RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-01898

INDEX CODE: 107.00

XXXXX COUNSEL: NONE

HEARING DESIRED: NOT INDICATED

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APPLICANT REQUESTS THAT:

Her Uncle’s military records be corrected to show entitlement to the Purple Heart (PH).

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APPLICANT CONTENDS THAT:

She is the former service member’s Niece and Next of Kin (NOK) and is the Administrator of his Estate. Item 34 (Wounds Received in Action) of his WD AGO Form 53-55, *Enlisted Record and Report of Separation* *Honorable Discharge*, states “None,” and this is incorrect as her uncle was shot in the lower groin area during the first strike on Normandy, Omaha Beach, on 6 June 1944 when his invasion ship was shot out from under him and he was wounded and in the water for hours. The wound caused him physical problems in his later years and although he received a Department of Veterans Affairs (DVA) pension, the DVA recorded the wounds as non-service connected which affected his pay and medical benefits. The record should be corrected and he should be awarded the PH to honor the truth of what happened and for the family’s historical records.

In support of her appeal, the applicant provides copies of her Uncle’s *Certificate of Death* andfuneral documents; a XXXX County Court Order appointing her as Temporary Administrator of her Uncle’s estate; his WD AGO Forms 53-55 for the periods 22 May 1941 to 27 November 1945 and 20 May 1946 to 4 February 1947; his *Army of the United States Honorable Discharge Certificates* effective 27 November 1945 and 4 February 1947; his WD AGO Form 100, *Army of the United States Separation Qualification Record*; and DVA documentation pertaining to her Uncle.

Applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

The military personnel records of the applicant’s Uncle were apparently located in the area most heavily damaged in the fire at the National Personnel Records Center in 1973. Partially reconstructed records indicate he served on active duty with the Regular Army as a tank gunner from 22 May 1941 to 27 November 1945, and as an air transportation technician from 20 May 1946 to 4 February 1947. Item 34, “Wounds Received in Action,” of both of his WD AGO Forms 53-55 reflects “None,” and Item 32 indicates he participated in the Normandy, Northern France, Ardennes, Rhineland, and the Central Europe Battles and Campaigns. His WD AGO Forms 53-55 indicate he is entitled to the Good Conduct Medal, World War II Victory Medal, American Theater Ribbon, European-African-Middle Eastern Campaign Medal, and the North Atlantic Treaty Organization (NATO) Ribbon.

In accordance with Army Regulation (AR) 600-45, *Decorations*, dated 22 Sep 43, during the period in question, the PH was awarded for wounds received in action against an enemy of the United States, or as a direct result of an act of such enemy, provided such wound necessitated treatment by a medical officer. For the purpose of awarding the PH, a wound was defined as an injury to any part of the body from an outside force, element, or agent, sustained as the result of a hostile act of the enemy, or while in action in the face of the enemy. When a person eligible for award of the PH was treated for a wound, the commanding officer of the hospital, or the medical officer who treated the wound, furnished the commanding officer of the wounded person a certificate briefly describing the nature of the wound, and certifying the necessity of treatment. In addition, a wounded soldier’s unsupported statement could be accepted in unusual or extenuating circumstances when, in the opinion of the officer making the award, no corroborative evidence was obtainable. However, the statement would be substantiated if possible.

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AIR FORCE EVALUATION:

AFPC/DPSIDR recommends denial of the requested relief as the applicant did not provide an eyewitness statement, medical documentation, or an exact date of the injury.

The Purple Heart Review Board (PHRB) has the authority, on behalf of the Secretary of the Air Force, to determine a veteran’s entitlement to the PH. Each request is considered based on the policies and criteria in use at the time the veteran was injured, and the determination is dependent on the documentary evidence presented. In order for the applicant’s case to be presented to the PHRB, it must contain a detailed personal account of the circumstances surrounding his injury, to include specifics as to how he was injured as well as other required, detailed information; if possible, a certified eyewitness account from an individual who saw him injured and can attest to the circumstances surrounding his personal account; and medical documentation to substantiate he received medical treatment, or a statement from a medical officer (military or civilian) attesting that an examination revealed that an injury of the type he incurred would, or should have, received medical treatment. Statements from individuals not substantiated by either medical or official records will not be considered sufficient evidence of wounds, and entries on Reports of Separation are not considered official.

The AFPC/DPSIDR evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the evaluation was forwarded to the applicant on 7 August 2009, for review and comment, within 30 days. The applicant furnished an additional medical document which she contends is proof of her uncle’s gunshot wound.

The applicant’s complete response, with attachment, is at Exhibit E.

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THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We are not unmindful or unappreciative of the service of the applicant's Uncle to our Nation; however, after thoroughly reviewing the evidence of record and noting his Niece’s contentions, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion the applicant’s Uncle has not been the victim of an error or injustice. In this respect, we note the regulation governing award of the PH requires specific documentation to support a member was wounded as a direct result of enemy action to include a detailed personal account of the circumstances surrounding the injury, a certified eyewitness account from an individual who saw the member injured and can attest to the circumstances surrounding the injury, and treatment by medical personnel, and the applicant did not provide these required documents in order for us to make a determination. If the applicant can provide such evidence, we will reconsider her application. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

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THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered Docket Number BC-2009-01898 in Executive Session on 23 September 2009, under the provisions of AFI 36-2603:

Mr. Anthony P. Reardon, Panel Chair

Mr. Mark J. Novitski, Member

Ms. Janet I. Hassan, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 15 Apr 09, w/atchs.

Exhibit B. Applicant's Available Master Personnel Records.

Exhibit C. Letter, AFPC/DPSIDR, dated 16 Jul 09.

Exhibit D. Letter, SAF/MRBR, dated 7 Aug 09.

Exhibit E. Letter, Applicant, undated, w/atch

ANTHONY P. REARDON

Panel Chair