

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240002647

APPLICANT REQUESTS:

- reconsideration of his previous request for correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show award of the Purple Heart
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for the period ending 23 July 1971

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 AR20210014334 on 31 May 2022.

2. The applicant states:

a. While in Vietnam his unit, Company D, 4th Battalion, 23rd Infantry, 25th Infantry Division was sent to Cambodia where they came under fire, and he was injured. He was helicoptered out to Tay Ninh hospital and treated for his injuries in April 1970. At the time he was told they would not receive any recognition for being in Cambodia, failing under the DADT ruling at the time. In 2020 he saw a documentary of the 23rd, 25th Infantry Division going into Cambodia on television. He then recognized that the Department of Defense acknowledged their presence in Cambodia.

b. He is requesting the Purple Heart for the injuries he sustained while under fire in Cambodia. The delay in submitting his request is due To Covid-19 And difficulty in locating evidence to prove his claim. He has not received his medical documents he requested, nor has the knowledge to access archive documents and the advocates have not been competent in assisting him.

3. A review of the applicant's service record show:

a. He was inducted in the Army of the United States on 30 July 1969. He held military occupational specialty 11B, Light Weapons Infantryman.

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

- Item 31 (Foreign Service), he served in Vietnam from 7 January 1970 to 21 November 1970 and in Germany from 7 January 1971 to an unspecified date.
- Item 38 (Record of Assignment), he was assigned to Company D, 4th Battalion, 23rd Infantry, 25th Infantry Division, Vietnam.
- Block 40 (Wounds) – no entries listed

c. He was honorably released from active duty on 23 July 1971 and transferred to the U.S. Army Reserve. His DD Form 214 shows he completed 1 year, 11 months, and 24 days of active service." It also shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal
- Bronze Star Medal
- Combat Infantryman Badge

4. The applicant petitioned the ABCMR for correction of his record to show award of the Purple Heart. The ABCMR considered his request on 31 May 2022, determined the supporting documents did not contain sufficient evidence to support his request.

5. The applicant was provided a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) dated 28 June 2022 to show award of:

- three bronze service stars to his previously issued Vietnam Service Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

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:

(1) 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.

(2) 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.

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

(4) 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.

(5) 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 25 May 1971, does not reflect any injuries. However, it shows he underwent surgery on 22 June 1971 for gyneocomastia and was cleared from the surgery clinic on 6 July 1971.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 600-8-22), 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lack of evidence showing the applicant was injured as a result of hostile action within his record, the Board concluded there was insufficient evidence of an error or injustice warranting adding the Purple Heart to the applicant's military record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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 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 that 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. U.S. Army Vietnam (USARV) Regulation 672-5-1 (Decorations and Awards), in effect at the time, prescribed policies, responsibilities, and criteria for awards to insure prompt and proper recognition of individuals. The regulation states, in part:

a. The Purple Heart may be awarded to U.S. personnel who are wounded or killed in action as a direct result of enemy action. A wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received must have been made a matter of official record.

b. Authority to award the Purple Heart was delegated to hospital commanders. Further, it directed that all personnel treated and released within 24 hours would be awarded the Purple Heart by the organization to which the individual was assigned. Personnel requiring hospitalization more than 24 hours or evacuation from Vietnam would be awarded the Purple Heart directly by the hospital commander rendering treatment.

4. 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.

5. Army Regulation 600-8-22 (Military Awards), currently in effect, prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It provides that the Purple Heart is awarded for a wound sustained 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 a medical officer, and the medical treatment must have been made a matter of official record.

a. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or 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.

//NOTHING FOLLOWS//