

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20240005762

APPLICANT REQUESTS: reconsideration of his previous requests in Army Board for Correction of Military Records (ABCMR) Docket Number AR20100020203, 12 January 2011, and ABCMR Docket Number AR20110002893, 6 September 2011, to amend his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show he was awarded the Purple Heart.

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

- Self-authored letter
- Medical records, dated 25 August 1969
- A letter issued by the National Personnel Records Center (NPRC), dated 13 January 2010
- A letter issued by the Department of Veterans Affairs (VA)
- A letter issued by NPRC, dated 15 July 2010
- ABCMR Docket Number AR20100020203, dated 12 January 2011
- ABCMR Docket Number AR20110002893, dated 6 September 2011
- VA Form 21-4138 (Statement in Support of Claim), dated 21 February 2012
- A medical document provided by Wayne State University Neurological Surgery, dated 20 September 2012
- Medical record, dated 12 November 2013
- Medical record, dated 17 March 2014
- A letter issued by the VA, dated 1 August 2019
- A letter issued by the U. S. Army Human Resources Command (HRC)
- A news article

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's cases by ABCMR in Docket Numbers AR20100020203 on 12 January 2011 and AR20110002893 on 6 September 2011.

2. The applicant states in a self-authored letter, which is available in its entirety for the Board's review, that he is requesting for a review of his previous requests for the award of the Purple Heart. He believes the Board made several mistake in his previous

requests. In addition, the Soldiers who transported him to the 1st Cavalry Division aid station were not from his unit, and that is why his company was not aware of his injuries, therefore it was never reported. He asks that the proof he is submitting be examined so he may be awarded the Purple Heart, which he earned on 25 August 1969.

3. The applicant provides:

a. Medical records that show the following entries:

- On 25 August 1969: patient came in with a cut in upper portion of left eyebrow
- On 25 August 1969: right eye seems to blur when reading
- On 26 August 1969: changed dressing on laceration on forehead

b. A letter issued by NPRC, dated 13 January 2010, shows his medical record were loaned to the VA.

c. A letter issued by the VA, shows he was granted 0 percent (%) for his disability of "residual scar from head injury" with an effective date of 19 February 2010.

d. A letter issued by NPRC, dated 15 July 2010, shows that after an extensive search for medical records pertaining to his injury, including the morning report of said injury, failed to locate any entries pertaining to treatment of a head injury in Vietnam for the applicant.

e. VA Form 21-4138, dated 21 February 2012, shows the applicant's statement in support of his claim for benefits. This document shows in pertinent part:

- He was injured while trying to seek shelter during a rocket and mortar attack, on 25 August 1969
- As he was entering the bunker, he was thrown on a metal culvert entrance, by an explosion that occurred next to him
- The explosion left him unconscious, and he was transported for treatment
- He awoke after receiving five stitches on his forehead

f. In a medical document provided by Wayne State University Neurological Surgery, dated 20 September 2012, a magnetic resonance imaging (MRI) of his cervical shows a lesion could be from the injury he sustained in Vietnam.

g. Additional medical records provide the following:

(1) On 12 November 2013: the history of pain in the area dates back to the trauma and degenerative disc disease and spine disease is progressive and can start from trauma, it is more likely than not that it is related to the injury he sustained in 1969.

(2) On 17 March 2014: after a review of medical records, history, physical findings, and imaging, it is extremely likely that his cervical stenosis and myelopathy is related to his head trauma sustained from combat in Vietnam on 25 August 1969.

h. in a letter issued by the VA, dated 1 August 2019, a VA staff neurosurgeon stated that, after reviewing the applicant's medical records, history, physical findings, and imaging, it is extremely likely that his cervical stenosis and myelopathy is related to the head trauma sustained in August 1969 during combat in Vietnam.

i. In a response issued by HRC, dated 26 February 2024, it reflects that HRC was still unable to act on this request for the Purple Heart.

4. The applicant is authorized additional awards not currently listed on his DD Form 214. These awards will be administratively corrected in the "Administrative Notes" section of this document without Board action.

5. The applicant's service record shows:

a. He enlisted in the Regular Army on 21 March 1968.

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

- item 31 (Foreign Service): 2 October 1968 through 1 October 1969 U.S. Army Pacific (USARPAC) - Vietnam
- item 33 (Appointments and Reductions) this document shows consecutive promotions and does not reflect any reductions in rank
- item 38 (Record of Assignments): He was assigned to Alpha Company, 31st Engineer Battalion, USARPAC from 7 October 1968 through 27 September 1969
- item 38 (continued): he received excellent, good, and unknown ratings in conduct and efficiency
- item 40 (Wounds): this document does not reflect any wounds
- item 41 (Awards and Decorations): National Defense Service Medal, Vietnam Service Medal with four bronze service stars, Vietnam Campaign Medal with Device (1960), two Overseas Bars, Commander's Unit Commendation

c. His DD Form 214 shows he was honorably released from active duty on 19 March 1971 and was transferred to the U.S. Army Reserve (USAR). He completed 2 years, 11 months, 29 days of active service, and 1 year of foreign service (USARPAC).

His grade at the time of discharge was specialist four (SP4)/E-4. He has service in Vietnam from 2 October 1969 through 1 October 1970. He was awarded or authorized:

- National Defense Service Medal
- Vietnam Campaign Medal with Device (1960)
- Vietnam Service Medal with four bronze service stars
- Commander's Unit Commendation

6. The applicant's service record does not reflect any disciplinary actions for this period of service. His record does not contain orders awarding him the Army Good Conduct Medal, or any derogatory information that would have disqualified him from receiving such award.

