

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20240000168

APPLICANT REQUESTS: retroactive award of the Legion of Merit.

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

- DD Form 149 (Application for Correction of Military Record), 20 November 2023
- Self-authored Statement, 15 November 2023
- letter, Army Review Boards Agency (ARBA), 16 April 2021
- letter, Human Resources Command (HRC), Awards and Decorations Branch (ADB), 14 July 2022
- DA Form 638 (Recommendation for Award), 4 October 2022
- letter, Retired (Ret) Major General (MG) RCT____, 26 September 2022
- letter, Ret Lieutenant General (LTG) DWJ____, 4 October 2022
- letter, HRC, ADB, 3 April 2023
- letter, Applicant, 14 March 2023
- DA Form 638, 4 December 2022, with enclosures
- letter, Ret LG DWJ____, 4 October 2022 (third copy)
- letter, BJ____, 12 November 2023
- Permanent Orders Number 163-5, 22 September 1987
- Meritorious Service Medal Certificate, 22 September 1987

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:

a. After 36 years she is requested review of the recommendations which have been submitted to upgrade her fourth Meritorious Service Medal to the Legion of Merit for her retirement in 1987.

b. Original communication was sent to her Senator's office with a response on 16 April 2021. This response indicated she must seek relief through the HRC, ADB.

c. She has sent multiple recommendations for an upgrade of the Meritorious Service Medal with Third Oak Leaf Cluster to the Legion of Merit to HRC over the past 2 years with varying responses, resulting in denials.

d. She has attempted numerous times to contact LTG DWJ___ but was not able to get a response. His wife responded that he is not able to respond due to age.

e. After 20 years of service this is her last resort to upgrade her Meritorious Service Medal with Third Oak Leaf Cluster to the Legion of Merit .

3. The applicant provided copies of:

a. A letter from ARBA, dated 16 April 2021, instructing the applicant to apply for relief for an upgrade of the Meritorious Service Medal with Third Oak Leaf Cluster to the Legion of Merit through HRC, ADB. This letter reads, in part, once all remedies have been exhausted by HRC and if (Applicant) is denied relief, she must include a copy of the denial memo and submit a request to the ABCMR.

b. A letter from HRC, ADB, dated 14 July 2022, which reads, in part:

(1) We would like to render favorable action; however, we are unable to facilitate your request. Upon thorough review of the newly provided documentation we must point out' the Meritorious Service Medal for the time period of June 24, 1984, to December 31, 1987, may not be reconsidered for a retirement award as it was awarded for meritorious service over a three-year time period and not intended to recognize a cumulative period of service for retirement.

(2) The (Applicant) may be considered retroactively for a new award of the Legion of Merit (not an upgrade or a previously approved award), in accordance with Title 10, United States Code, Section 1130 and Army Regulation 600-8-22 (Military Awards), which allow for the referral of a retroactive award recommendation by a Congressional member. For your constituent's convenience we have provided a resource handout citing our requirements for retroactive award consideration, as well as blank and sample copies of the latest version of the DA Form 638, effective April 2021.

c. A DA Form 638 dated 21 June 2022, with approval signatures.

d. A letter of recommendation from Ret MG RCT___, dated 21 June 2022, in which he strongly recommended the applicant for an upgrade of her Meritorious Service Medal with Third Oak Leaf Cluster to the Legion of Merit.

e. A letter from HRC, ADB, dated 14 November 2022, to her congressional representative, in response to the applicant's application for award of the Legion of Merit. This response reads, in part:

(1) While we would like to take favorable action, we remain unable to facilitate your request. Per Army Regulation 600-8-22 (Military Awards), meritorious service awards will be awarded, upon retirement, which may include periods of service longer than that served in the recommending command. An extended period will only be considered in those cases where the length or nature of the individual's terminal assignment would not qualify him or her for an appropriate award. Such periods will be limited to the last 10 years of service. Please note, only one decoration will be awarded to an individual for the same act, achievement, or period of meritorious service.

(2) In order to proceed, the period of the reconsideration must be limited to the last 10 years of (Applicant's) service, provided that it does not overlap with any other existing awards. Accordingly, we must review his previously approved awards to ensure he is not awarded twice for the same service and achievements. In future correspondence, please provide copies of (Applicant's) orders announcing these awards, DA Form's 638, certificates, and citation. Once we receive the required corrections and documents, we will be pleased to respond further to your inquiry.

f. A second DA Form 638 dated 16 September 2022, with signatures and with enclosures. The enclosures include a signed letter from Ret MG RCT____, dated 16 September 2022, recommending the applicant for the Legion of Merit; and a signed letter from Ret LTG DWJ____, dated 4 October 2022, strongly recommending the applicant for the Legion of Merit.

g. A letter from HRC, ADB, dated 3 April 2023, which reads, in part:

(1) As we have not yet received (Applicant's) Army Military Human Resource Record from the National Personnel Records Center (NPRC), we cannot further action this request. Once we have received and reviewed his record, we will further respond to your request concerning processing (Applicant's) retroactive award recommendation.

