

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230013432

APPLICANT REQUESTS: to be awarded the

- Purple Herat
- Bronze Star Medal (BSM)
- Silver Star (SS)
- Any awards and decorations he did not receive

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 13 November 1969
- A letter issued by the National Personnel Records Center (NPRC), dated 18 July 2023

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 he never received any awards or decorations for his service. He was shot five times during the war, all on separate occasions. Additionally, he operated 52 war worms (a device used to remove unspent powder bag remnants from a cannon or other piece of muzzle-loading field artillery). During this time, he was serving as a platoon leader throughout Vietnam and was assisting others that were injured. He never received any PH's, BSM or the Silver Star for his bravery for saving others. These events have resulted in high blood pressure, bad knees, bad back and hips and many other health problems. His records had been missing for a while and were discovered when he visited the Department of Veterans Affairs (VA) in Tampa. He is requesting all his awards, and for his records to be corrected. He is preparing for the future due to his age and would like for his children to be made aware of his service. Everything he has stated is all that he can provide. The applicant has annotated post-traumatic stress disorder (PTSD) and other mental health issues on the DD Form 149.

3. Regrading the Silver Star and Bronze Star Medal, the applicant's request is premature. Army Regulation 600-8-22 (Military Awards) prescribes Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards. Paragraph 1-14 of this regulation states, except for award recommendations submitted in accordance with the provisions of Section 1130, Title 10, United States Code (10 USC 1130), which is outlined below, each recommendation for an award of a military decoration must be entered administratively into military channels within 2 years of the act, achievement, or service to be honored, with the exception of the Medal of Honor, Distinguished Service Cross, and Distinguished Service Medal. An award recommendation will be considered to have been submitted into military channels when it has been signed by the initiating officer and endorsed by a higher official in the chain of command. However, pursuant to 10 USC 1130, a Member of Congress can request consideration of a proposal for the award or presentation of decoration (or the upgrading of a decoration), either for an individual or unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy. Based upon such review, the Secretary of the Army will make a determination as to the merit of approving the award or presentation of the decoration and other determinations necessary to comply with congressional reporting requirements under 10 USC 1130.

a. 10 USC 1130 allows the Service Secretary concerned to review a proposal for the award of, or upgrading of, a decoration that is otherwise precluded from consideration by limitations established by law or policy. In order to request an award under Title 10 USC 1130, you must submit a DA Form 638 (Recommendation for Award), a copy of which is enclosed.

b. The DA Form 638 should clearly identify the member's unit, the period of assignment, and the award being recommended. A narrative of the actions or period for which the member is requesting recognition must accompany the DA Form 638. In addition, the award request should be supported by sworn affidavits, eyewitness statements, certificates and related documents. Corroborating evidence is best provided by commanders, leaders, and fellow Soldiers who had personal (i.e., eyewitness) knowledge of the circumstances and events relative to the request.

c. 10 USC 1130 also requires that a request of this nature be referred to the Service Secretary from a Member of Congress. Therefore, the member must submit his or her request through a Member of Congress who will send it to the United States Army Human Resources Command, ATTN: AHRC-PDP-A, 1600 Spearhead Division Avenue, Fort Knox, KY 40122. The burden and costs for researching and assembling documentation to support approval of requested awards and decorations rest with the requestor.

d. Therefore, the Silver Star and Bronze Star Medal will not be discussed in this Record of Proceedings. The Board will address the Purple Heart and any other awards.

4. The applicant provides a letter issued by NPRC, dated 18 July 2023 that does not reflect the PH, BSM or Silver Star. However, this document shows he was issued the following awards:

- Army Commendation Medal (ARCOM)
- National Defense Service Medal (NDSM)
- Vietnam Service Medal (VSM) with two bronze service stars
- The Combat Infantryman Badge (1st Award)
- Republic of Vietnam Campaign Ribbon with device (1960)
- Marksman Badge with Rifle Bar

5. 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.

6. The applicant's service record reflects the following:

a. The applicant's DD Form 4 (Enlistment Record – Armed Forces of the United States) shows he enlisted in the Regular Army on 2 December 1966. He held military occupational specialty 11B, Light Weapons Infantryman.

b. The applicant's DA Form 20 (Enlisted Qualification Record) shows in:

