ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20230013756

APPLICANT REQUESTS: entitlement to the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- General Orders Number 719, Headquarters, 1st Cavalry Division (Airborne), 13 January 1970
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum, Brooke Army Medical Center, 11 October 2006
- Department of Veterans Affairs (VA) Rating Decision, 1 November 2006
- Memorandum, Brooke Army Medical Center, 27 November 2006
- Applicant Memorandum, Circumstances Surrounding Incident of 8 November 1969, 29 April 2022
- Applicant Memorandum to the U.S. Army Human Resources Command (AHRC), Undated
- Letter, AHRC, 5 July 2022
- Applicant Memorandum to AHRC with 14 Pages of Medical Documentation
- Letter, AHRC, 1 May 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, in effect:

a. He was injured as the result of enemy fire causing an injury by aircraft accident. He received medical treatment from an evacuation (EVAC) hospital following the helicopter crash. The division policy was once a pilot reached 300 combat hours the pilot could qualify to move from co-pilot to aircraft commander. On 8 November 1969, he was scheduled to take his aircraft commander's check ride.

b. Operating out of Quan Loi, his first sortie after lunch was transporting an engineer clearing platoon consisting of 27 Soldiers plus an external load. It was a short fifteen-minute flight to Fire Base (FB) Vivian. When he called for clearance to land at FB Vivian, the Black Hat informed him there was a chinook already sitting in the landing zone but to continue his approach. If the other chinook had not moved by the time he reached decision height, he would be required to make a "go around."

c. As the acting aircraft commander all the flying was his responsibility while being graded by the instructor pilot. In his initial landing approach, the other chinook was still on the ground, and he had to make the go around. He remained about 200 feet above the 100-foot trees as he circled. When he set up for the second landing approach, his aircraft started to receive ground to air fire causing both engines to fail. They hit the ground very hard. He was the last one out of the chinook and everyone got out alive. The aircraft was a total loss following the landing and aircraft fire.

d. He managed to walk away from the accident, but the next morning he was unable to walk. He was transported to an EVAC hospital for treatment. He spent six weeks in and out of the hospital and in physical therapy. Medical authorities determined he had spinal compression injuries because of the hard landing in the chinook. He managed to gain use of his legs and eventually returned to flying. Afterwards, he learned he had permanent damage to his lower spine. The VA awarded him a disability rating, due in part to the combat injury.

e. Previous requests for correction, to AHRC were denied based on lack of medical records as he did not have the entire medical file. After the last letter from AHRC, he received his medical records and now has evidence that the injuries suffered in the helicopter crash in Vietnam were more than soft tissue damage. Based on the attached medical records, there is history of back pain, evidence of degenerative arthritis secondary to fractures sustained in the helicopter crash in 1969. X-rays following the incident demonstrates there were fractures on vertebrate T9 to T11, and there is evidence of neurologic damage given 1 + (partially diminished) reflexes in his bilateral lower extremities and bilateral paresthesias (numbness/tingling) at the time of the crash. He has suffered from chronic pain and reduced mobility as a direct result of his service in Vietnam. These injuries required treatment from a medical officer at the time of injury, continue to this day, and were a direct result of enemy action.

3. Having 11 months and 5 days total prior active service, the applicant entered active duty on 12 February 1968.

4. He retired honorably for length of service on 31 August 1992, in the rank/grade of lieutenant colonel/O-5. The DD Form 214 he was issued shows he was awarded or authorized the:

- Distinguished Flying Cross
- Bronze Star Medal
- Defense Meritorious Service Medal
- Meritorious Service Medal
- Army Commendation Medal (3rd oak leaf cluster)
- Navy Commendation Medal
- National Defense Service Medal with bronze service star
- Vietnam Service Medal with one silver and one bronze service star
- Army Service Ribbon
- Overseas Service Ribbon (3rd Award)
- Republic of Vietnam Campaign Medal with Device 1960
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Army Aviator Badge
- Legion of Merit

5. During the processing of this case, a member of the Board's staff reviewed the Department of the Army Vietnam casualty roster. The applicant's name is not included on the roster.

6. The applicant provides a/an:

a. General Orders Number 719 dated 13 January 1970, which awarded him the Distinguished Flying Cross for heroism while participating in aerial flight evidenced by voluntary action above and beyond the call of duty in the Republic of Vietnam. [The applicant] distinguished himself by exceptionally valorous action on 8 November 1969, near landing zone Vivian, Republic of Vietnam. When the aircraft was heavily loaded, it received small arms fire that caused both engines to fail at 100 feet above the ground. Maneuvering the craft, he was able to land preventing injury to his crew and passengers. Once on the ground, he helped move an injured man to safety where he administered first aid until the medevac helicopter arrived.

b. Memorandum to the VA dated 11 October 2006, from the Orthopedic Consultant to the Surgeon General, Brooke Army Medical Center who states, in effect, the applicant had been under his care for seven years for chronic mid-back pain, progressive since being shot down piloting a CH-47 helicopter over South Vietnam in 1969, sustaining compression fractures of the T10 and T11 vertebral bodies. His back injury has resulted in kyphosis at the thoracolumbar junction with radiographic evidence of advanced spondylosis (disk space narrowing, marginal osteophytes of the vertebral bodies, and hypertrophic changes of the facet joints) at T8 - T12 and L3 - L5, with pain that limits his ability to bend, squat, jog, and lift more than twenty pounds. The anterior wedging with bridging osteophytes at T9 – T12 is consistent with healed compression fractures with resultant degenerative spondylosis is permanently disabling and is a

direct result of his combat injury in 1969. It has persisted to the present, requiring frequent analgesics and intermittent narcotics.