(2) Regarding the latest version of (Applicant's) recommendation included with the request, there are requirements that must be met prior to forwarding the recommendation to the Army Decorations Board. Concerning who may recommend, in accordance with Army Regulation 600 -8-22 (Military Awards), section 3-5, the recommending official must have first-hand knowledge of the event. as well as observed all of the actions or service cited. If the recommending official did not personally witness the actions or service, the official must have been associated, by virtue of their position in the command, with the incident and/or the individual being recommended for the award. If the recommending official is not the commanding officer, he or she must

endorse the recommendation, or a signed statement must be included if it is no longer possible to route the recommendation through the commander. If such is the case, another officer who has knowledge of the actions, and who was senior in the chain of command of the recommended individual during the period for which recognition is desired, may endorse the recommendation. We acknowledge receipt of the DA Form 638 signed by Ret MG RCT____, as the recommending official; however, as stated by MG RCT____, in his recommendation letter, he was not in the same assignment as (Applicant) during the period of award and does not meet the requirements to be the recommending official.

h. A letter from the applicant to her U.S. Senator, requesting assistance with award of the Legion of Merit. This letter includes four enclosures, including three letters of recommendation from MG RCT and one letter of recommendation from LTG DWJ.

i. A third DA Form 638 dated 4 October 2022, with signatures and with enclosures. The enclosures include a narrative for the Legion of Merit, a citation for the Legion of Merit, and a copy of a letter from LTG DWJ, dated 4 October 2022 (previously provided).

j. A copy of a letter of recommendation from MG RCT____, dated 4 October 2022.

k. An email from the wife of Ret LTG DJ____, indicating he was not able to communicate due to age.

l. Permanent Order Number 163-5, awarding the applicant the Meritorious Service medal with Third Oak Leaf Cluster.

m. A Meritorious Service Medal Certificate.

4. A review of the applicant's available service records shows:

a. On 29 November 1973, she was appointed a second lieutenant in the Reserve Component of the Adjutant General Corps.

b. She served a period of active service from 23 August 1976 to 15 September 1977 and was Honorably discharged.

c. Orders 37-2-A-56 issued by U.S. Army Military Personnel Center, dated 19 June 1986, appointed, and commissioned her as a Chaplain at the grade of major.

d. On 1 November 1986, she was promoted to major.

e. On 5 January 1987, she requested relief from active duty and assignment to the retired list.

f. On 31 December 1987, she was retired at the rank of major. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was retired after having served 10 years, 3 months, and 15 days of net active service this period. She was awarded, in part, the Meritorious Service Medal with Third Oak Leaf Cluster.

g. On 1 September 1992, she was mobilized from retirement for a duration of the war or for 6 months.

h. Her DA Form 2-1 shows she served, in part, in: Vietnam from 6 October 1969 to 22 June 1969, 6 months and Korea from 23 August 1973 to 16 June 1974, 10 months.

5. By Regulation 600-8-22 (Military Awards) the Legion of Merit is awarded to any service member of the Armed Forces of the United States or a friendly foreign nation who has distinguished himself or herself by exceptionally meritorious conduct in the performance of outstanding services and achievements.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was awarded the Meritorious Service Medal for service from 24 June 1984 to 31 December 1987.

a. The evidence shows AHRC informed the applicant that his Meritorious Service Medal may not be reconsidered for a retirement award since this award was awarded for meritorious service over a 3-year time period and not intended to recognize a cumulative period of service for retirement. However, AHRC also informed the applicant, he could be considered retroactively for a new award of the Legion of Merit (not an upgrade or a previously approved award), in accordance with Title 10, U.S. Code, section 1130.

b. Although the applicant submitted a reconstructed recommendation, this recommendation does not meet the intent. The recommending official for the particular award must have first-hand knowledge of the event as well as observed all of the actions or service cited. If such official did not personally witness the actions or service, the official must have been associated, by virtue of their position in the command, with the incident and/or the individual being recommended for the award. If the recommending official is not the commanding officer, he or she must endorse the

recommendation, or a signed statement must be included if it is no longer possible to route the recommendation through the commander. If such is the case, another officer who has knowledge of the actions, and who was senior in the chain of command of the recommended individual during the period for which recognition is desired, may endorse the recommendation. In the applicant's submitted recommendation, the recommending official was not in the same assignment as the applicant during the period of award and does not meet the requirements to be the recommending official.

c. If the applicant complies with all the requirements to submit a complete award recommendation to the Army Decorations Board at AHRC in accordance with 10 USC section 1130, and if the Army Decorations Board denies his request, the applicant may appeal the denial to this Board.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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. The Legion of Merit is awarded to any service member of the Armed Forces of the United States or a friendly foreign nation who has distinguished himself or herself by exceptionally meritorious conduct in the performance of outstanding services and achievements. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.
3. Section 1130 of the United States Code (Title 10 USC 1130) allows the Service Secretary concerned to review a proposal for the award of, or upgrading of, a decoration otherwise precluded from consideration by limitations established by law or policy. In order to request an award under Title 10 USC 1130, a completed DA Form 638 (Recommendation for Award), is required. The DA Form 638 should clearly identify the unit, the period of assignment, and the recommended award. A narrative of the actions or period of the award recognition requested must accompany the DA Form 638. In addition, the award request should be supported by sworn affidavits, eyewitness statements, certificates, and related documents. Commanders, leaders, and fellow Soldiers who had personal (i.e., eyewitness) knowledge of the circumstances and events related to the request are the best persons to provide corroborating evidence.

//NOTHING FOLLOWS//