR20090016886, on 25 February 2010
- AR20110000914, on 3 May 2011

2. The applicant states on 30 September 1971, he sustained wounds during an engagement with the enemy in Vietnam. On his DD Form 149, he has checked blocks indicating post-traumatic stress disorder (PTSD) and Other Mental Health Conditions are related to his request, and he provides additional information and arguments in a self-authored letter to the Board. The applicant writes, in effect:

a. In 1971, while in Vietnam, the applicant was a first lieutenant (1LT) platoon leader, assigned to the 101st Pathfinder Platoon, 101st Airborne Division (Airmobile). On 29 September 1971, then 1LT J\_\_ L. M\_\_ and the applicant received instructions to attend a 30 September 1971 Air Mission Commander's (AMC) briefing; participating in such a briefing always meant that the Pathfinder mission leader (the applicant) and his

second-in-command (1LT M\_\_) would be provided the full scope and intent of an upcoming combat air assault mission. By way of context, the applicant adds that the command heavily committed its pathfinders during this period.

b. As 1LT M\_\_ and the applicant arrived for the briefing, the applicant noticed the presence of the division commander, the applicant's aviation group commander, and the ARVN (Army of the Republic of Vietnam) regimental commander. The applicant then describes the substance of the briefing, which included discussions about an increase in the Vietnamization Program (designed to shift the responsibility for the Vietnam war from U.S. forces to the South Vietnamese) and the decision to conduct one more large joint combat operation. He adds details about the role of pathfinders during these types of operations.

c. The joint operation commenced around 0730 hours on 30 September 1971, and, as the helicopters approached the landing zone (LZ), they prepared to receive enemy gunfire. The applicant and 1LT M\_\_ exited the helicopter and were followed by ARVN Soldiers; they immediately came under enemy rifle and machinegun fire. The applicant's rifle was "blown from my right hand. I used my 'Drive-On' rag and wrapped my right wrist to slow the bleeding, grabbed my rifle, and joined (1LT M\_\_) behind a large downed tree."

d. As the operation progressed, the applicant saw ARVN Soldiers huddled in a shallow bomb crater on the left side of the LZ; he ran across the LZ to the ARVN Soldiers and moved them to safer fighting positions. He then attempted to return to the downed tree and rejoin 1LT M\_\_. "As I ran back across the LZ, mortar fire began to hit the LZ. I stumbled and went down, face first. I felt a deep pain in my left thigh. I had been hit by mortar shrapnel in my left thigh. Crawling and dragging my left leg, I made it to my fighting position and applied my field dressing to my left leg."

e. USAF bombs and napalm, along with rockets from Cobra gunships, effectively suppressed the enemy gunfire and mortars. Subsequently, the entire ARVN regiment arrived at the LZ, and the applicant facilitated the unit's movement to its night defensive position. "When I reached the ARVN CP (command post), the regimental commander directed one of his medics to tend to my wounded right wrist. The medic removed one large piece of shrapnel and several smaller pieces from my left thigh. Shrapnel was removed from my wrist and leg, open wounds disinfected and bandaged." Upon the applicant's arrival at his home base, "...the flight medics examined my wounds, redressed each, and returned me to duty."

3. The applicant provides photos of his wounds and a previously submitted letter to his U.S. Representative and DD Form 149. Additionally, the applicant offers five letters of support; with the exception of Mr. H\_\_ F\_\_'s letter, all of the letters were reviewed by the Board in earlier considerations. Mr. H\_\_ F\_\_ writes that, in 1971, he served with the

applicant in Vietnam; they were both members of the 101st Airborne Division's pathfinder unit.

a. Mr. F\_\_ points out that, while their unit was based at Camp Eagle, they spent most of their time in fortifications/firebases located in a series of valleys and mountainous regions stretching to the Cambodian border. In some areas, the Army stripped and destroyed the trees using defoliant.

b. "While we were in the field or on firebases, aircraft would fly over and spray chemicals on us. Of course, we had no way of knowing what they were spraying and just accepted it as a normal part of life...The Veterans Administration has determined that I got Type II Diabetes as a result of exposure to Agent Orange. [Applicant] had exactly the same exposure to Agent Orange that I had."

