

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230014572

APPLICANT REQUESTS: Correction of his record to show he was entitled to and awarded the Purple Heart (PH).

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

- DD Form 149 (Application for Correction of Military Record)
- A picture
- A self-authorized statement

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 a self-authored statement that "April 1970 (do not know specific date) I left forward operating base (FOB) Barbara driving a M110 8 inch howitzer (self-propelled artillery weapon system) for repair, with Sergeant (SGT) [REDACTED]. We traveled to FOB Nancy. On my second evening at Nancy, we came under 120mm rocket attack. I was on my way to the perimeter when an explosion occurred throwing me into the air, when I landed, I was disoriented and had received an injury to my right shoulder, I was unable to hear anything. I was confused and disoriented on what just occurred, multiple individuals were kneeling around me and talking but I could not hear them. I was put on a stretcher and taken to the aid station. They placed me on a helicopter to Quang Tri, upon arrival the medical personnel said they couldn't treat me, and I was placed on another helicopter and flown to Phu Bai to be treated by an Orthopedic Surgeon. I was treated and kept in patient quarters for seven days during which I started to remember the event and my hearing had returned I was then flown to Dong Ha to patient quarters for the remaining days before I was processed to go home. I flew home through Ft. Lewis for processing. I flew home to [REDACTED] and was taken to the VA hospital at that location. I underwent inpatient rehab and physical

therapy staying at the VA the months of June and July 1970. I was discharged and moved on with my life. Recently I thought about the event and thought I was deserving of a PH and gained information from the VA on the submission of consideration. I do receive a monthly disability for the injury. I have attached a photo of me from Dong Ha showing my condition two weeks post event.”

3. The applicant provides a picture and states that this is him two weeks after his injury with what appears to be a sling on his arm.

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 23 October 1968.

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

- item 31 (Foreign Service): 13 May 1969 through 2 May 1970 U.S. Army Pacific (USARPAC)- Republic of Vietnam
- item 38 (Record of Assignments): He was assigned to Alpha Battery, 2nd Battalion, 94th Artillery, USARPAC from 18 May 1969 through 24 May 1970
- item 40 (Wounds): no entry
- item 41 (Awards and Decorations): does not list the PH

c. A partial medical form, dated 24 May 1970, provides a physician’s summary and lists a dislocated shoulder and hearing loss.

d. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably released from active duty on 24 May 1970. The form does not list the PH among his awards.

e. Department of Veterans Affairs (VA) Form 07-3101 (Request for Information), dated 10 November 1970, reflects that the VA requested the applicant’s medical records be expedited due to his disability claim. The alleged injury was to his right shoulder on 2 May 1970, and he was treated at the 85th Evacuation Hospital in Phu Bai, Vietnam. This document further shows that the records of the alleged treatment had not yet been received.

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

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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The Board found no evidence in the available service records corroborating the applicant's description of what caused his shoulder injury. In the absence of additional documentation confirming his account of how he was injured, the Board determined the evidence is insufficient to confirm his entitlement to the PH.

BOARD VOTE:

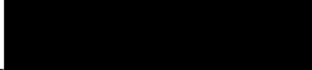
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:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

12/26/2024

X 

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) 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 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//