

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230012911

APPLICANT REQUESTS:

- An update to his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 15 August 1969 to show he was entitled to and awarded the Purple Heart (PH).
- In addition, a personal appearance before the Board (via video/telephone).

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

DD Form 149 (Application for Correction of Military Record)

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 that while serving in Vietnam he was hurt from an explosion. Enemy forces attacked by throwing a bag at the applicants in his living quarters that exploded, causing him to fall. He suffered with tinnitus, hearing loss and slight traumatic brain injury (TBI). The applicant informed his commander of the incident, but the commander instructed him to take a week off for his injuries instead of going to sick call. The applicant is now asking to be awarded the PH for his injuries sustained from this incident. He further explains that his supporting documents were burned during the fire of the National Archives.
3. The applicant is authorized additional awards not currently listed on his DD Form 214. These awards will be administratively correction in the "Administrative Notes" section of this document without the need for Board action.
4. The applicant's service record reflects the following:
  - a. DD Form 47 (Record of Induction) shows he was inducted into the Army of the United States on 4 December 1967.

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

- item 31 (Foreign Service): 8 August 1968 through 7 August 1969 U.S. Army Pacific (USARPAC)- Republic of Vietnam
- item 33 (Appointments and Reductions) this document shows consecutive promotions and does not reflect any reductions in rank.
- item 38 (Record of Assignments): He was assigned to Headquarters U.S. Army Headquarters Area Command (USAHAC), USARPAC from 28 June 1968 through 23 July 1969
- item 38 (continued): he received all excellent ratings in conduct and efficiency
- item 39 (Campaigns): Vietnam Counteroffensive Phase V
- item 40 (Wounds): this document does not reflect any wounds
- item 41 (Awards and Decorations): NDSM, VSM, VCM with device (1960), this document does not reflect the PH

c. His DD Form 214 shows he was honorably released from active duty on 15 August 1969 and was transferred to the U.S. Army Reserve (USAR). He completed 1 year, 8 months, 11 days of net service during this period. This document further reflects in:

- item 22c (Foreign and/or Sea Service): 1 year, 0 months, 0 days (USARPAC)
- item 24 (Awards): NDSM, VSM, VCM with device (1960), does not reflect the PH
- item 30 (Remarks): does not reflect service in Vietnam

d. A fire at the National Personnel Records Center, St. Louis, MO in 1973 destroyed 80 percent of the records of Army personnel who were discharged from 1 November 1912 - 1 January 1960. The applicant's period of service was from 4 December 1967 to 15 August 1969, therefore it was not affected by the fire.

e. The service record does not reflect, and the applicant does not provide any orders or certificates awarding him the PH.

f. The applicant's service record does not reflect any misconduct or disciplinary actions, for the period ending 15 August 1969.

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 Military Awards Branch, failed to reveal any orders for the PH pertaining to the applicant.

6. The applicant's name is not shown on the Department of the Army Office of the Adjutant General Vietnam Casualty Division Casualty Reference Name Listing for the period 1 January 1961 through 30 June 1973, a battle and non-battle listing of Soldiers who were killed, wounded, sick, captured, or missing during their service in Vietnam.

7. Due to the applicant's claim of PTSD and TBI sustained while in combat, the case is being forwarded to the Medical and Behavioral Staff at the Army Review Boards Agency.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a Purple Heart. He states:

"While serving in Vietnam the veteran was hurt from an explosion. The veteran stated that (Cowboys) Vietcong was on a motorcycle near the barracks and threw a bag in front of the barracks. The bag exploded and I was knocked to my feet. I suffered with tinnitus and hearing loss and had a slight TBI.

The veteran informed the commander of the incident, and the commander told the veteran to take a week off for his injuries instead of going to sick call. The veteran would like to receive the Purple Heart Medal for his incident.

