

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240002786

APPLICANT REQUESTS: correction of his father's/grandfather's (a deceased former service member (FSM)), WD AGO Form 53-98 (Military Record and Report of Separation Certificate of Service) by adding the:

- Purple Heart
- National Defense Service Medal (NDSM)

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

- Three DD Forms 149 (Application for Correction of Military Record), signed by the FSM's son and grandson
- Letter, Army Review Boards Agency (ARBA), Request Verification of Relationship
- Hotmail, from the FSM's grandson
- Two Certificates of Live Birth
- FSM's Certificate of Death, State of California
- Purple Heart Statement, Trench Foot/Frostbite (Source Unknown)
- Hospital Record, showing frostbite
- Morning Report, showing frostbite
- Two Reports of Physical Examination
- Portion of WD AGO Form 193
- Document (No name/no date References the Purple Heart)
- WD AGO Form 53-98
- Letter Orders 362 and 639, from Southern California, Sub-District and Fort MacArthur, San Pedro, CA
- Request for NDSM, based on Letter Orders 362 and 639
- Army Regulation (AR) 600-8-22 (Military Awards), NDSM (Inclusive Dates)
- Two Letters, from the Department of Veterans Affairs (VA)
- Letter Of Notification, Transfer to Retired Reserve, from the Southern California, Sub-District, Fort MacArthur
- Letter, U.S. Civil Service Commission
- Monthly Medical Bulletins (17 pages)
- Federal Register (Title Page)

- Executive Order 13293
- Code of Federal Regulations, section 578.16 (Bronze Star Medal)

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's state they obtained documents from the FSM's service record that did not contain convincing evidence of a frostbite diagnosis while engaged in combat as an Infantry officer with the 106th Infantry Division between 1944 and 1945.
  - a. Following an extensive investigation through a private research firm, as well as a Privacy Act Request for information regarding the FSM's medical records, and VA records, substantive evidence shows the FSM was diagnosed with frostbite and the issuance of the Purple Heart at the Convalescent Hospital, Fort Carson, CO, in 1945. Failure to recognize the FSM awards would be a disservice to the FSM and the sacrifices he made for our country.
  - b. Additionally, the applicants state that some medical evidence contained within the FSM's service record shows a trench foot diagnosis; however, a hospital record issued on 17 January 1945 and a morning report issued on 20 January 1945 identified frostbite as the diagnosis for which he was evacuated from the field. Similarly, the FSM's medical records were obtained through a Freedom of Information Act (FOIA) Request, which revealed issuance of the Purple Heart during the FSM's hospitalization.
  - c. Furthermore, amendments to Executive Order 10448 retroactively extended eligibility for the NDSM to include qualified reservist.
3. The FSM's military records are not available to the Board for review. A fire destroyed approximately 18 million service members' records at the National Personnel Records Center in 1973. It is believed the FSM's records were lost or destroyed in that fire. However, there were sufficient documents remaining in a reconstructed record, to include those provided by the applicants, for the Board to conduct a fair and impartial review of the FSM's case.
4. The FSM 's WD AGO Form 53-98 shows he served in the Army of the United States from 28 July 1942 to 20 June 1946, his military occupational specialty was Infantry Unit Commander (1542), at the time of release he was assigned to the 106th Infantry Division, in the rank of first lieutenant. This document also shows in:

- a. Item 28 (Battles and Campaigns): Ardennes and Rhineland.
- b. Item 29 (Decorations and Citations):
  - World War II Victory Medal
  - European African and Middle Eastern (EAME) Service Medal
  - American Campaign Medal
- c. Item 30 (Wounds Received in Action) is annotated to show None.
- d. Item 32 (Service Outside Continental U.S. (CONUS) and Return):
  - arrived in the EAME Theater of Operations on 30 October 1944
  - departed the EAME Theater of Operations on 12 February 1945
  - arrived in CONUS on 19 February 1945
- e. Item 34 (Current Tour of Active Duty):
  - Continental Service, 3 years, 6 months, and 24 days
  - Foreign Service, 3 months, and 29 days
- f. Item 42 (Remarks), he was issued the [Service] Lapel Button and the Expert Marksmanship Qualification Badge 30 Caliber M-1 Rifle.

5. The FSM's Separation Qualification Record, dated 20 June 1946, shows he was an infantry unit commander – he served as a platoon leader and later as a company executive officer in the 424th Infantry Regiment from May 1944 to January 1945. He went overseas in October 1944 fought with them in the battles of the Ardennes and Rhineland. Prior to this, from August to February 1943, he served as an instructor of training methods at the Chemical Warfare Officer Candidate School, Edgewood Arsenal, MD.