c. VA Rating Decision dated 1 November 2006, indicating service-connection for external cutaneious nerve with L1 - L3 nerve root involvement, left lower extremity and post compression fracture T9 - T11 with degenerative disc disease, lumbar intervertebral disc syndrome.

d. Memorandum to the VA dated 27 November 2006, from the Director, Amputee Services, Brooke Army Medical Center who states, in effect, he has been directly involved with the applicant's medical care since 1999, including scrubbing in on all his major surgeries. He writes to correct a basic misconception on the VA's part concerning the nature of the applicant's left ankle condition.

e. 14 pages of medical documentation from 14 November 1969 through 8 May 1985. These documents will be reviewed by medical authority as noted below.

7. On 5 July 2022, the Chief, Awards and Decorations Branch, AHRC, stated, in effect, that they were unable to verify his entitlement to the Purple Heart. The statutory and regulatory criteria governing the award require it to be authorized to Soldiers who are wounded as a direct result of enemy action. The wound must have required treatment by a medical officer and been made a matter of official record. They specifically requested military medical documentation from immediately after or close to the incident reflecting a diagnosis of and treatment for a qualifying wound.

8. On 1 May 2023, the Chief, Awards and Decorations Branch, AHRC, stated, while they would like to act favorably, they remained unable to authorize the Purple Heart for issuance. Based upon review of the forwarded military medical documentation from the time of incident, it appeared [the applicant] was diagnosed with and treated for a soft tissue injury. Although unfortunate, soft tissue injuries do not constitute qualifying injuries for award of the Purple Heart. Accordingly, they were unable to verify he met the regulatory criteria for award of the Purple Heart.

9. The Purple Heart is awarded to members of the Armed Forces of the United States who, while serving under the authority with any of the U.S. Armed Services, have been wounded, were killed, or who have died or may hereafter die of wounds received as a result of hostile enemy action. The wound, injury, or death must have been the result of hostile enemy action, the wound or injury must have required treatment, not merely examination, by a medical officer or a medical professional, provided a medical officer include a statement in the Service member's medical record that wounds would have required treatment by a medical officer if one had been available. Additionally, treatment of the wound will be documented in the Service member's medical and/or health record.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the majority of the Board found that relief was warranted, while a minority of 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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and U.S. Army Human Resources Command – Award and Decorations Branch advisory, the Board did not concur with the advisory noting the applicant received the Distinguished Flying Cross an award for valor. The Board was convinced by the applicant's statement and supporting documents which correlated with and substantiated the DFC narrative statement that the applicant's injury was as a result of hostile enemy action on or about 8 November 1969.

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. In events involving TBI and other similar injuries, the applicant's record must show that the 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.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
XXX	:	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	XXX	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by awarding him the Purple Heart for injuries sustained in action on 8 November 1969.

X //SIGNED//

CHAIRPERSON

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, 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), paragraph 2-8, states the Purple Heart is awarded to members of the Armed Forces of the United States who, while serving under the authority with any of the U.S. Armed Services, have been wounded, were killed, or who have died or may hereafter die of wounds received as a result of hostile enemy action. The wound, injury, or death must have been the result of hostile enemy action; the wound or injury must have required treatment, not merely examination, by a medical officer or a medical professional; and treatment of the wound must be documented in the Service member's medical and/or health record.

a. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider is the degree to which the enemy or hostile force caused the wound, and was the wound so severe that it required treatment by a medical officer.

b. Some examples of enemy-related actions which justify eligibility for the Purple Heart are as follows:

(1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(2) Injury caused by enemy emplaced trap, mine or other improvised explosive device.

(3) Injury caused by chemical, biological, or nuclear agent released by the enemy.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract.

(6) Concussions (and/or mild traumatic brain injury (mTBI)) caused as a result of enemy-generated explosions that result in 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. Refer to paragraph 2–8l for additional information.

c. Some examples of injuries which do not justify eligibility for the Purple Heart are as follows:

(1) Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951).

(2) Trench foot or immersion foot.

(3) Heat stroke.

(4) Food poisoning not caused by enemy agents.

(5) Exposure to chemical, biological, or nuclear agents not directly released by the enemy.

(6) Battle fatigue, neuro-psychosis and post-traumatic stress disorders.

(7) Disease not directly caused by enemy agents.

(8) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

(9) Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.

(10) First degree burns.

(11) Airborne (for example, parachute/jump) injuries not caused by enemy action.

(12) Hearing loss and tinnitus (for example: ringing in the ears, ruptured tympanic membrane).

(13) mTBI that does not result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function.

(14) Abrasions or lacerations (unless of a severity requiring treatment by a medical officer).

(15) Bruises or contusions (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer).

(16) Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).

d. It is not intended that such a strict interpretation of the requirement for the wound to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must take into consideration the circumstances surrounding a wound. Note the following examples:

(1) In a case such as an individual injured while making a parachute landing from an aircraft that had been brought down by enemy fire; or, an individual injured as a result of a vehicle accident caused by enemy fire, the decision will be made in favor of the individual and the award will be made.

(2) Individuals injured as a result of their own negligence (for example, driving or walking through an unauthorized area known to have been mined or placed off limits or searching for or picking up unexploded munitions as war souvenirs) will not be awarded the PH as they clearly were not injured as a result of enemy action, but rather by their own negligence.

3. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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//