- item 31 (Foreign Service): 9 May 1967 through 8 May 1968 U.S. Army Pacific (USARPAC)- Vietnam 12 months
- item 33 (Appointments and Reductions): this document shows consecutive promotions and does not reflect any reductions in rank.
- item 38 (Record of Assignments): assigned to the Headquarters and Headquarters Company, 2nd Battalion, 8th Cavalry, 1st Cavalry Division, from 21 April 1967 to 8 May 1968
- item 38 (continued): he received all excellent ratings in conduct and efficiency
- item 40 (Wounds): this document does not reflect any wounds
- item 41 (Awards and Decorations): Vietnam Service Medal, Combat Infantryman Badge, Vietnam Campaign Medal with device (1960), Army Commendation Medal, two overseas bars, Marksman Badge M14 Rifle, Marksman Badge .45mm

c. The applicant was honorably released from active duty on 13 November 1969. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 2 years, 11 months,, and 12 days of active service. This document further reflects in:

- item 22c (Foreign and/or Sea Service): 1 year, 7 months, 14 days
- item 24 (Awards): Combat Infantryman Badge, National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal, two overseas bars, Army Commendation Medal, and Marksman Badge M14 Rifle,
- item 30 (Remarks): "USARPAC from 9 May 1967 through 8 May 1968"

7. 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, BSM or the Silver Star pertaining to the applicant.

8. 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.

9. The applicant's service record does not reflect any misconduct or disciplinary actions.

10. 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 (AHLTA), 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 has applied to the ABCMR requesting Purple Hearts be added to his service record. He states: "Was shot 5 times in war, not at one time."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows the former Infantryman entered the regular Army on 2 December 1966 and received an honorable discharge on 13 December 1969 under the provisions provided in section VII, Chapter 5 of AR 635-200, Personnel Management – Enlisted Personnel (1 June 1967): Early Separation of Overseas Returnees. The separation program number (SPN or "spin code") of 411 denotes "Early separation of overseas returnee."

d. No medical documentation was submitted with the application and applicant's service pre-dates AHLTA. His first encounter in JLV is from 2007.

e. Paragraph 34a and 34b of AR 672-5-1, Awards (May 1961), lists the criteria for the awarding of the Purple Heart. Paragraph 2b lists the circumstances under which the injury is eligible for a Purple Heart (enemy action, friendly fire, peace keeping, etc.). Paragraph 2e states the wound and medical care requirements for the award:

“For the purpose of considering an award of this decoration, 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, provided the concussion or other form of injury is directly due to enemy, opposing armed force, or hostile foreign force action.”

“A wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received in action as described above must have been made a matter of official record.”

f. Paragraph 2-8 of AR 600-8-22, Military Awards (11 December 2006), lists the criteria for the awarding of the Purple Heart. Paragraph 2b lists the circumstances under which the injury is eligible for a Purple Heart (enemy action, friendly fire, peace keeping, etc.). Paragraph 2e states the wound and medical care requirements for the award: “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.”

g. Paragraph 2-8k(3) of 600-8-22 succinctly lists the requirements for this award: 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.

h. It is the opinion of the ARBA Medical Advisor the awarding of a Purple Heart is not warranted.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Purple Heart: Deny. 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 applicant served in Vietnam from 9 May 1967 to 8 May 1968. The Board found no evidence he was injured as a result of hostile action, or he required medical treatment for any hostile injury. Therefore, the Board determined he does not meet the criteria for award of the Purple Heart.

b. The Board noted that the applicant served on active duty from 2 December 1966 to 13 November 1969, completing a total of 2 years, 11 months, and 12 days of continuous active duty service. He received excellent conduct and efficiency ratings. His record does not reflect any lost time or any derogatory information that would have disqualified him from receiving his first award of the Army Good Conduct Medal, or a commander's disqualifying memorandum for this award. The Board determined he met the criteria to be awarded the Army Good Conduct Medal (1st Award).

2. 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.

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 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 (1st Award) for service during the period 2 December 1966 through 13 November 1969
- adding award 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 awarding him 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):

A review of the applicant's records shows he is authorized additional awards not listed on his DD Form 214. As a result, amend his DD Form 214 by amending item 24 (Awards) to show he was authorized the following awards:

- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- 4 bronze service stars to be affixed to his Vietnam Service 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 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. Army Regulation 672-5 (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.

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

a. A bronze service star is worn on the appropriate service ribbon, to include the Vietnam Service Medal, for each credited campaign. During his service in Vietnam, the applicant participated in the following campaigns:

- Vietnam Counteroffensive, Phase II, 1 July 1966—31 May
- Vietnam Counteroffensive, Phase III, 1 June 1967—29 January
- TET Counteroffensive, 30 January 1968—1 April 1968

- Vietnam Counteroffensive, Phase IV, 2 April 1968—30 June 1968

b. Table 2, 8th Cavalry reflects the unit was awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation for the period 9 August 1965 to 19 May 1969, pursuant to Department of the Army General Order 59, dated 1969.

5. 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.

//NOTHING FOLLOWS//