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

a. On 23 January 1970, after completing over 1 year of enlisted service and graduating from officer candidate school, the applicant executed his oath of office as a commissioned officer, branched infantry.

b. Based on reassignment instructions, the applicant arrived in Vietnam, on 21 April 1971, and effective 30 April 1971, orders further assigned him to Headquarters and Headquarters Company (HHC), 101st Aviation Group. On 16 January 1972, intratheater orders transferred him to HHC, 159th Aviation Battalion, 101st Airborne Division (Airmobile). On 6 February 1972, the applicant completed his tour in Vietnam, and he transferred with his unit to Fort Campbell, KY, arriving at Fort Campbell, on 13 March 1972.

c. The applicant continued his service and completed numerous overseas and continental United States assignments. On 31 March 1989, the Army honorably retired the applicant. His DD Form 214 shows he completed 19 years, 2 months, and 8 days of net active duty service, with 1 year, 7 months, and 29 days of prior active duty service. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the following:

- Bronze Star Medal
- Meritorious Service Medal (5th Award)
- Air Medal (4th Award)
- Army Commendation Medal
- Army Achievement Medal
- Valorous Unit Award
- Army Good Conduct Medal
- National Defense Service Medal

- Vietnam Service Medal with three bronze service stars
- Armed Forces Reserve Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Republic of Vietnam Civil Actions Honor Medal, First Class Unit Citation
- Republic of Vietnam Campaign Medal with Device (1960)
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Combat Infantryman Badge
- Master Parachutist Badge
- Pathfinder Badge
- Ranger Tab
- U.S. Air Force Meritorious Achievement Medal

d. On 22 June 1999, the applicant petitioned the ABCMR, requesting the Purple Heart for wounds incurred in 1971.

(1) In support of his request, he provided letters from his former commander and the aviation group surgeon; the commander stated he remembered the applicant sustaining an "arm wound/infection" in August 1971, and the group surgeon indicated that, on or about 27 August 1971, "it is probable that I did treat [applicant]...but I am unable to recall the treatment myself."

(2) On 13 January 2000, the Board voted to deny relief, noting that the applicant had failed to provide any medical evidence confirming that any injuries or wounds he incurred resulted from hostile action.

e. In February 2003, the applicant asked the ABCMR to reconsider his Purple Heart request; on 10 July 2003, the Board administratively closed the applicant's petition. The Board detailed the criteria for the award of the Purple Heart; the letter went on to point out that the applicant had offered no medical evidence and that "third party witness statements...were not sufficiently convincing to support award of the PH (Purple Heart), absent any corroborating military record confirmation."

f. On 29 September 2006, the applicant resubmitted his request for reconsideration; he again provided his former commander's statement and added that his medical records from his Vietnam service were missing. On 19 April 2007, the Army Review Boards Agency (ARBA) administratively closed the applicant's request, citing the applicant's two previous requests and pointing to the provision in Army Regulation (AR) 15-185 (ABCMR) that required reconsideration requests to be received within one year of the ABCMR's original decision.

g. On 28 June 2009, the applicant again requested reconsideration of his Purple Heart request.

(1) The applicant stated, "During Lam Son 720, I was providing direct support during intense combat operations...and I was struck below the 'R' elbow by rifle fire. I contacted the TOC/ABN Cdr (tactical operations center/airborne commander) and informed them the ARVN medics patched the wound, and I could continue until relief arrived, but I required evac(uation) on 26 Aug(ust) 1971 to the Avn Gp (Aviation Group) Surgeon."

(a) With his application, the applicant provided three new letters of support and the two letter he previously submitted from his former commander and the Aviation Group Surgeon.

- Lieutenant Colonel (Retired) W\_\_ T. A\_\_ stated he and the applicant shared the same building for sleeping quarters, and he recalled the applicant went to the aid station to receive medical treatment after a combat operation
- Mr. W\_\_ M. W\_\_ affirmed he served with the applicant in Vietnam; in August 1971, Mr. W\_\_, the applicant, and the pathfinder team arrived at an LZ; the applicant said he had been "hit but should be okay..."; Mr. W\_\_ later learned the applicant had "infection problems" with the injury sustained in combat
- First Sergeant (Retired) D\_\_ L. R\_\_ wrote he "pulled many combat assault missions with [Applicant]...I do recall while on a combat assault, [applicant] sustained a wound to his arm...to be best of my memory, he was wounded in August 1971"; the applicant was later treated for the wound and an infection

(b) The applicant also submitted an extract of his service treatment records, showing entries between February 1970 and May 1975. One entry, dated 26 August 1971, stated, "Boil on elbow, not large enough to cut." Subsequent entries described an "enflamed cyst." There were no entries describing wounds incurred in combat.

(2) On 25 February 2010, ARBA administratively closed the applicant's request, citing the requirement in AR 15-185 (ABCMR) that reconsideration requests to be received within one year of the ABCMR's original decision.

h. On 3 May 2011, following a Congressional inquiry, the Board reassessed the applicant's June 2009 reconsideration request and administratively closed it after determining it did not meet the regulatory criteria for reconsideration.

i. On 16 March 2022, ARBA issued the applicant a DD Form 215 (Correction to DD Form 214), which added the Republic of Vietnam Parachutist Badge and Republic of Vietnam Technical Service Honor Medal, First Class to his DD Form 214, ending 31 March 1989.

