# DEPARTMENT OF HOMELAND SECURITY BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of the Coast Guard Record of:

**BCMR Docket No. 2018-211** 



## FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant's completed application on August 30, 2018, and assigned it to staff member to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 6, 2019, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

### APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who served in the Coast Guard as a seaman (SN) from April 28, 1967, to April 30, 1971, asked the Board to correct his military record to show that he was awarded a Purple Heart for injuries that he sustained aboard the CGC in January 1968 while serving in Vietnam. In support of his application, the applicant submitted the following:

- A news article about Coast Guard Division 13 being awarded the Navy Unit Commendation for the period June 1 to December 31, 1968; and
- A photocopy of a letter dated July 7, 2016, in which the applicant wrote that he served in Vietnam and would like any medals that he is entitled to receive. He stated that the crew of the CGC had been awarded the Vietnam Campaign Medal with four stars for their participation in the Vietnam Counteroffensive, the TET Counteroffensive, and Vietnam Counteroffensive, and phase 5 of the Vietnam Counteroffensive. He also alleged that he had been awarded a Combat Action Ribbon, a Navy Meritorious Unit Commendation with two stars, a Sea Service Ribbon, a Vietnam Civil Action Ribbon with Palm, and a Vietnam Cross of Gallantry with Palm.

The applicant stated that the doctor and chief corpsman were rarely seen aboard the because they were very busy and were flown from village to village and boated from ship to shore. Therefore, a corpsman in training took care of the needs of the

crew. During Phase III of the Tet Counteroffensive, during the first week of January, the applicant wrote,

we had a powder case misfire[.] it didn't come out of the baich (barrel)[.] it popped up in the air and when it came down the only way I could control it was to catch it after it bounced off the sidewall of the inside of the gun[.] I had asbestos gloves on but they only protected my hands[.] I caught it against my chest[.] my shirt protected me some[.] it bounced off my chest and hit me in my face[.] the gun powder still burning out the open end burned my face arms and some fell inside my gloves on my hands. It was my job (hot shell man) to keep it off the loader the time setter and fuse setter[.] the latter two were sitting on the deck of the gun and I was there [sic] only protection. We continued firing[.] I told the Chief I could make it.

When we secured I went to [unreadable] for treatment. They put some kind of salve on it (silverdeen?) or something like it and bandaged my face and some of my arms. We went into the Phillipines [sic] a couple of days latter and I remember it well because I had to drink my beer thru a straw.

Also during a landing taking supplies, food, medical, building materials into Song Ong Duc we unloaded it[.] The Doc and Chief Corpsman were in the village[.] We were notified to return to ship immediately[.] We all got back in the boat and the BM3 ... had just made 3<sup>rd</sup> class and had very little experience handling a small boat[.] While we were putting everything in place, he bumped the throttle[.] Seaman [name] fell over my leg with the boat ax[.] When we got back to the boat I started to sick bay and they told me to hurry because we were headed to a gun fire support mission to help cover an Army patrol advancement. I informed the corpsman striker ([name]) of this[.] He cleaned the wound and put butterfly bandages over it (5 or 6) to hold it together because he didn't have time to sew it up. Seaman [name] was a witness[.] [In the margin of the letter at this point, the applicant wrote "letter attached" but there is none.] he was the one who passed on to hurry for NGFSM.

It was a pretty good cut about 4 to 5 inches long and about  $1\frac{1}{4}$  inches deep on one end and tapered down to about  $\frac{1}{2}$  inch or so on the other end[.] I've had some trouble with it[:] loss of feeling[,] burning[,] feet turn cold. It has no reflexes when you (doctor) hit it. You can stick a needle  $\frac{1}{2}$  to  $\frac{3}{4}$  inch into my lower leg without me feeling it.

Either one or both of these wounds would have gotten me a Purple Heart if the records would have been keep straight, or if I would have been in the Army or Navy.

The applicant also described other serious knee and leg injuries he incurred in the United States, as well as bad dreams, flashbacks, and knee and leg pain he has had. He stated that he had received treatment from the VA for these symptoms.

The applicant alleged that he received burns on his face, neck, and both arms from an ejected cannon shell. He further alleged that the doctor and corpsman aboard the ship were too busy to render comprehensive care for the burns and that the minor treatment he did receive was never recorded in his medical record.

The applicant stated that he discovered the error on April 1, 1971, and argued that the Board should find it in the interest of justice to consider his application because he was unsure if the Coast Guard would find that he qualified for the Purple Heart.