The veteran's supporting documents were burned during the fire at the National Archives."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 shows for the period of Service under consideration shows he entered the regular Army on 4 December 1967 and was honorably discharged on 15 August 1969 under provisions provided in AR 635-200, Personnel Management – Enlisted Personnel. The applicant's separation program number (SPN) of 411 denotes "Early Separation of Overseas Returnee."

d. There is no evidence for the injuries or the explosion the applicant references. No medical documentation submitted with the application. His period of service pre-dates the EMR and there are no documents in iPERMS.

e. Paragraph 2-8k(3) of 600-8-22, Military Awards, succinctly lists the requirements for the awarding of a Purple Heart:

Each approved award of the Purple Heart must exhibit all of the following factors: wound, injury or death must have been the result of enemy or hostile act; international terrorist attack; or friendly fire (as defined in paragraph b(8) above); the wound or injury must have required treatment by medical officials; and the records of medical treatment must have been made a matter of official Army records.

f. There is no evidence the above criteria were met.

g. It is the opinion of the ARBA medical advisor there is insufficient evidence to support the awarding of a Purple Heart.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board 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 of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support eligibility requirements for award of the Purple Heart. The Board agreed there was insufficient evidence that showed the applicant's name on the casualty listing or notification to his family that he had been wounded. There is no medical record showing the applicant received wounds caused by enemy forces that required treatment by medical personnel.

2. 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. However, during deliberation, the Board determined the applicant's service record did not reflect he was awarded the Army Good Conduct Medal (1st Award) and his record shows he received "excellent" conduct and efficiency ratings throughout his service for the period of 4 December 1967 to 15 August 1969. Based on this the Board granted partial relief to correct the applicant's record to show award of the Army Good Conduct Medal.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

█                █                █                GRANT PARTIAL RELIEF

:                :                :                GRANT FORMAL HEARING

:                :                :                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by awarding him the Army Good Conduct Medal (1st Award) for exemplary service from 4 December 1967 – 15 August 1969 and adding the medal to his DD Form 214 for the period ending 15 August 1969.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to award of the purple heart.

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he is authorized foreign service and additional awards not listed on his DD Form 214. As a result, amend his DD Form 214 for the period ending 15 August 1969, by amending:

- item 30 (Remarks) to read "Service in Vietnam from 8 August 1968 to 7 August 1969" and
- item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) to show he was authorized the following awards:
  - Republic of Vietnam Gallantry Cross with Palm Unit Citation, pursuant to Department of the Army General Orders (DAGO) 8, dated 1974
  - VSM with four bronze service stars
    - Vietnam Counteroffensive, Phase V
    - Vietnam Counteroffensive, Phase VI
    - TET 69 Counteroffensive
    - Vietnam Summer-Fall 1969

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 Citation and Campaign Participation Credit Register) paragraph 8 campaign participation credits shows he was authorized four bronze campaign stars for the following campaigns:

- Vietnam Counteroffensive, Phase V
- Vietnam Counteroffensive, Phase VI
- TET 69 Counteroffensive
- Vietnam Summer-Fall 1969

4. Army Regulation 672-15 (Decorations and Awards Service Medals), in effect at the time, states 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; for first award only, 1 year served entirely during the period 7 December 1941 to 2 March 1946; and, for the first award only, upon termination of service on or after 27 June 1950 of less than 3 years but more than 1 year. The enlisted person must have had all "excellent" conduct and efficiency ratings. Ratings of "Unknown" for portions of the period under consideration were not disqualifying. There must have been no convictions by a court-martial. However, there was no right or entitlement to the medal until the immediate commander made a positive recommendation for its award and until the awarding authority announced the award in general orders.

5. Army Regulation 635-5 (Separation Documents) in effect at the time, states that the DD Form 214 will reflect the conditions and circumstances that existed at the time the records were created. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate and reflects the conditions as they existed at the time of separation.



6. 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 ABCMR. 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

10. Title 10, U.S. Code, section 1556 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.

//NOTHING FOLLOWS//