

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240000236

APPLICANT REQUESTS: reconsideration of his previous request to be awarded the Silver Star and Purple Heart. He also requests a personal appearance.

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

- DD Form 149 (Application for Correction of Military Record)
- Email exchange
- DA Form 2-1 (Personnel Qualification Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 4 October 1980

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230002450 on 7 November 2023.

2. The applicant states the Silver Star and Purple Heart were to be awarded prior to enlistment ending in 1970. As an advisor to indigenous force of about 100 soldiers consisting of two maybe three US soldiers, awards were presented when US troops were reassigned from Vietnam. The awards promised to him were not given as a result of him being transferred to another division. He wants to correct an injustice.

3. Regarding the Silver Star, there is no evidence the applicant was recommended for or awarded the Silver Star. His request for this award remains premature.

a. The applicant was previously advised that Title 10, U.S. Code, section 1130, allows the Service Secretary concerned to review a proposal for an award or decoration that is otherwise precluded from consideration by limitations established by law or policy. The applicant was also informed that in order to request an award under Title 10, U.S. Code, section 1130, he must submit a DA Form 638 (Recommendation for Award). It was further explained that Title 10, U.S. Code, section 1130 requires that a request of this nature be referred to the Service Secretary from a Member of Congress and

therefore, he must submit his request through a Member of Congress who will send it to the U.S. Army Human Resources Command (AHRC) Awards and Decorations Branch.

b. There is no evidence indicating the applicant pursued the Silver Star by submitting a request under the provisions of Title 10, U.S. Code, section 1130 and that his request was subsequently denied by AHRC. Based on the foregoing the portion of the applicant's request that pertains to award of the Silver Star will not be discussed further in this Record of Proceedings.

4. The applicant enlisted in the Regular Army on 5 June 1967. He served in Vietnam from 27 July 1968 to 26 January 1970.

5. He was honorably released from active duty and transferred to the U.S. Army Reserve on 26 January 1970. His DD Form 214 for this period does not show the Purple Heart.

6. Nothing in several typical sources show he was injured or wounded as a result of hostile action or that he was awarded the Purple Heart:

a. His name is not shown on the Vietnam casualty listing. This is a listing of Vietnam era casualties commonly used to verify entitlement to award of the Purple Heart.

b. His available personnel records do not contain an official Army message or a Western Union telegram notifying his next of kin of an injury or wound sustained in action. This was generally the proper notification procedure for injuries at the time.

c. Item 40 (Wounds) of his DA Form 20 (Enlisted Qualification Record) does not record any wounds sustained as a result of hostile action.

d. 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, failed to reveal any orders for the Purple Heart pertaining to the applicant.

e. His records do not contain contemporaneous medical records showing he was wounded as a result of hostile action or treatment for such injury. His Report of Medical Examination, dated 28 May 1971, does not reflect any injuries or treatment.

7. The applicant reenlisted in the Regular Army on 5 October 1976 for a period of four years. He was discharged on 4 October 1980 upon completion of required service. His DD Form 214 shows he was awarded or authorized:

- National Defense Service Medal

- Vietnam Service Medal with 1 silver service star
- Republic of Vietnam Campaign Medal
- Vietnamese Cross of Gallantry with Palm
- Combat Infantryman Badge
- Vietnam Parachutist Badge
- Explosive Ordnance Disposal Badge
- Expert Marksmanship Qualification Badge (Rifle) (Hand Grenade)
- Marksman Marksmanship Qualification Badge (Pistol)
- Good Conduct Medal
- Parachutist Badge

8. On 7 November 2023, the Board denied the portion of his request related to the Purple Heart. 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 contends that when mortar shells started exploding around them in Vietnam, one shell hit near him and knocked him of his feet, and he felt a sharp pain in his leg. He felt as if he suffered a concussion as a result of the blast. He states he should be awarded the Purple Heart for concussion and leg injury. 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. There is no contemporaneous medical documentation for his contended injury submitted with the application or found in the record. The applicant did not provide evidence that satisfies the criteria for award of the Purple Heart and therefore determined there is insufficient documentation to warrant awarding it to him.

9. By regulation (AR 600-8-22), the criteria for an award of the Purple Heart requires the submission of substantiating evidence to verify: (1) the injury/wound was the result of hostile action (2) the injury/wound must have required treatment by personnel, and (3) the medical treatment must have been made a matter of official record

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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 and available military records Board determined there is insufficient evident to support the applicant's contentions for award of the Silver Star and the Purple Heart. The Board noted the applicant's record is

absent evidence that he submitted his request through a member of Congress who would send it to the U.S. Army Human Resources Command (AHRC) Awards and Decorations Branch. Furthermore, there is no evidence indicating that the applicant pursued the Silver Star by submitting a request under the provisions of Title 10, U.S. Code, section 1130 and the applicant's request was subsequently denied by AHRC.

2. The Board determined there is no contemporaneous medical documentation for the applicant's contended injury submitted with his application or found in the record. The Board agreed the applicant did not provide evidence that satisfies the criteria for award of the Purple Heart and therefore determined there is insufficient documentation to warrant awarding it to him. 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. Based on regulatory guidance and U.S. Code Title 10, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20230002450 on 7 November 2023.



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. Army Regulation (AR) 600-8-22 (Military Awards), prescribes policies and procedures for military awards and decorations, to include the Purple Heart. The Purple Heart is awarded for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify 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. The key issue that commanders must take into consideration is the degree to which the enemy caused the injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite but is not the sole justification for the award. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet/shrapnel/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

2. Army Regulation 600-200 (Enlisted Personnel Management System), chapter 9, of the version in effect at the time, stated a brief description of wounds or injuries

(including injury from gas) requiring medical treatment received through hostile or enemy action, including those requiring hospitalization would be entered in item 40 (wounds) of the DA Form 20. This regulation further stated that the date the wound or injury occurred would also be placed in item 40.

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 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.

4. Army Regulation 15-185 (ABCMR) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//