

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20240002805

APPLICANT REQUESTS: award of the Purple Heart and a personal appearance via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Medical documents (Operation Report)

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 requests the Purple Heart from 16 December 1967, due to combat circumstances. He transferred before the Purple Heart was considered and applied for. In a self-authored letter, he states he writes to fulfill his family's encouragement, wishes, and desires. They wonder as to why he has not done this much earlier, regarding the Purple Heart. He attached a Medical Record from 1981. Its significance is that the doctor, while treating a different injury, made an off-the-cuff note about "a history of gunshot wound" that occurred much earlier probably around 1967. On 8 December 1967, he arrived in Vietnam. He was temporarily assigned to the 90th Replacement Battalion, U.S. Army Republic of Vietnam (USARV). The unit was in preparation for the on-coming Tet Counter Offensive IV. On 16 December 1967, he incurred a gunshot wound along his right arm. He reported to the battalion medical station. He was treated on 16 December 1967, and released on 17 December 1967. On 18 December 1967, he was transferred to the 44th Signal Battalion, USARV away from the 90th Replacement Battalion. The Medical Report of 16 December 1967, and the transfer orders did not reach him. Therefore, the Purple Heart was not awarded nor presented.

3. The applicant enlisted in the Regular Army on 11 July 1955. He reenlisted on 9 December 1958. He again reenlisted on 9 November 1962.
4. He was honorably discharged on 12 May 1965, to accept commission. On 13 May 1965, he was commissioned as a Reserve Commissioned Officer of the Army.
5. He served in Vietnam from 6 December 1967 – 5 December 1968. He was assigned as follows:
 - 8 December 1967 – 18 December 1967: 90th Replacement Detachment
 - 18 December 1967 – 11 March 1968: Headquarters Detachment 44th Signal Battalion
 - 11 March 1968 – 5 July 1968: Headquarters Company, 160th Signal Group
 - 5 July 1968 – 27 November 1968: Headquarters Company, 69th Signal Battalion
6. Orders S112-3, issued by U.S. Army Military Personnel Center, Alexandria, VA, on 10 December 1976, show he was to be retired 31 January 1977.
7. Accordingly, he was honorably retired on 31 January 1977. His DD Form 214 (Report of Separation from Active Duty) shows he was awarded or authorized:
 - 2 overseas bars
 - National Defense Service Medal
 - Good Conduct Medal (2d award)
 - Armed Forces Expeditionary Medal
 - Bronze Star Medal
 - Army Commendation Medal (2 oak leaf clusters)
 - Republic of Vietnam Gallantry Cross Unit Citation with Palm
 - Meritorious Unit Commendation (1 oak leaf cluster)
 - Vietnam Service Medal
 - Republic of Vietnam Campaign Medal
 - Meritorious Service Medal
8. There is no evidence in the available records which shows he was awarded the Purple Heart or was wounded as a result of hostile action in Vietnam.
9. The applicant's name does not appear on the Vietnam Casualty Roster.
10. The applicant provides an Operation Report dated 23 October 1981, which shows a preoperative diagnosis of radial nerve entrapment right forearm and osteophytosis radial head remnant.

a. INDICATIONS: The patient is a 43-year-old with a history of gunshot wound to the right forearm in 1964. At that time, a radial head excision was performed. Since that time the patient has had progressive pain with range of motion of the right elbow and complains of recent onset of dull aching sensations and the dorsum of the forearm, wrist to elbow. EMG was within normal limits. A preop diagnosis of entrapment of the radial nerve, main trunk or superficial branch was entertained.

b. FINDINGS: At surgery, exploration of the lateral aspect of the brachioradialis and search of the superficial radial nerve revealed some scarring and absence of the nerve most likely lost at the time of the injury. The trunk radial nerve was then explored deep in the interval between the brachioradialis and brachialis. The nerve was seen to be free however, it appeared to be impinged by several bands of fibrous tissue together within the deep ... drainage system that approximated the proximal third of the forearm. The nerve was again seen to be free as it dives into the supinator muscle. Exploration of the radio humeral joint revealed impingement of the radial head with large osteophyte against capitulum.

11. By regulation (AR 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.

12. AR 600-8-22 states 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 medical personnel, and the medical treatment must have been made a matter of official record.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the available evidence insufficient to confirm that the applicant incurred a wound as a result of hostile action that required treatment by medical personnel at the time the wound was incurred. The Board determined the available evidence is insufficient as a basis for awarding the Purple Heart to the applicant.

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.

3/29/2025

X

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.

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 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. AR 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Purple Heart is awarded to any member who, while serving under competent authority in any capacity with one of the Army Services, has been wounded or killed or who has died or may hereafter die after being wounded:

(1) In any action against an enemy of the United States;

(2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged;

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party;

(4) As a result of an act of any such enemy of opposing armed forces;

(5) As a result of an act of any hostile foreign force;

(6) After 23 March 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate armed services concerned if persons from more than one service are wounded in the attack;

(7) After 28 March 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force; or

(8) Members killed or wounded by friendly fire.

b. Substantiating evidence must be provided to verify that 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.

c. When contemplating eligibility for the PH, the two critical factors commanders must consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer. Some examples of enemy-related actions that justify eligibility for the PH are as follows:

(1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(2) Injury caused by enemy emplaced trap, mine, or other improvised explosive device.

(3) Injury caused by chemical, biological, or nuclear agent released by the enemy.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract.

(6) Perforated eardrum caused by enemy action (two critical factors to consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer).

(7) Concussions or mild traumatic brain injury (mTBI) caused as a result of enemy-generated explosions that result in 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.

d. It is not intended that such a strict interpretation of the requirement for the wound to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must take into consideration the circumstances surrounding a wound.

//NOTHING FOLLOWS//