#### SUMMARY OF THE APPLICANT'S RECORDS

The applicant enlisted	d in the Coast	Guard on	April 28,	1967, c	ompleted	recruit	training,
and was assigned to the CGC		from July	, 15, 1967,	to Sept	tember 2,	1968.¹	

An Abstract of Medical History in the applicant's record states that while assigned to the CGC , he was treated at a hospital in Jacksonville, Florida, for a laceration of his left leg on September 26, 1967; a re-injury of his left leg on October 7, 1967 (before the cutter deployed to Vietnam); an upper respiratory tract infection on January 19, 1968; and viral gastritis on March 26, 1969. After he returned stateside, according to the abstract, he suffered an infected right toe in November 1970 and "water on the knee" in January 1971.

A Sick Call Treatment Record in the applicant's medical record includes the following entries while he was assigned to the CGC

- "SEP 26 1967 USPHS Outpatient Clinic ... Jacksonville, Florida ... Superficial laceration left leg below knee area cleansed and dressed one silk sutures ..."
- "7 Oct. 67 Androscog. Pt. involved in accidental self-inflicted stab wound L leg (lat. Pre-tibial area) las night. Today leg warm, edematous locally and exquisitely tender. Imp: Early Infected Hematoma ..."
- "19 Jan 68 Andy Pt. c/o headache and sore throat. Has hyperemic edematous oral pharynx. No exudate. Imp: Viral U.R.I. ..."
- "3-26-68 Andy cc: General Malaise, nausea, headache x 24 hrs. ... Imp: 1. Viral gastritis. 2. Migraine headache. ..."
- "7-18-68 Andy VDRL neg."

After transferring from the CGC in September 1968, the applicant served aboard two stateside cutters—the CGC and the CGC in the control of th

For the applicant's pre-separation physical examination, he completed a Report of Medical History on May 29, 1971. The applicant listed his past medical conditions as follows:

- "Stab wound in chest approximately 2" above heart. Coughed blood for about a month after wound. Infected approx. 4 or 5 times. Treated by Station corpsman ([name])."
- "Laceration of the left lower leg USPHS JAX."
- "Stab wound in left lower leg approx. 1½" cir. scar. Treated on board ship CGC

<sup>&</sup>lt;sup>1</sup> The Wikipedia page for the CGC states states that the ship was assigned to Coast Guard Squadron Three, South Vietnam, from December 4, 1967, to August 4, 1968. (last visited July 31, 2019).

• "Water on the knee, injured on board CGC approx. 2" oval shape bruise on scar[.] treated on board Also treated by Naval Station Mayport. Still sore."

On the Report of Medical Examination completed on April 1, 1971, the doctor noted no current injuries or burn scars and reported that the applicant's head, face, arms, and upper and lower extremities were "normal." The doctor also noted no significant or interval medical history or defects.

The applicant's DD 214 indicates that he received the following awards:

- 1. National Defense Service Medal
- 2. Vietnam Service Medal with one bronze star
- 3. Republic of Vietnam Campaign Medal with device.

The applicant did not receive a Good Conduct Medal because he was punished at mast for a short period of absence without leave in March 1969.

The applicant's record contains an undated, handwritten letter in which he stated that he served on the CGC not receive a Navy Unit Presidential Citation.

On or about December 11, 1990, the applicant sent a request to the National Archives and Records Administration (NARA) for his service records in order to determine which medals and awards he was eligible to receive. The Navy Liaison Office of the National Personnel Records Center (NPRC) responded to him on February 11, 1991, and sent him an Entitlement to Awards form which indicates that he is authorized to receive six different awards, but not the Purple Heart Medal. The six awards are as follows:

- 1. National Defense Service Medal
- 2. Vietnam Service Medal w/4 bronze stars
- 3. Navy Unit Commendation Ribbon
- 4. Republic of Vietnam Meritorious Unit Citation (Gallantry Cross Medal Color with Palm)
- 5. Republic of Vietnam Meritorious Unit Citation (Civil Actions Medal, First Class Color with Palm)
- 6. Republic of Vietnam Campaign Medal with/Device

#### VIEWS OF THE COAST GUARD

On April 9, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she adopted the findings of the Coast Guard Personnel Service Center (PSC) in a memorandum on the case and recommended that the Board grant alternative relief.

PSC noted that the application is untimely but recommended granting alternative relief because the Medals and Awards Branch had reviewed the applicant's request and determined that, while he is not eligible for the Purple Heart, he is eligible for following additional medals that are not included on his DD 214:

- 1. Combat Action Ribbon
- 2. Navy Unit Commendation Ribbon with two stars
- 3. Sea Service Ribbon
- 4. Republic of Vietnam Civil Action Ribbon with Palm
- 5. Vietnam Service Medal with four bronze stars

PSC argued that the applicant is not eligible for the Purple Heart Medal because there is no mention or evidence of the stated injury within his medical file or personnel record in January 1968. Moreover, PSC noted that the applicant's Abstract of Medical History does not mention any related injuries during the timeframe mentioned in the application.

