

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20240000861

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show award of the Legion of Merit (LOM).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 638 (Recommendation for Award) dated 28 Sep 98 (page 1)
- Certificate of the Legion of Merit
- DD Form 214 for the period ending 30 November 1998

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 upon his retirement on 28 September 1998, he was awarded an LOM; attached is the DA Form 638 and DA Form 4980. The LM is not annotated on his DD Form 214 and request his DD Form 214 is corrected to reflect the receipt of a LM.
3. The applicant provides:
  - a. The first page of DA Form 638 dated 12 September 1998 and signed by his supervisor show he was recommended for a LM as his retirement awards for the time period between 15 October 1988 to 15 October 1998.
  - b. The LOM Certificate that summarized his service during the period of 30 September 1988 through 1 October 1998 while serving in a position of increased responsibility.
4. A review of the applicant's service record shows:

a. He was appointed as a Reserve commissioned officer and executed an oath of office on 14 May 1977.

b. Orders number 159-2-A-495 dated 12 September 1977 ordered him to active duty as a Regular Army commissioned officer with an effective date of accession as 7 October 1977.

c. On 30 November 1998, he was honorably released from active duty. His DD Form 214 shows he completed 21 years, 1 month and 25 days of net active service this period. It also shows he was awarded or authorized:

- Meritorious Service Medal (MSM) (5th award)
- Army Commendation Medal (ARCOM) (2d award)
- Army Achievement Medal (AAM) (2d award)
- National Defense Service Medal (NDSM)
- Armed Forces Reserve Medal
- Army Service Ribbon (ASR)
- Overseas Service Ribbon (OSR) (2nd award)

d. The available service record is void of an Officer Record Brief, DA Form 2-1 (Personnel Qualification Record) and further documentation showing the applicant was awarded the LOM.

5. A review of the Awards and Decorations Computer Assisted Retrieval System maintained by the U.S. Army Human Resources Command, failed to reveal any orders for the Legion of Merit pertaining to the applicant.

6. By regulation AR 600-8-22, the Legion of Merit is awarded to individuals who distinguish themselves by exceptionally meritorious conduct in the performance of outstanding services and achievements. The performance must merit recognition of key individuals for service rendered in a clearly exceptional manner. Performance of duties normal to the grade, branch, specialty, or assignment and experience of an individual is not an adequate basis for this award. In peacetime, service should be in the nature of a special requirement, or an extremely difficult duty performed in an unprecedented and clearly exceptional manner. However, justification may accrue by virtue of exceptionally meritorious service in a succession of important positions. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

7. By regulation AR 635-5, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty,

retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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 counsel's statement, 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. One potential outcome was to grant relief based on the legion of merit certificate signed by the Deputy Chief of Staff for Operations and Plans along with the DA Form 638 signed by his supervisor recommending the applicant for the retirement award. However, upon further review of the applicant's petition and available military records, the Board majority determined the legion of merit certificate was insufficient evidence to support the applicant's contentions for award of the LOM.

2. The Board agreed based on regulatory guidance which stipulates that approval through the chain of command and announcement in permanent orders numbers are required for award of all personal decorations and formal recommendations. Therefore, the Board denied relief.

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.

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) states the Legion of Merit is awarded to individuals who distinguish themselves by exceptionally meritorious conduct in the performance of outstanding services and achievements. The performance must merit recognition of key individuals for service rendered in a clearly exceptional manner. Performance of duties normal to the grade, branch, specialty, or assignment and experience of an individual is not an adequate basis for this award. In peacetime, service should be in the nature of a special requirement, or an extremely difficult duty performed in an unprecedented and clearly exceptional manner. However, justification may accrue by virtue of exceptionally meritorious service in a succession of important positions. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.
3. Army Regulation 635-5 (Separation Documents – Personnel Separations) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge.

The information entered thereon reflects the conditions as they existed at the time of separation.

//NOTHING FOLLOWS//