

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20240000631

APPLICANT REQUESTS: correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show award of the Purple Heart (PH).

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

- DD Form 149 (Application for Correction of Military Record)
- Hospital Admission Form, 27 December 1970
- Medical Record, 5 February 1971
- DA Form 20 (Enlisted Qualification Record), Page 3
- DD Form 214, 23 December 1971
- Department of Veterans Affairs (VA) Original Disability Compensation, 24 December 1971
- Letter, U.S Army Human Resources Command (HRC), undated
- Google Search for Purple Heart, undated

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 feels that he was unjustly denied award of the PH.
3. The applicant provides the following:
 - a. A hospital admission form which shows the applicant was admitted to general surgery on 27 December 1970. He was diagnosed with 2nd and 3rd degree burns of the face, left buttock, right hand, and both legs. The document shows the applicant alleged that on 21 November 1970 at 1130 hours, near Plei Ku, he sustained the injuries when JP4 or gasoline spilled on him from a burning tanker. Item 28 (Circumstances of Accident, Violence, or Poisoning) notes duty within command and hostile action, and the PH was not awarded.

b. A medical record dated 5 February 1971, which states the applicant received burns in the Republic of Vietnam on 21 November 1970 when a gas tank of a truck exploded and he received burns of the face, hand, left back, both legs, and buttocks. He was treated for 16 days in the Republic of Vietnam and 18 days in Camp Zama in Japan.

c. VA original disability compensation, which shows he was service connected for burn scars to his face, left leg and buttock, right leg, and right hand, with a combined evaluation of 40 percent, effective 24 December 1971.

d. A letter from the Chief, Awards and Decorations Branch, HRC, which states they remain unable to authorize the requested award for issuance. The Chief noted that the basic criteria for the PH require it to be awarded to Soldiers for wounds or injuries received as a direct result of enemy action. Pursuant to Army Regulation 600-8-22 (Military Awards), the PH is not authorized for accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action. Based upon review of the submitted documentation, the applicant sustained multiple burn wounds from a gasoline spill caused by a burning tanker. While one of the forwarded documents makes reference to a hostile action, there is a handwritten notation that appears to clarify that he had been evacuated for a non-battle injury. Without question, they sympathize with his subsequent medical condition. However, without official military medical documentation confirming his wounds were caused directly by enemy action (not due to an unfortunate accident), they are unable to act favorably upon his request.

e. A google search, which shows the eligibility for a PH applies to service members who suffered a wound: as the direct or indirect result of enemy action and the wound required treatment by a medical officer at the time of the injury.

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

a. He enlisted in the Regular Army on 28 March 1969.

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

- Item 22 (Military Occupational Specialties) – 35B, Electronic Instrument Repairman
- Item 31 (Foreign Service) – 7 March 1970 to 27 December 1970, U.S. Army Pacific - Vietnam (USARPAC)
- Item 38 (Record of Assignments) shows during his service in Vietnam he was assigned to:

- 560th Maintenance Company from 17 March 1970 to 7 December 1970
- U.S. Army Hospital, Camp Zama, Japan (Patient) from 8 December 1970 to 22 December 1970
- Item 40 (Wounds): None
- Item 41 (Awards and Decorations): does not list the award of the PH.

c. He was honorably released from active duty and transferred to the U.S. Army Reserve on 23 December 1971. His DD Form 214 shows he completed 2 years, 8 months, and 6 days of net active service for the covered period. It shows in:

- Item 22c (Foreign and/or Sea Service): USARPAC, 9 months and 21 days
- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): Does not list the PH, it lists the following awards:
 - National Defense Service Medal
 - Vietnam Service Medal
 - Republic of Vietnam Campaign Medal with Device (1960)
 - 2 overseas service bars
 - Expert Marksmanship Qualification Badge with rifle bar
- Item 30 (Remarks): Vietnam service from 7 March 1970 through 27 December 1970

5. The applicant's service record does not contain, and the applicant does not provide general orders awarding him the PH.

6. The applicant's name is not shown on the Vietnam casualty roster as having sustained an injury as a result of hostile action.

7. His record indicates he was awarded or authorized additional awards that are not shown on his DD Form 214 and will be listed in the administrative notes.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the information reflected on the applicant's medical record, dated 5 February 1971, the Board found insufficient evidence the applicant's injuries were directly related to combat. Based upon the facts outlined on the document, the Board found the injuries were more likely than not related to an accidental event and not combat-related. As a result, the Board recommended denying relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

   DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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.
2. Prior to closing the case, the Board noted the administrative notes below from the analyst of record and recommended those changes be completed to more accurately reflect the military service of the applicant.

2/13/2025

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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.

ADMINISTRATIVE NOTE(S): A review of the applicant's records show he is authorized additional awards not listed on his DD Form 214 for the period ending 23 December 1971. As a result, amend his DD Form 214 by:

- a. Deleting the Vietnam Service Medal
- b. Adding:
 - Vietnam Service Medal with three bronze service stars
 - Meritorious Unit Commendation
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation

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 for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify that 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.
 - (1) A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required. However, the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound will be documented in the Service member's medical and/or health record. Award of the Purple Heart may be made for wounds treated by a medical professional other than a medical officer, provided a medical officer includes a statement in the Service member's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.
 - (2) When contemplating an award of the Purple Heart, 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 award.

(3) Examples of enemy-related injuries that clearly justify award of the Purple Heart include concussion injuries caused as a result of enemy-generated explosions resulting in a mTBI 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.

(4) Examples of injuries or wounds that clearly do not justify award of the Purple Heart include post-traumatic stress disorders, hearing loss and tinnitus, mTBI or concussions that do not either 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.

b. Paragraph 6-11, Service stars (campaign and battle stars), states service stars are worn on campaign and service medals to denote participation in a named campaign and on the service ribbons to denote an additional award. A service star is a bronze star or silver five-pointed star 3/16 inch in diameter. The applicant participated in three campaigns during Vietnam.

3. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) lists the unit awards received by units serving in Vietnam.

a. 560th Maintenance Company was cited for the Meritorious Unit Commendation by order of the Department of the Army General Order (DAGO) Number 48, dated 1971, for the period 1 June 1969 to 31 May 1970.

b. DAGO Number 8, dated 19 March 1974, awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, United States Military Assistance Command, and its subordinate units for the period 8 February 1962 to 28 March 1973.

//NOTHING FOLLOWS//