7. The applicant's name is not shown on the Department of the Army Office of the Adjutant General Vietnam Casualty Division Casualty Reference Name Listing for the period 1 January 1961 through 30 June 1973, a battle and non-battle listing of Soldiers who were killed, wounded, sick, captured, or missing during their service in Vietnam.

8. In a prior ABCMR Docket Number AR20100020203 on 12 January 2011, wherein the applicant requested that he be awarded the Purple Heart and that his records be corrected accordingly, the Board determined that the overall merits of the case were insufficient as a basis for correction of the records of the applicant.

a. While the sincerity of the applicant's contention that he is entitled to award of the Purple Heart is not in doubt, there is insufficient evidence in his military records and the evidence submitted with his application to show that he was injured as a result of enemy action in Vietnam especially given the passage of 40+ years since the event occurred.

b. While the applicant provided a document showing that a dressing was changed on a laceration to his forehead, it does not satisfy the requirement that the injury must have been the result of enemy action. Therefore, in the absence of such evidence there does not appear to be a basis to award him the Purple Heart at this time.

9. In a prior ABCMR Docket Number AR20110002893 on 6 September 2011, wherein the applicant requested reconsideration of his previous request that he be awarded the Purple Heart, the Board denied his request for relief. This document is not available for the Board's review.

**BOARD DISCUSSION:**

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 the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation.

a. The Board determined to be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; there must be proof a wound was incurred as a result of enemy action, that the wound required treatment by medical personnel, and that the medical personnel made such treatment a matter of official record. The Board majority did not find documentary evidence that clearly or explicitly shows criteria for award of the Purple Heart. Based on the evidence, the Board majority determined the applicant does not meet the criteria for award of the Purple Heart.

b. The Board minority noted a medical record from 25-26 August 1969 showing some type of injury was treated and determined the medical record combined with the VA letter from 2019 draw a connection to combat and voted to grant relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	█	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 amendment of the ABCMR decision rendered in Docket Number AR20100020203, 12 January 2011, and ABCMR Docket Number AR20110002893, 6 September 2011.

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he is authorized awards not listed on his DD Form 214. As a result, amend his DD Form 214 for the period ending 19 March 1971, by amending item 24 (Awards) by adding:

- Meritorious Unit Commendation
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Republic of Vietnam Civil Actions Honor Medal

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records (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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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

a. The Purple Heart is awarded in the name of the President of the United States to any member of an Armed Force of the United States under the jurisdiction of the Secretary of the Army, who, after 5 April 1917, has been wounded, killed, or who has died or may hereafter die of wounds received, under any of the following circumstances:

(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 the result of an act of any such enemy or opposing Armed Forces.

(5) As the result of an act of any hostile foreign force.

(6) After 7 December 1941, pursuant to Title 10, United States Code, section 1129, as a result of friendly fire provided the member was killed or wounded in action by friendly weapon fire while directly engaged in armed conflict, other than the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of the willful misconduct of the member.

(7) On or after 7 December 1941, to a member who is killed or dies while in captivity as a Prisoner of War under circumstances establishing eligibility for the Prisoner of War Medal, unless compelling evidence is presented that shows the member's death was not the result of enemy action.

b. To qualify for award of the Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer. A wound is defined as an injury to any part of the body from an outside force or agent. A physical lesion is not required.

(1) Treatment of the wound will be documented in the member's medical and/or health record.

(2) Award may be made for a wound treated by a medical professional other than a medical officer provided a medical officer includes a statement in the member's medical record that the severity of the wound was such that it would have required treatment by a medical officer if one had been available to provide treatment.

(3) A medical professional is defined as a civilian physician or a physician extender. Physician extenders include nurse practitioners, physician assistants, and other medical professionals qualified to provide independent treatment (to include Special Forces medics). Medics (such as combat medics – military occupational specialty 68W) are not physician extenders.

(4) A medical officer is defined as a physician with officer rank. The following are medical officers:

- An officer of the medical corps of the Army
- An officer of the medical corps of the U.S. Navy
- An officer in the U.S. Air Force designated as a medical officer in accordance with Title 10, United States Code, section 101

c. 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

3. Army Regulation 672-15 (Decorations and Awards Service Medals), in effect at the time, states the Army Good Conduct Medal was awarded for each 3 years of continuous enlisted active Federal military service completed on or after 27 August 1940; for first award only, 1 year served entirely during the period 7 December 1941 to 2 March 1946; and, for the first award only, upon termination of service on or after 27 June 1950 of less than 3 years but more than 1 year. The enlisted person must have had all "excellent" conduct and efficiency ratings. Ratings of "Unknown" for portions of the period under

consideration were not disqualifying. There must have been no convictions by a court-martial. However, there was no right or entitlement to the medal until the immediate commander made a positive recommendation for its award and until the awarding authority announced the award in general orders.

4. Department of the Army Pamphlet 672-3 (Unit and Campaign Participation Credit Register) shows:

a. Department of the Army General Orders Number 39, dated 1970, announced award of the Meritorious Unit Commendation to the 31st Engineer Battalion, for the period 1 May 1968 to 31 December 1968.

b. Department of the Army General Orders Number 8, dated 1974, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, U.S. Army Vietnam, and its subordinate units for the period 20 July 1965 to 28 March 1973.

c. Department of the Army General Orders Number 43, dated 1970, announced award of the Republic of Vietnam Civil Actions Honor Medal to the 31st Engineer Battalion, for the period 25 April 1968 to 9 February 1970.

5. Army Regulation 635-5 (Separation Documents) in effect at the time, states that the DD Form 214 will reflect the conditions and circumstances that existed at the time the records were created. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate and reflects the conditions as they existed at the time of separation.

//NOTHING FOLLOWS//