

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 August 2024

DOCKET NUMBER: AR20240000289

APPLICANT REQUESTS: entitlement to the Purple Heart and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 30 Apr 71

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 was awarded the Purple Heart by his Commander in Vietnam, for wounds by fragments from a booby trap near Hawk Hill, Republic of Vietnam, but it did not show on his discharge documents. He was hospitalized from 29 November 1969, and released back to duty 1 December 1969. He physically had the Purple Heart until his last divorce when it came up missing. This was clearly an administrative error. Clearly, he was in Vietnam in combat, the medical documentation supports his contention, he was also awarded the Combat Infantryman Badge, Vietnam Service Medal w/2 bronze service stars, Vietnam Campaign Medal, etc. See attached DD Form 214 and DD Form 215. Though the hospital had the authority to award the Purple Heart at the time, they did not and left it to his Commander. He was hit by shrapnel, spent days in the hospital and treated by medical professionals. He discovered the oversight when asked for replacement medals. He was unaware of this avenue of redress until he spoke with his Veterans Service Officer on 26 September 2023.
3. The applicant's service records are not available for review. An exhaustive search was conducted to locate the service records, but they could not be found. The only

documents available were the documents provided by the applicant. These documents are sufficient for the Board to conduct a fair and impartial review of this case.

4. The applicant was inducted into the Army of the United States on 2 May 1969.

5. He served in Vietnam from 15 October 1969 – 13 October 1970.

6. The applicant provided medical documents:

a. DA Form 8-275-3 (Clinical Record Cover Sheet) shows he was wounded in action when he was hit by fragments from a booby trap near Hawk Hill, Republic of Vietnam on or about 1030 hours, 29 November 1969. Item 23 (Diagnosis) states would, open, superficial, left ear, left shoulder, and back, no nerve or artery involvement. Item 25 (Selected Administrative Data) shows Purple Heart not awarded.

b. Standard Form 502 (Clinical Record – Narrative Summary) shows he was discharged on 1 December 1969.

7. He was honorably transferred to U.S. Army Reserve on 30 April 1971. His DD Form 214 shows he was awarded or authorized:

- National Defense Service Medal
- 2 overseas bars
- Combat Infantryman Badge
- Army Commendation Medal
- Sharpshooter Marksmanship Qualification Badge (Rifle M-14)
- Marksman Marksmanship Qualification Badge (Rifle M-16)
- Vietnam Service Medal with 2 bronze service stars
- Vietnam Campaign Medal with 1960 Device

8. He was issued a DD Form 215 (Correction to DD Form 214), which added the following awards:

- Army Good Conduct Medal
- Vietnam Service Medal with four bronze service stars
- Republic of Vietnam Gallantry Cross Unit Citation with Palm Device
- Deleted: Vietnam Service Medal with 2 bronze service stars

9. By regulation, Army Regulation 15-185 (ABCMR) 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.

10. By regulation, AR 600-8-22 (Military Awards), the criteria for an award of the Purple Heart requires the submission of substantiating evidence to verify:

- the injury/wound was the result of hostile action
- the injury/wound must have required treatment by personnel
- the medical treatment must have been made a matter of official record

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. Based upon the information outlined on the applicant's DA Form 8-275-3 (Clinical Record Cover Sheet) showing the applicant was wounded in action when he was hit by fragments from a booby trap near Hawk Hill, Republic of Vietnam on 29 November 1969, the Board concluded there was sufficient evidence to award and add the Purple Heart to the applicant's military record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

   GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by awarding and adding the Purple Heart Medal for injuries incurred on 29 November 1969, while serving in the Republic of Vietnam.

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 (AR) 15-185 (ABCMR) 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, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.
3. AR 600-8-22, (Military Awards) prescribes policies and procedures for military awards and decorations, to include the Purple Heart.

- a. 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.
- b. When contemplating an award of this decoration, 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.
- c. Examples of enemy-related injuries which clearly justify award of the Purple Heart include concussion injuries caused by enemy-generated explosions, and a TBI or concussion that is severe enough to cause:
 - loss of consciousness; or
 - restriction from full duty due to persistent signs, symptoms, or clinical findings; or
 - impaired brain functions for a period greater than 48 hours from the time of the concussive incident

//NOTHING FOLLOWS//