

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 June 2024

DOCKET NUMBER: AR20230013081

APPLICANT REQUESTS: award of the Purple Heart and, in effect, its addition to his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge).

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

- DD Form 149 (Application for Correction of Military Record)
- Affidavit

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, while he served in Vietnam, he incurred wounds that warrant the award of the Purple Heart; he does not identify the date of his combat-incurred injuries.

a. The applicant believes that, because the war was coming to an end in a period of extreme turmoil, his chain of command overlooked what had happened to him; he feels their oversight should be corrected and his contributions to the defense of our nation acknowledged. He additionally notes that, while having the Purple Heart did not matter much to him when he was younger, he now wants his heirs to know this part of his history.

b. The applicant discloses he previously made inquiries to the Department of Veterans Affairs (VA); and they told him his service records had been misplaced or were lost; as a result, they said efforts to verify the applicant's claims would be hard to prove. Because of this, the applicant decided to reach out to a surviving former comrade in arms, and he provided a sworn affidavit attesting to the wounds the applicant sustained.

3. The applicant provides a December 2022 sworn affidavit from Mr. D\_\_ W\_\_, who states the following:

a. Mr. W\_\_ affirms he served with the applicant while both were assigned to the 39th Engineer Battalion in Chu Lai, Vietnam. The applicant operated a bulldozer as a member of the unit's landmine clearing team, and Mr. W\_\_ recalls being told that the applicant had sustained wounds requiring medical evacuation after driving over and detonating a landmine; (Mr. W\_\_ does not provide the date of this incident).

b. They brought the applicant to the Chu Lai Trauma Field Hospital and treated him for multiple shrapnel wounds and a severe concussion. Mr. W\_\_ acknowledges he did not witness the incident, but he remembers seeing the applicant return to the unit with bandages and multiple bruises; in addition, the applicant complained for having severe headaches, being unable to hear, and suffering from a ringing in his ears. The applicant also told him he had no recollection of running over the landmine, just that the next thing he knew, he woke up in the hospital.

c. When Mr. W\_\_ saw the bulldozer, the applicant had been driving, he realized the applicant was lucky to be alive; the tracks had been blown off and the damage was so severe, the command deemed the vehicle unrepairable and stripped it for parts. Even months after the incident, the applicant still said he felt like someone had beat him with a sledgehammer, and he continued to have recurring headaches and a ringing in his ears.

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

a. On 23 September 1968, the applicant enlisted into the Regular Army for 3 years; upon completion of initial entry training and the award of military occupational specialty (MOS) 62B (Engineer Equipment Repairman), orders transferred him to Vietnam, and he arrived in country, on 12 June 1969. Orders subsequently further assigned him to the 93rd Engineer Battalion, and he arrived at his new duty station, on 17 June 1969.

b. Effective 9 October 1969, intra-theater orders reassigned him to the 39th Engineer Battalion, with duty MOS 62E (Crawler Tractor Operator). On 12 March 1971.

c. Headquarters, 18th Engineer Brigade General Orders (GO) awarded the applicant the Army Commendation Medal for meritorious service, during the period April 1969 to April 1971.

d. On 28 April 1971, the applicant completed his tour in Vietnam, and orders transferred him to Fort Lewis, WA for separation processing. On 29 April 1971, the applicant underwent a separation physical; on his Standard Form 88 (Report of Medical Examination), the applicant signed his name to the following affirmation: "1. Since my

last phy(sical) my condition has not changed. 2. My condition is good. 3. Med(ical) record reviewed." The examining physical indicated all clinically evaluation areas were normal, identified no limitations in the applicant's physical profile (to include hearing), and declared the applicant qualified for separation.

e. On 30 April 1971, the Army honorably released the applicant from active duty, based on an early release policy, and transferred him to the U.S. Army Reserve for the remainder of his military service obligation. His DD Form 214 shows he completed 2 years, 7 months, and 8 days of his 3-year enlistment contract. Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) lists the following:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Army Commendation Medal
- Two overseas service bars
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)

f. A review of the applicant's available service record reveals no derogatory information; in addition DA Form 20 (Enlisted Qualification Record) reflects the following:

- Item 33 (Appointments and Reductions) – applicant's leadership progressively promoted him, and he attained the rank/grade of specialist five (SP5/E-5); no entries show a reduction in rank
- Item 38 (Record of Assignments – Conduct/Efficiency) – the applicant received "Excellent" rating throughout his term of active duty
- Item 40 (Wounds) – No entries
- Item 41 (Awards and Decorations) – Purple Heart is not listed

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. Army Regulation (AR) 600-8-22 (Military Awards), currently in effect, prescribes policies and procedures for military awards. Regarding the Purple Heart, the regulation 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 and as a result of action against an enemy of the United States, has been wounded, killed, or who has died or may hereafter die of wounds received.

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

8. AR 15-185 (ABCMR), currently in effect, states: 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). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Purple Heart: Deny. In order to be awarded the Purple Heart, 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. In order to determine such eligibility, medical documentation describing both diagnosis and treatment of injuries caused by the enemy immediately after, or close to the incident date and signed or endorsed by a medical professional. The Board reviewed and did not find documentation to support award of the Purple Heart.

b. Army Good Conduct Medal: Grant. As a related award, the applicant served on active duty from 23 September 1968 to 30 April 1971, completing 2 years, 7 months, and 8 days of active service. His DA Form 20 shows he received "Excellent" rating throughout his term of active duty, and there is no derogatory information in his service

record. The Board determined he meets the criteria for award of the Army Good Conduct Medal (1st Award).

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 correction addressed in Administrative Note(s) below, 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:

- Awarding the applicant the Army Good Conduct Medal for service during the period 23 September 1968 through 30 April 1971
- Adding awards of the Army Good Conduct (1st Award) to his DD Form 214

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.

█

---

█ █

█

█

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. AR 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all decorations, service medals, campaign credits, and badges awarded or authorized.

2. AR 600-8-22, currently in effect, states the Vietnam Service Medal is awarded to all members of the Armed Forces of the United States based on their qualifying service in Vietnam after 3 July 1965 through 28 March 1973. A bronze service star will be awarded for wear on the Vietnam Service Medal for the Soldier's participation in each recognized campaign; Vietnam campaigns include the following:

- Summer-Fall 1969 (9 June 1969 to 31 October 1969)
- Winter-Spring 1970 (1 November 1969 to 30 April 1970)
- Sanctuary Counteroffensive (1 May 1970 to 30 June 1970)
- Counteroffensive, Phase VII (1 July 1970 to 30 June 1971)

3. Department of the Army Pamphlet (DA PAM) 672-3 (Unit Citation and Campaign Participation Credit Register) shows:

a. Department of the Army General Order (DAGO) Number 2, dated 1971, awarded the 39th Engineer Battalion the Meritorious Unit Commendation for the period 21 January 1968 to 3 February 1970.

b. DAGO Number 51, dated 1971, awarded the 93rd Engineer Battalion the Meritorious Unit Commendation for the period 1 October 1968 to 30 June 1969.

c. DAGO Number 43, dated 1970, awarded the 93rd Engineer Battalion the Republic of Vietnam Civil Actions Honor Medal, First Class Unit Citation, for the period 3 August 1967 to 9 February 1970.

d. DAGO Number 8, dated 1974, awarded all units that served in Vietnam the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

5. Based on the foregoing, amend the applicant's DD Form 214, ending 30 April 1971, as follows: item 24: delete Vietnam Service Medal and add the following:

- Vietnam Service Medal with four bronze service stars
- Meritorious Unit Commendation (2nd Award)
- Republic of Vietnam Civil Actions Honor Medal, First Class Unit Citation
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

REFERENCES:

1. Title 10, USC, 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. AR 600-8-22 (Military Awards), currently in effect, prescribes policies and procedures for military awards. Regarding the Purple Heart, the regulation 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; it stated 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 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, 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//