

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240006170

APPLICANT REQUESTS: correction of his DD Form 214 (Report of Separation from Active Duty) for the period ending on 30 August 1976, to reflect award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214

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 was treated for gastritis. He drank toxic water at Fort Dix, NJ, and Fort Jackson, SC.
3. A review of the applicant's available service records reflect the following:
 - a. On 29 September 1975, the applicant enlisted in the Regular Army for 3 years. He served in the military occupational specialty of 94B (Food Service Specialist). The highest grade he attained was E-2.
 - b. On or about 3 October 1975, the applicant was assigned to Company C, 5th Battalion, 3rd Basic Combat Training Brigade, U.S. Army Training Center, Fort Dix, NJ.
 - c. On or about 2 February 1976, the applicant was assigned to Company C, 3rd Battalion, 1st Brigade, Fort Jackson, SC.
 - d. On 15 June 1976, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 11 June 1976; and being

disrespectful in language toward his superior noncommissioned officer, on or about 11 June 1976. His punishment included 14 days restriction and extra duty, and forfeiture of \$90.00 for a period of one month.

e. On 19 July 1976, the applicant accepted NJP under Article 15 of the UCMJ, for being derelict in the performance of his duties, on or about 17 June 1976. His punishment included forfeiture of \$84.00 for a period of one month, and 14 days extra duty and restriction.

f. On 30 August 1976, Headquarters, U.S. Army Training Center and Fort Jackson, Fort Jackson, SC, issued Order 48-701, discharging the applicant from the Regular Army.

g. The applicant was discharged on 30 August 1976. His DD Form 214 reflects that he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-37. His service was characterized as honorable. He completed 11 months and 25 days of net active service this period.

4. The applicant's records do not contain orders awarding him the Purple Heart. Additionally, there is no evidence he was injured or wounded as a result of hostile action.

5. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting "medical" and a Purple Heart. He states:

"I was treated for gastritis. I drank toxic water at Fort Dix, NJ and at Fort Jackson, SC."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 29 September 1975 and received an honorable discharge on 30 August 1976 under

provisions provided in paragraph 5-37 of AR 635-200, Personnel Separations – Enlisted Personnel (1 December 1975): Discharge for failure to demonstrate promotion potential. The separation program designator (SPD) KMN which denotes “Army Expeditious Discharge.”

d. Paragraph 5-37 of AR 635-200 states that discharge under the provisions of this paragraph is limited to:

“(1) Personnel who fail to be advanced to the grade of E-2 after 4 months of AD.

(2) Personnel who fail to demonstrate potential to justify advancement to the grade of E-3 after attaining the normal time-in-service and time-in-grade criterion for promotion to grade E-3, without waiver, established in chapter 7, AR 600-200.”

e. The one page of medical documentation submitted with the application is mostly illegible but does show the applicant was briefly treated with valium and referred to mental hygiene in late June - early July 1976.

f. On 17 August 1976, the applicant’s company commander informed him of the initiation of action to separate him under paragraph 5-37 of AR 635-200 stating:

“The reasons for my proposed action are: Your poor attitude, lack of motivation, substandard performance, indifference toward service in the United States Army.”

g. Also on 17 August 1976, the applicant voluntarily consented to this discharge. The battalion commander approved his discharge on 18 August 1976. His period of service pre-dates AHLTA.

h. The Part II of the applicant’s Personnel Qualification Record (DA Form 2-1) shows the applicant only served in the continental United States and not exposed to combat. Thus, there is not injury for which the applicant would be eligible for a Purple Heart.

i. JLV shows the applicant had three service-connected disability ratings awarded on 12 March 2019 - PTSD, “muscle nerve condition,” and bronchial asthma His combined rating is 100%. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military

service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j. It is the opinion of the ARBA medical advisor that neither the awarding of a Purple Heart nor a referral to the Disability Evaluation System is warranted.

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 applicant's request, his statement failing to describe an injured while serving in direct combat and the insufficient evidence provided to show such an injury, the Board concluded there was insufficient evidence of an error or injustice warranting awarding the Purple Heart.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 600-8-22 (Military Awards) states the Purple Heart is 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.
 - a. Examples of enemy-related injuries which clearly justify the Purple Heart:

- 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 explosion

b. Examples of injuries or wounds which clearly do not justify the Purple Heart:

- Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951)
- Trench foot or immersion foot, heat stroke, battle fatigue, first degree burns, and food poisoning not caused by enemy agents
- Chemical, biological, or nuclear agents not released by the enemy
- Disease not directly caused by enemy agents
- Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action
- Self-inflicted wounds, except when in the heat of battle and not involving gross negligence
- Post-Traumatic Stress Disorder
- Airborne (for example, parachute/jump) injuries not caused by enemy action
- Hearing loss and tinnitus (for example: ringing in the ears)
- Abrasions and lacerations (unless of a severity to be incapacitating)
- Bruises (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer)
- Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth)

4. Army Regulation 672-5-1 (Decorations and Awards) in effect at that time provides that the Purple Heart may be awarded by the Commanding General of any separate force who is in the grade or position of a major general or higher or by any field grade officer to whom he may delegate authority. The Purple Heart was established by General George Washington at Newburgh, New York, on 7 August 1782 and revived by the President on 22 February 1932, is awarded to any member of the Armed Forces of the United States and to any civilian citizen of the United States serving with the Army who was wounded either in action against an armed enemy of the United States or as a direct result of an act of such enemy, provided the wound necessitated treatment by a medical officer. 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 medical personnel

- the medical treatment must have been made a matter of official record during the period of hostilities or within 6 months thereafter

//NOTHING FOLLOWS//