6. The applicants submitted various documents from the FSM's service record, medical records, portions of regulations, executive order, and bulletins, etc. The submissions were provided to the board in their entirety. These documents include:

- a. a Hospital Record, dated 17 January 1945, prepared by a medical officer at the 128 Evacuation Hospital in Verviers, Belgium showing a diagnosis of "Frost bite, both feet, moderate to severe. The FSM was, admitted, but transferred immediately, not treated.

b. Morning Report dated 20 January 1945, showing while stationed in Belgium the FSM sustained frostbite (Line of Duty: Yes). FSM was transferred to the 128th Evacuation Hospital. He was dropped from assignment on 1 January 1945.

c. Two Reports of Physical Examination showing the FSM was examined on:

- 14 September 1945, and he stated he had temporary limited service for 6 months, "B/O" Hospital Center, Camp Carson, CO, by reason of frostbite and trench foot, 17 January 1945; hospital evacuee; otherwise, good general health
- 20 April 1946, medical history shows Frostbite, January 1945, General Hospital [REDACTED] Trench foot - January 1945, General Hospital [REDACTED]

d. Document (No name/no date, referencing award of the Purple Heart), this document states, "bilateral, moderate cause undetermined, LOD, Yes, cured 13 July 1945. General to Convalescent Hospital, reconditioning class II, specialized treatment, trench foot and general medicine; PH awarded."

e. Letter Orders 362 and 639, ordering the FSM to active duty for training from 25 July 1954 to 8 August 1954.

h. A VA Letter, dated 6 August 1954, acknowledging the FSM's request for a waiver of 15 days compensation while participating in active-duty training. Action had been taken to discontinue compensation from 1 to 15 August 1954. The FSM was requested to furnish a certificate showing the exact days during which he would be on active duty. The certificate is not available for review with this case.

i. Letter of Notification, dated 20 January 1956, transferring the FSM to the Retired Reserve.

7. The record does not contain nor did the applicant's provide pay records showing the FSM fulfilled this training obligation required by Letter Orders 362 and 639, ordering the FSM to active duty for training from 25 July to 8 August 1954

8. Army Regulation 600-8-22 (Military Awards) lists the inclusive date for award of the National Defense Service Medal as 27 June 1950 to 27 July 1954 for service members involved in the Korean conflict. The Korean Conflict occurred from 25 June 1950 to 27 July 1953; the FSM appears to have been serving as a Reservist during this period. The FSM served in an active-duty status during WWII; the United States entered WWII from approximately December 1941 to 2 September 1945.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the SM's military record, the Board found that partial relief was warranted. The Board carefully considered the SM'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, available SM's military records, and regulatory guidance, the Board determined that the SM qualifies for partial relief regarding the award of the Purple Heart but does not meet the criteria for the National Defense Service Medal.
2. The Board acknowledges that frostbite sustained during wartime operations between World War II and 23 August 1951 were considered a qualifying injury under Purple Heart criteria. Based on available medical documentation, the Board found sufficient evidence to support the award of the Purple Heart for the SM's frostbite injury in accordance with regulatory guidance during that timeframe. However, the National Defense Service Medal, Army Regulation 600-8-22 (Military Awards) states that the inclusive dates for the award during the Korean Conflict are from 27 June 1950 to 27 July 1954. While the SM served as a Reservist during this period, the criteria for the National Defense Service Medal require active-duty service. The SM's active-duty service occurred during World War II, which lasted from December 1941 to 2 September 1945, and does not fall within the established timeframe for eligibility during the Korean Conflict. Based on the preponderance of evidence and regulatory guidance, the Board grants partial relief by awarding the Purple Heart for frostbite but denies the request for the National Defense Service Medal.
3. The governing regulation and policy were not always the same. Both policy and enforcement varied from time to time and place to place and were not consistently applied even in adjacent major European commands. The regulation normally authorized the Purple Heart for frostbite while in combat and sometimes excluded the award for trenchfoot while in combat. Army Regulation 600-45 (Decorations), which governed the award of Army decorations until 23 August 1951, stated that for the purpose of considering an award of the Purple Heart, a "wound" was defined as an injury to any part of the body from an outside force, element, or agent sustained while in action in the face of the armed enemy or as a result of a hostile act of such enemy. An "element" pertained to weather and the award of this decoration to personnel who were severely frostbitten while actually engaged in combat was authorized.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

█           █           █           GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the SM's WD AGO Form 53-98 to show award of the Purple Heart.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to award of the National Defense Service Medal (NDSM).



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:

a. While award of the Purple Heart for frostbite injuries is currently prohibited, such injuries were previously a basis for the award. Until 23 August 1951, AR 600-45 (Decorations), which governed the award of Army decorations, stated that for the purpose of considering an award of the Purple Heart, a "wound" is defined as an injury to any part of the body from an outside force, element, or agent sustained while in action in the face of the armed enemy or as a result of a hostile act of such enemy. An "element" pertains to weather and the award of this decoration to personnel who were severely frostbitten while actually engaged in combat was authorized. The Purple Heart is currently 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. Some examples of injuries which do not justify eligibility for the Purple Heart are as follows: Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951).

b. The National Defense Service Medal may be awarded for both active and Reserve service, as defined by section 10 USC 10143. It is awarded for honorable active service for any period between 27 June 1950 and 27 July 1954 (Korea) and between 1 January 1961 and 14 August 1974 (Vietnam). During the period's listed for Korea and Vietnam, Servicemembers in the following categories will not be eligible for the National Defense Service Medal:

(1) Members of the ARNG and USAR on short tours of duty to fulfill training obligations under an inactive duty training program.

(2) Any Servicemember on temporary duty (TDY) or temporary active duty to serve on boards, courts, commissions, and like organizations.

(3) Any Servicemember on active duty for the sole purpose of undergoing a physical examination.

//NOTHING FOLLOWS//