#### APPLICABLE LAW AND POLICY

The Coast Guard Medals and Awards Manual, COMDTINST M1650.25B in effect in 1971, provides detailed instructions for the administration of the military decorations and awards programs of the Coast Guard. Article 2.B.11. of the manual states that the Commandant is authorized to award the Purple Heart Medal in the name of the President to any member of the Coast Guard who, while serving under competent authority in any capacity with the Coast Guard subsequent to April 5, 1917, has been wounded or killed:

- (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 Force;
- (5) The result of an act of any hostile foreign force;
- (6) As the indirect result of enemy action (e.g., injuries resulting from parachuting from a plane brought down by enemy or hostile fire);
- (7) As the result of maltreatment inflicted by captors while a prisoner of war.

The manual further states that a "wound" is defined as an injury to any part of the body from an outside force or agent, sustained while in action as described in the eligibility requirements. A physical lesion is not required, provided the concussion or other form of injury received was as a direct result of the action engaged in, and required treatment by a medical officer.

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The Medals and Awards Manual indicates that there is a Coast Guard Combat Action Ribbon and a Navy Combat Action Ribbon, the latter authorized by the Department of Defense/U.S. Navy in SECNAVNOTE 1650, February 17, 1969, for certain Coast Guard units

and operations. Enclosure (2) to the manual states that the Combat Action Ribbon is authorized for the crew of the CGC for its service from February 29, 1968, to March 1, 1968.

Enclosure 6 to the manual lists the units and eligible periods for the Navy Unit Commendation Medal. The CGC is listed as eligible for this medal as part of the Navy Coastal Surveillance Force (Task Force 115) from December 17 to 31, 1967; from February 14 to March 6, 1968; and from March 14 to 31, 1968. According to paragraph 123.1. of SECNAVINST 1650.1H, each bronze star appended to a medal denotes a subsequent award of this medal.

Chapter 5.A.19. of the manual states that the Coast Guard Sea Service Ribbon is awarded to active and inactive duty members of the Coast Guard and Coast Guard Reserve or non-Coast Guard personnel who, under temporary or permanent assignment, satisfactorily complete a minimum of 12 months cumulative sea duty. For the purposes of the award, sea duty is defined as duty performed aboard any commissioned Coast Guard cutter 65 feet or more in length. This award was authorized on March 3, 1984, and was not made retroactive.

Enclosure 16 to the Medals and Awards Manual states that the Republic of Vietnam Gallantry Cross Medal Color with Palm was awarded from February 8, 1962, to March 28, 1973, and the Republic of Vietnam Civil Actions Medal, First Class Color with Palm was awarded from January 1, 1965, to March 28, 1973. These awards were issued to both individuals who accomplished deeds of valor and to units. Enclosure 6 notes that the unit citation was issued to Naval Forces Vietnam and all subordinate units from February 8, 1962, to March 28, 1973.

- The Vietnam Campaign Medal was issued to members who met certain criteria from March 1, 1961, to March 28, 1973, including those who "[s]erved six (6) months in South Vietnam or served six (6) months outside the geographical limits of South Vietnam, but contributed direct combat support to the Republic of Vietnam Armed Forces during such period."
- The Gallantry Cross Unit Citation was issued to Naval Forces Vietnam and all subordinate units for the period February 8, 1962, through March 28, 1973.
- The Civil Actions Medal First Class Color with Palm was issued to Naval Forces Vietnam and all subordinate units from 01 January 1965 to 28 March 1973.

Enclosure 16 of the current Medals and Awards Manual states that the Vietnam Service Medal is awarded to members of the armed forces who served in Vietnam, its contiguous waters, or airspace, between March 15, 1962, and March 28, 1973. Members must have been attached to one of the listed vessels, including the CGC for at least one day while the vessel was directly supporting military operations in Vietnam. Enclosure 16 states that a bronze star is added to the ribbon for each period of campaign during the member's eligibility period, including the first. The list of seventeen campaigns includes the "Vietnamese Counteroffensive Phase III" from June 1, 1967, to January 29, 1968; and the "TET Counteroffensive" from January 30, 1968, to April 1, 1968; "Counteroffensive, Phase IV" from April 2 to June 30, 1968; and "Counteroffensive, Phase V" from July 1 to November 1, 1968. It states that the eligibility period for the crew of the CGC is December 17, 1967, to July 16, 1968.

#### APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 15, 2019, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

- 1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
- 2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was discharged in 1971 but did not submit his application to the Board until 2017. The Board finds that the application is untimely because the applicant knew upon his discharge in 1971 that he had not been awarded the Purple Heart Medal.
- 3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>2</sup> In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review" to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." Although the applicant did not justify his long delay in seeking a Purple Heart, because the Coast Guard has identified clear omissions on the applicant's DD 214, which should be corrected, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.
- 4. The applicant alleged that his military record is erroneous and unjust because it does not show that he received the Purple Heart Medal. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>5</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."
- 5. The applicant argued that he is eligible for the Purple Heart Medal because he was treated for burns on his face, arms, and hands from an ejected shell while serving aboard the

<sup>3</sup> Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>&</sup>lt;sup>2</sup> 10 U.S.C. § 1552(b).

<sup>&</sup>lt;sup>4</sup> *Id.* at 164, 165; see also Dickson v. Secretary of Defense, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>&</sup>lt;sup>5</sup> 33 C.F.R. § 52.24(b).

<sup>&</sup>lt;sup>6</sup> Arens v. United States, 969 F.2d 1034, 1037 (Fed. Cir. 1992); Sanders v. United States, 594 F.2d 804, 813 (Ct. Cl. 1979).

CGC in Vietnam in early January 1968 and because he suffered a laceration on his leg from an axe. The record shows that the applicant served aboard the CGC in Vietnam from December 1967 to July 1968, but there is no evidence in the record that supports his claim that he is entitled to a Purple Heart Medal, which requires that the member be injured as the result of enemy action and require treatment by a medical officer. The applicant's medical records show that while serving in Vietnam from December 1967 to July 1968, he was treated for an upper respiratory tract infection in January 1968 and for viral gastritis and migraine headache in March 1968. Therefore, the corpsman aboard the cutter was recording crewmembers' medical treatment. But there is no record of any burns, treatment for burns, or burn scars. Nor is there a record of an axe wound or for any treatment for an axe wound while he was in Vietnam. In fact, the applicant himself did not report any injuries incurred in Vietnam on the Report of Medical History that he completed for his pre-separation physical examination. The applicant received wounds while in the Coast Guard, but his medical records show that they were all incurred in the United States.

- 6. Given the applicant's detailed description of catching the ejected shell, the Board believes that the applicant received minor burns when he caught it, but there is no evidence to show that they required treatment by a "medical officer," which is a requirement to receive the Purple Heart. Accordingly, the Board finds that the applicant has not proven by a preponderance of the evidence that he met the criteria for a Purple Heart Medal according to Article 2.B.11. of the Coast Guard Medals and Awards Manual.
- 7. PSC reviewed the applicant's records and determined that his DD 214 is missing several awards that he is eligible to receive, including the Combat Action Ribbon, Navy Unit Commendation ribbon with two Stars, Sea Service Ribbon, Republic of Vietnam Civil Action Ribbon with Palm, and the Vietnam Service Medal with four bronze Stars. With respect to the medals recommended by the Coast Guard, the Board finds the following:
- a. The Coast Guard found that the applicant is entitled to the Combat Action Ribbon and the Board agrees. He meets the eligibility criteria for the ribbon because he served aboard the CGC from July 15, 1967, to September 2, 1968, and Enclosure (2) to the awards manual states that the Combat Action Ribbon is authorized for the crew of the CGC for its service from February 29, 1968, to March 1, 1968. Accordingly, his record should be corrected to show that he earned the Combat Action Ribbon.
- b. The Coast Guard and the Navy Liaison Office of NPRC stated that the applicant is eligible for the Navy Unit Commendation. The Board agrees. Enclosure 6 to the awards manual lists the Coast Guard units and periods eligible for the Navy Unit Commendation Medal. The applicant served on the CGC from July 15, 1967, to September 2, 1968, and this cutter is listed as eligible for this medal as part of the Navy Coastal Surveillance Force (Task Force 115) from December 17, 1967, to December 31, 1967; from February 14, 1968, to March 6, 1968; and from March 14, 1968, to March 31, 1968. According to paragraph 123.1. of SECNAVINST 1650.1H, each bronze star appended to a medal denotes a subsequent award of this medal. Accordingly, the Board finds that the applicant is eligible for the Navy Unit Commendation with two bronze stars because he was aboard the CGC during three eligibility periods.

