

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240004143

APPLICANT REQUESTS:

1. Reconsideration of his previous request to show he was awarded:

- Silver Star with "V" Device
- Purple Heart (2nd Award)
- Bronze Star Medal with "V" Device (2nd Award)
- Qualifications with the M-16 and M-60 Machine Gun

2. As a new request he requests correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), ending on 22 May 1970, to show:

- South Vietnamese Awards
- Assignment with the Military Assistance Command-Vietnam (MAC-V)
- Combat Infantryman Badge Upgrade
- Qualifications with the M-14 and .45 caliber handgun
- Characterization of service upgrade from general under honorable conditions to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- Archival Research Catalogue Printout

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 AR20050004723 on 12 January 2006.

2. The applicant's records contain a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty), dated 22 February 2006, which shows he was awarded or authorized:

- Purple Heart
- Bronze Star Medal (1st Oak Leaf Cluster) and "V Device
- Army Commendation Medal
- Vietnam Service Medal with two bronze service stars
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation
- Expert Marksmanship Qualification Badge with Rifle Bar

The Board will not consider the applicant's request for Vietnam awards. The applicant does not provide supporting evidence that he requested award of the Silver Star with "V" Device through the U.S. Army Human Resources Command, under Title 10, United States Code, section 1130. Additionally, he does not provide new evidence not previously considered by the Board for the Purple Heart (2nd Award). Army Regulation (AR) 600-8-22 (Military Awards) does not provide a provision for the Combat Infantryman Badge Upgrade. The Board will consider his request for the weapons qualifications, service with the MAC-V, and discharge upgrade.

3. The applicant's available service record shows:

- a. He enlisted in the Regular Army on 14 December 1967.
- b. He was honorably discharged for immediate reenlistment on 22 August 1968.
- c. DA Form 20 (Enlisted Qualification Record) shows in pertinent part:

(1) Item 22 (Military Occupational Specialties): 11B1P; Light Weapons Infantryman

(2) Item 38 (Record of Assignments):

- 1 June 1969; 11B10; Rifleman; Company C, 5th Battalion, 60th Infantry Regiment, 9th Infantry Division, U.S. Army Pacific
- 23 January 1970; 11B1P; Rifleman; Company C, 1st Battalion, 508th Infantry Regiment, 82nd Airborne Division, Fort Bragg, NC

d. On 12 May 1970, the applicant was notified of his immediate commander's intent to discharge him for three occasions of being Absent Without Leave (AWOL), substandard performance and appearance, and negative attitude toward authority.

e. On 13 May 1970, in the applicant's election of rights, he acknowledged:

- he has been advised by consulting counsel of the basis for the contemplated action to separate her for unsuitability

- having been given the opportunity to consult with counsel, he did not desire to consult with military and/or civilian counsel at no expense to the Government
- he waived consideration of his case by a board of officers
- he waived a personal appearance before a board of officers
- a statement on his own behalf is not submitted
- he waived representation by counsel
- he understood he may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued to him
- he further understood that, as the result of issuance of an undesirable discharge under conditions other than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and State laws, and can expect to encounter substantial prejudice in civilian life

f. In the immediate commander's report of separation, dated 14 May 1970, he states:

(1) The applicant is recommended for discharge because of "frequent incidents of a discreditable nature with military authorities."

(2) His performance as unsatisfactory and the applicant was counseled on four occasions between 10 February – 19 April 1970.

(3) The applicant has no Article 15 punishments.

(4) He has one conviction by Special Court-Martial for AWOL and was confined at hard labor for a period of 30 days and is currently pending trial by Special Court-Martial for another occasion of AWOL.

g. On 14 May 1970, his intermediate commander recommended approval of separation proceedings, with the issuance of a General Discharge Certificate.

h. On 15 May 1970, consistent with the immediate commander's recommendation, the separation authority approved the separation, directed issuance of a General Discharge Certificate.

i. He was discharged under the provisions of AR 635-212 (Discharge Unfitness and Unsuitability) with an under Honorable Conditions (General) characterization of service on 22 May 1970. He completed 1 year, 4 months, and 2 days of active service. His DD Form 214 shows in:

- Item 5a (Grade, Rate, or Rank): Private
- Item 5b (Pay Grade)L E-2
- Item 12 Company C, 1st Battalion, 508th Infantry

- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):
  - National Defense Service Medal
  - Parachutist Badge
  - Vietnam Service Medal
  - Combat Infantryman Badge
  - Bronze Star Medal
- Item 26a (Non-Pay Periods Time Lost): 148 days

5. The applicant did not provide, nor did his service record contain orders for marksmanship qualifications not previously awarded. Additionally, his record does not contain evidence he was assigned or attached to the Military Assistance Command, Vietnam. Likewise, the applicant's service personnel records contain no evidence of any additional awards of the Purple Heart to the applicant. There also is no evidence the applicant was wounded twice as a result of hostile action. The Vietnam Casualty Roster does not show the applicant was wounded or injured a second time.

6. On 12 January 2006, in ABCMR Docket Number AR20050004723, the Board considered the applicant's request for the Silver Star, Bronze Star Medal with "V" Device, and an award of the Purple Heart. The Board decided to grant partial relief and awarded him the Purple Heart for wounds sustained on 24 July 1969, Bronze Star Medal with "V" Device (First Oak Leaf Cluster), Army Commendation Medal, Vietnam Service Medal with two bronze service stars, Republic of Vietnam Gallantry Cross with Palm Unit Citations, and the Republic of Vietnam Civil Actions Honor Medal, First Class Unit Citation. He was denied award of a second Purple Heart, and two additional Bronze Star Medals.

7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

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 available documentation, the Board made the following findings and recommendations related to the requested relief:

- Silver Star with "V" Device – DENY, based upon the lack of evidence showing the applicant was submitted and awarded the Silver Star during his period of military service. NOTE: The Board wished to advise the applicant that all Silver Stars are for valor, so there would no “V” device awarded.
- Purple Heart (2nd Award): DENY, based upon the lack of evidence the applicant sustained wounds while engaged with an armed enemy for a second time.
- Bronze Star Medal with "V" Device (2nd Award): DENY, based upon the lack of evidence showing the applicant was submitted and awarded the BSM with “V” device.
- Qualifications with the M-16 and M-60 Machine Gun: DENY, based upon the applicant having a DD215 generated with this change already completed.
- Characterization of Service: DENY, based upon the pattern of misconduct leading to the applicant’s separation.

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. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.
2. 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.
3. AR 635-212 (Personnel Separations - Discharge Unfitness and Unsuitability) in effect at the time, established policy and procedures and guidance for eliminating enlisted personnel who are found to be unfit or unsuitable for further military service. An individual is subject to separation under the provisions of this regulation when one or more of the following conditions exist:
  - a. Unfitness – frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction or unauthorized use or possession of habit-forming drugs or marijuana, established pattern for shirking, pattern showing dishonorable failure to pay debts or failure to contribute adequate support to dependents.

b. Unsuitability – Inaptitude, character and behavior disorders, apathy, defective attitudes, and inability to expend effort, alcoholism, enuresis, or homosexuality.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

6. AR 635-5 (Separation Documents) in effect at the time prescribes the separation documents that will be furnished each individual who is separated from the Army. Source documents consist of DA Form 20 and orders. Item 12; enter the individual's current unit of assignment and the title of the major command or agency having jurisdiction over that organization. Item 24; enter from DA Form 20, section 9, all decorations, service medals, campaign credits, and badges awarded or authorized.

7. AR 672-5-1 (Awards) in effect at the time states a basic marksmanship qualification badge is awarded to indicate the degree in which an individual, military or civilian, has qualified in a prescribed record course and an appropriate bar is furnished to denote each weapon with which qualified. Basic qualification badges are of three classes: expert, sharpshooter, and marksman. The only weapons for which component bars are authorized are:

- Rifle
- Pistol
- Antiaircraft artillery
- Automatic rifle
- Machinegun
- Field Artillery
- Tank Weapons
- Flamethrower
- Submachine gun
- Rocket Launcher
- Grenade
- Carbine
- Recoilless rifle
- Mortar
- Bayonet
- Rifle, small bore
- Pistol, small bore
- Missile

8. AR 600-8-22 (Military Awards) provides, in pertinent part, that the Purple Heart is awarded for a wound sustained 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 a medical officer, and the medical treatment must have been made a matter of official record.

//NOTHING FOLLOWS//