

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]
[REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230012918

APPLICANT REQUESTS: the following corrections of the record of her father, deceased former service member (SM) -

- a. entitlement to award of the Purple Heart.
- b. correction his WD AGO Form 53-55 (Enlisted Record and Report of Separation-Honorable Discharge):
 - add Purple Heart
 - correct his date of birth (DOB) to show the date listed on his certification of birth (the requested DOB) instead of the contested DOB
 - correction of his name to show the requested name listed on his certificate of death instead of the contested name
- c. She also requests a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- FSM's Certification of Birth
- Applicant's Certification of Birth
- Certificate of Death x2
- Congressional Correspondence
- WD AGO Form 53-55
- Two Honorable Discharge Certificates
- Letter, Office of the Adjutant General, subject: Honorable Discharge from New Jersey Army National Guard (ARNG) and Commendation for Service
- Former SM's Marriage Certificate
- Veteran's Certificate of Eligibility
- Social Security Card
- Immunization Register
- Letter, National Personnel Records Center (NPRC)

- Letter, Army Review Boards Agency

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, in effect, the Heritage Society at Bushnell National Cemetery advised her that her father should have received the Purple Heart for a severe spinal injury sustained in a foxhole by a grenade.

a. He had emergency surgery in a Belgium Hospital, the incision was torn, and he required a second surgery. He was there several months. The only proof of her dad's injury was his verbal account and the 14-inch scar that was visible on his back.

b. The former SM was born at home and celebrated his birthday in December until he was age 58. When he obtained his birth certificate to apply for disability, he found out his date of birth (DOB) was in September.

3. The former SM's complete military records are not available to the Board for review. A fire destroyed approximately 18 million service members' records at the NPRC in 1973. It is believed the former SM's records were lost or destroyed in that fire. However, there were sufficient documents provided and a limited number of records remaining in a reconstructed record for the Board to conduct a fair and impartial review of this case.

4. This paragraph of the record of proceedings will specifically address the request for correction of the former SM's name and date of birth (DOB).

a. The former SM's name is variably listed throughout his records and the evidence provided by the applicant as follows:

(1) His name is listed as J.D. (with no middle name, middle initial, or suffix) on the following documents:

- Former SM's certificate of Birth
- Applicant's Certificate of Birth

(2) His name is listed as J.D. Jr on a letter, subject Honorable Discharge from the NJARNG, 3 December 1945.

(3) His name is listed as J.J.D. (with no suffix) on the following documents:

- Former SM's WD AGO 53-55, 11 September 1945
- Former SM's Honorable Discharge Certificate, 11 September 1945
- Final Payment Roll, 11 September 1945
- Former SM's Marriage Certificate, 22 April 1950
- Veterans Administration Certificate of Eligibility, 20 April 1951

(4) His name is listed as J.J.D. Jr on the following documents:

- ABCMR application
- Former SM's certificate of death
- Social Security Administration Card

b. The FSM's WD AGO 53-55 lists the contested date of birth. There is no evidence he used the requested DOB during the period of his military service.

c. His certification of death reflects the requested date of birth.

5. The former SM's WD AGO Form 53-55 shows he enlisted in the ARNG on 12 September 1938, and he entered active duty on 16 September 1940. He was honorably separated on 11 September 1945 at Fort Dix, NJ, by reason of demobilization. This form also shows at the time of separation he held military occupational specialty 511 (Armorer) and he was assigned to the 644th Truck Destroyer Battalion. His WD AGO Form 53-55 shows in:

- Battles and Campaigns – Ardennes, Normandy, Northern France, and Rhineland
- Decorations and Citations – American Defense Service Medal, European African Middle Eastern Service Medal, Good Conduct Medal, and Army Service Lapel Button
- Wounds Received in Action – None
- Service Outside United States and Return – European Theater of Operations from 11 January 1944 to 23 August 1945
Continental Service – 3 years, 3 months, and 18 days
- Foreign Service – 1 year, 8 months, and 6 days

6. The applicant provided:

a. Congressional Correspondence written to her Congressperson, wherein she stated her dad's name was incorrect on his headstone, and she requested a copy of his full military records. She never received the record nor was her dad's name corrected.

Her dad had a spinal injury which resulted in the shattering of some of his spinal vertebra in his mid to lower back sustained in a foxhole by a grenade. He was treated in a Belgium Hospital for over a year. His scar was about 14 inches long. He had emergency surgery, the incision tore, and he had surgery again to repair the torn incision. The injury was not recorded on his discharge. Her dad asked why it was not recorded and he was told "it was recorded somewhere else." She also requested assistance obtaining the FSM's full military service record.

b. Several certificates, letters, separation documents, reflective of his active service and VA documents reflective of his post service. The Board was provided the FSM's submissions in their entirety.

7. The Purple Heart is awarded for a wound 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, the wound must have required medical treatment, and the medical treatment must have been made a matter of official record.

8. For historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created.

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 deceased servicemember's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. The Board determined the evidence presented does demonstrate the existence of a probable error or injustice. The deceased servicemember used the contested name during his entire period of service. However, upon review of the applicant's petition and available military records, the Board determined there is sufficient evidence based on the deceased servicemember's Honorable Discharge from the NJARNG dated 3 December 1945 showing his name as reflected on his certificate of live birth. Further, the Board noted correction to the applicant's date of birth would be annotated in the Remarks section of his WD AGO Form 53-55 to show also known as (AKA) the date listed on his certificate of live birth.

2. However, during deliberation, the Board determined the deceased servicemember's records are absent sufficient evidence to support he meet eligibility requirements for award of the Purple Heart. The Board agreed there was insufficient evidence that showed the deceased servicemember's name on the casualty listing or notification to his family that he had been wounded. There is insufficient medical records showing the

deceased servicemember received wounds caused by enemy forces that required treatment by medical personnel. Per the regulatory guidance on awarding the Purple Heart, the individual 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. Based on the evidence provided, the Board grant partial relief to correct the deceased servicemember’s name and add also known as to the remarks section for his date of birth.

3. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the deceased servicemember's WDAGO-53-55 to show in:

- block 1 (Name) as reflected on his certificate of live birth
- block 55 (Remarks) add also known as (AKA) his date of birth as reflected on his certificate of live birth

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.

[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 annotated on his WD AGO Form 53-55. As a result, amend his WD AGO Form 53-55 by adding the World War II Victory Medal.

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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-11 contains guidance on ABCMR hearings, and it states 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.
3. Army Regulation 600-45 (Decorations), then in effect, which governed the award of Army decorations until 23 August 1951, stated the Purple Heart was awarded citizens of the United States serving with the Army, who are wounded in action against an enemy of the United States, or as a direct result of an act of such enemy, provided such wound necessitated treatment by a medical officer. This regulation stated that for the purpose of considering an award of the Purple Heart, a "wound" is defined as an injury to any part of the body from an outside force, element, or agent sustained while in action in the face of the armed enemy or as a result of a hostile act of such enemy.
4. Army Regulation 600-8-22 (Military Awards) provides that:
 - a. The Purple Heart is awarded for a wound 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, the wound must have required treatment, and the medical treatment must have been made a matter of official record. 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 mine or trap; injury caused by enemy released chemical, biological, or nuclear agent; injury caused by vehicle or aircraft accident resulting from enemy fire; and/or concussion injuries caused as a result of enemy generated explosions.
 - b. The World War II Victory Medal is awarded for service between 7 December 1941 and 31 December 1946, both dates inclusive.
5. Army Regulation 635-8 (Separation Processing and Documents) establishes the policy for preparing and distributing the DD Form 214. The regulation directs that 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.

//NOTHING FOLLOWS//