5. 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.

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

7. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests PH award for wounds received from enemy engagement in Vietnam. This is a request for reconsideration (multiple requests in the past). The applicant indicated that his request was related to PTSD and Other Mental Health diagnoses. This review will focus on physical battle wound(s). The BH conditions review was completed under separate cover.

2. The ABCMR ROP summarized the applicant's available record and circumstances surrounding the case. The applicant entered service in the Regular Army 24May1968. He was deployed in Vietnam 19710421 to 19720206. He was retired (for length of service) on 31Mar1989. His service was characterized as honorable.

3. Summary of pertinent medical records and related

a. 26Aug1971 101st AVN GP (Chronological Record of Medical Care, SF 600). The applicant was seen for a lesion described as a boil on his elbow. It was too small to lance. Treatment plan was for the applicant to apply a heating pad until the boil came to a head.

b. 27Aug1971 follow up visit. The lesion was described as an inflamed cyst-like eruption on his forearm. Heat application the day prior had caused eruption and mild drainage. Plan of action: Incise and drain, and polycillin (antibiotic). The lesion was non-fluctuant.

c. 29Aug1971, the lesion was still non fluctuant. Prostaphlin (an antibiotic) was started.

d. 30Aug1971, the lesion was fluctuant and draining now.

e. Letter from the applicant's commanding officer dated 30Aug1990 endorsed the applicant's arm was injured during an action on/near a fire base outside Camp Eagle RVN in August 1971, and he was subsequently treated for an arm wound/infection.

f. Letter from a physician dated 14Sep1990 acknowledged receipt of a letter from the applicant indicating the physician had treated the applicant for an arm wound/infection. The physician responded it is probable that they did treat the applicant, but they were unable to recall the treatment.

4. Review of the available medical record showed treatment of a wound on the applicant's forearm in August 1971. The name of the physician who authored the letter referenced in 3f above, appears to match the provider's name signed in the August 1971 treatment record. There was no medical documentation of the cause of the forearm wound that received treatment. As the medical record reads, there was treatment for an infected forearm lesion diagnosed as a boil or inflamed cyst-like eruption in August 1971 without mention of etiology or circumstances under which the wound was obtained.

#### BEHAVIORIAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous requests for the Purple Heart, noting that he incurred PTSD and Other Mental Health Conditions while on active duty as the result of combat. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant states, in effect, on 30 September 1971, he sustained wounds during an engagement with the enemy in Vietnam. On his DD Form 149, he has checked blocks indicating PTSD and Other Mental Health Conditions are related to his request; 2) The applicant has previously applied to ABCMR to consider his request in 1999, 2003, 2006, and 2009 for a Purple Heart for injuries incurred during his deployment to Vietnam.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy documentation provided by the applicant were also examined.

c. The applicant asserts he experienced mental health conditions including PTSD while on active service due to his experiences in Vietnam, which warrants a Purple Heart Award. There is insufficient evidence the applicant reported or was diagnosed with any mental health condition including PTSD while on active service. A review of JLV provided evidence the applicant has been diagnosed with service-connected PTSD by the VA, and in 2009, he was awarded VA disability (30% SC) for his service-connected PTSD related to his combat experiences both in Vietnam and during his Cold War experiences.

d. Paragraph 2-8 of AR 600-8-22, Military Awards (11 December 2006), lists the criteria for the awarding of the Purple Heart. Specifically, an individual's injury must be "A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required, however, the wound for which the award is made must have required treatment by medical personnel and records of medical treatment for wounds or injuries received in action must have been made a matter of official record."

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant has been diagnosed with service-connected PTSD by the VA due to his combat experiences in Vietnam and during the Cold War. However, this mental health condition does not meet the requirements of the injury sustained during combat, which results in being awarded a Purple Heart in IAW AR 600-8-22.

#### 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 amendment of the ABCMR decision rendered in Docket Numbers AR1999028863 on 13 January 2000, AR2003085612 on 10 July 2003 AR20060015037 on 19 April 2007 AR20090016886 on 25 February 2010 and AR20110000914 on 3 May 2011.

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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, USC, section 1556 (Ex Parte Communications Prohibited) requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicant's (and/or their counsel) prior to adjudication.

2. AR 600-8-22, currently in effect, prescribes policies and procedures for military awards. Regarding the Purple Heart, the regulation states:

a. Paragraph 2-7 (Purple Hearts) states 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 15-185, currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, 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).

b. 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//