- c. The Coast Guard stated that the applicant is entitled to the Coast Guard Sea Service Ribbon. The Board finds, however, that he is not eligible for the ribbon because it was authorized in 1984, long after the applicant had left the service, and was not authorized to be issued retroactively. Therefore, the applicant's record should not be corrected to show that he is eligible to receive the Sea Service Ribbon.
- d. The Coast Guard and the Navy Liaison Office of NPRC stated that the applicant is eligible to receive the Republic of Vietnam Meritorious Unit Citation (Civil Action Medal with Palm). The Board agrees. The applicant served on a cutter in Vietnam from July 15, 1967, to September 2, 1968, and Enclosure 16 to the Medals and Awards manual states that the Republic of Vietnam Meritorious Unit Citation (Civil Actions Medal, First Class Color with Palm) was awarded to Naval Forces Vietnam and all subordinate units from January 1, 1965, to March 28, 1973. Accordingly, his record should be corrected to show that he earned this medal.
- e. In 1991, the Navy Liaison Office at NPRC told the applicant that he is eligible to wear the Vietnam Service Medal with four bronze stars, and the Coast Guard recommended this relief. The Board agrees. According to the Medals and Awards Manual, members who served in Vietnam receive one star for serving at least one day attached to a vessel during "each campaign during their period of eligibility," and the eligibility period for the crew of the CGC is December 17, 1967, to July 16, 1968. The manual further shows that four campaigns occurred during that period: "Counteroffensive, Phase III" from June 1, 1967, to January 29, 1968; "Tet Counteroffensive" from January 30 to April 1, 1968; "Counteroffensive, Phase IV" from April 2 to June 30, 1968; and "Counteroffensive, Phase V" from July 1 to November 1, 1968. Therefore, the applicant is entitled to wear the Vietnam Service Medal with four bronze stars.
- 8. The Navy Liaison Office of the NPRC reviewed the applicant's complete military record in 1991 and determined that he is eligible to receive the Republic of Vietnam Meritorious Unit Citation (Gallantry Cross Medal Color with Palm), and the Republic of Vietnam Campaign Medal with/Device. The Coast Guard did not provide any recommendations with respect to these two medals, but they are authorized for wear in the Medals and Awards Manual. The Board finds that the applicant is entitled to both medals because Enclosure 16 to the Medals and Awards Manual states that they were issued to all U.S. Naval Forces in Vietnam and subordinate units, noting that the Vietnamese Government issued the Republic of Vietnam Meritorious Unit Citation (Gallantry Cross Medal Color with Palm) to Naval Forces Vietnam and all subordinate units from February 8, 1962, to March 28, 1973, and issued the Civil Actions Medal First Class Color with Palm to Naval Forces Vietnam and all subordinate units from January 1, 1965, to March 28, 1973.
- 9. The Navy Liaison Office of the NPRC determined that the applicant is eligible to receive the Republic of Vietnam Campaign Medal with device. The Coast Guard did not comment on the applicant's eligibility for this medal in its advisory opinion, but the Board finds that he is eligible to receive the medal. Chapter 6.A.2. of the Awards Manual states that the Vietnam Campaign Medal was issued to members who met certain criteria from March 1, 1962, to March 28, 1973, including those who "[s]erved six (6) months in South Vietnam or served six (6)

months outside the geographical limits of South Vietnam, but contributed direct combat support to the Republic of Vietnam Armed Forces during such period." The record shows that the applicant served in South Vietnam aboard the CGC for more than six months during the medal's eligibility period and his DD 214 should be corrected to reflect receipt of the medal.

10. The applicant's request for a Purple Heart Ribbon should be denied. However, the preponderance of the evidence shows that his DD 214 does not accurately reflect all of the medals and awards he received or is eligible to receive. Specifically, his DD 214 should be corrected by issuance of a DD 215 to show that he received the Combat Action Ribbon; the Vietnam Service Medal with four bronze stars (instead of one); the Navy Unit Commendation with two bronze stars; the Republic of Vietnam Meritorious Unit Citation Gallantry Cross Ribbon with Palm; the Republic of Vietnam Meritorious Unit Citation Civil Action First Class Color Ribbon with Palm; and the Republic of Vietnam Campaign Medal with device. All other requests should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

## **ORDER**

The application of former SN USCG, for correction of his military record by the addition of a Purple Heart Medal is denied, but his record shall be corrected by issuing a DD 215 to add the following medals and awards to his DD 214:

- 1. Combat Action Ribbon
- 2. Vietnam Service Medal with four bronze stars (instead of just one)
- 3. Navy Unit Commendation with two bronze stars
- 4. Republic of Vietnam Meritorious Unit Citation Gallantry Cross Ribbon with Palm
- 5. Republic of Vietnam Meritorious Unit Citation Civil Action First Class Color Ribbon with Palm
- 6. Republic of Vietnam Campaign Medal with device

All other requests are denied.

September 6, 2019

