

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03445

XXXXXXXXXXXXXXXXXX

COUNSEL: XXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be awarded the Purple Heart Medal.

APPLICANT'S CONTENTIONS

On 5 July 2009, he was a Mine-Resistant Ambush Protected truck commander on routine Combat Logistics Patrol mission when an improvised explosive device buried in the road denoted approximately one meter ahead of his vehicle and his convoy came under enemy attack. The resulting fire fight lasted 22 minutes until the convoy was able to turn around and vacate the engagement area. Battle damage assessment identified 12 bullet and shrapnel marks on both sides of the vehicle along with the side window and gunner's turret being peppered with fragmentation marks.

Since that day, he has had a difficult time seeking help, as he put his career ahead of his health. Although he indicated he was involved in a blast on his post-deployment health assessment, he did not begin treatment until years later, and even after he started treatment, he would try to hide it due to shame and career implication concerns.

In 2016, he was referred to a neurologist and clinical neuropsychologist for memory and focus issues. After evaluations and Magnetic Resonance Imaging, they stated his brain has damage consistent with traumatic brain injury (TBI), which they believe to be a direct result of the blast received on 5 July 2009. In addition, after an extensive neuropsychological evaluation he was informed the area of his brain that "takes pictures" for short term memory is not working correctly and he suffered from minor cognitive impairment.

He is currently receiving constant treatment for TBI and post-traumatic stress disorder. It is his humble request that a review of the hostile action described in his memorandum, and the supporting documentation of the resulting head trauma be considered as meeting the qualifying criteria for the award of the Purple Heart.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force chief master sergeant (E-9).

On 29 October 2009, according to the applicant's Air Force Combat Action Medal (AFCAM) citation, he was awarded the AFCAM for active participation in combat, having been under direct and hostile fire or physically engaging enemy forces with direct and lethal fire, in connection with military operations on 5 July 2009.

On 10 June 2021 and 16 September 2021, according to memoranda from the 9th Air Force (AF) Air Forces Central Command 9AF (AFCENT)/A1 the applicant was notified his request for the award of the Purple Heart for the incident that occurred on 5 July 2009 was disapproved. The memoranda states this decision was based on the 9AF (AFCENT) commander's determination that after a thorough review of the supporting documentation and medical records the incident and/or injuries do not meet the criteria for the award of the Purple Heart. The memoranda further indicates in accordance with Air Force Manual (AFMAN) 36-2806, *Awards and Memorialization Program*, when considering award for a Purple Heart for mild TBI or concussion that did not result in a loss of consciousness, ensure the diagnosed mild TBI resulted in a disposition of "not fit for duty" by a medical officer for a period of greater than 48 hours based on persistent signs, symptoms, or findings of functional impairment resulting from the concussive event. In this regard, when completing the Post Deployment Health Assessment Questionnaire following his deployment, the applicant reported experiencing a blast or explosion and noted he saw a provider three times; however, he did not report being wounded, assaulted, or otherwise injured during the deployment. Additionally, it was noted no medical documentation was provided or identified from the time of injury in medical systems (ALHTA, JLV, or TMDS) for this event. He was informed in order for his decision to be reconsidered, the commander required additional medical or other applicable documentation describing the specific injuries sustained and the treatment rendered.

On 31 May 2022, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was released from active duty for the purpose of retirement. He was credited with 25 years, 1 month, and 8 days of active service to include 8 years, 8 months, and 12 days of foreign service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

Air Force Personnel Center Instruction (AFCPI) 36-114, *Purple Heart Review Board*, 21 March 2016 (Certified Current, 3 June 2019). The objective of the Purple Heart Review Board is to review, evaluate, make recommendations on applications, and award the Purple Heart Medal to Air Force military members and the Defense of Freedom Medal to Air Force civilians. A key aspect of an awards and decorations program is its consistent application. Accordingly, board members will evaluate applications on the basis of criteria and policy effective when the applicant was wounded or injured received as a direct result of enemy actions (e.g., gunshot or shrapnel wounds, hand-to-hand combat wounds, forced aircraft bailout injuries, etc.). In addition, it is necessary the wound required or received treatment by medical personnel. Indirect injuries do not meet the criteria for award of the Purple Heart. These include, but are not limited to, injuries received while seeking shelter during mortar or rocket attacks, aircraft bombings, grenades, and injuries incurred while serving as an aircrew member or in a passenger status because of the aircraft's evasive measures against hostile fire. For example, if an Airman hits his head causing a laceration while entering shelter, the laceration is a result of indirect injury as it was not caused by the mortar or rocket attack. 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. Requests must consist of the following:

a. A detailed personal account of the circumstances surrounding the injury to include specifics as to how the injury occurred, exact date of injury, unit of assignment, and rank held at the time of the injury.

b. Medical documentation from the time of the incident to substantiate medical treatment was received. If medical documentation is not available, a statement from a medical officer

(military or civilian) attesting an examination revealed an injury of the type incurred would or should have received medical treatment at the time of the incident may be submitted. Statements from individuals not substantiated by either medical or official records will not be considered sufficient evidence of wounds. In this respect, entries on Reports of Separation are not considered official. Concerning service-related conditions noted by the Veterans Administration (VA), the injury must have been a direct result of the enemy and meet the Purple Heart criteria. Not all service-connected conditions, as determined by the VA, were caused by the enemy.

c. Eyewitness account from an individual who witnessed the injury and can attest to the circumstances surrounding the personal account. In the event eyewitness account from individuals is unable to be obtained, it is the responsibility of the applicant to provide other creditable inputs.

Purple Heart Bulletin - Requests for Award of the Purple Heart. Guidance AFI 36-2803, *The Air Force Military Awards and Decorations Program*, Table 3.9. AFPCI 36-114, *Purple Heart Review Board*. All Purple Heart requests must exhibit that the wound or injury was the result of enemy action; the wound for which the award is made must have required treatment; and treatment of the wound shall be documented in the Service member's medical/health record. Active duty members reported as casualties on casualty messages are automatically considered, by virtue of being reported as casualties, by the AFPC Purple Heart Review Board for eligibility. Members not reported as casualties through the AFPC Casualty Matters Division must provide to the Military Personnel Section (MPS) the following information/documents in order to be considered for the Purple Heart:

a. Signed memorandum from the injured member requesting the Purple Heart and explaining how the injuries occurred.

b. Signed official medical documentation identifying the source, type, treatment, and date of injury.

c. A completed DECOR6, signed by the member's squadron commander or equivalent. The MPS will forward those documents to AFPC Recognitions.

AIR FORCE EVALUATION

AFPC/DP3SP recommends denying award of the Purple Heart. After a thorough review of the documentation provided by the applicant and his official military record to possibly provide administrative relief, they are unable to verify the award of the Purple Heart. In accordance with AFMAN 26-2806, paragraph A2.10, the Purple Heart medal was established by General George Washington on 7 August 1782. It was reestablished by the War Department General Order No. 3, 1932, and is currently awarded pursuant to Executive Order 11016, 25 April 1962, subject to the provisions in: 10 U.S.C. § 1127, 10 U.S.C. § 1129, 10 U.S.C. § 1129a, 10 U.S.C. § 1131; Public Law 104 – 106: Department of Defense Instruction 1348.33, *DoD Military Decorations and Awards* and DoD Manual (DoDM) 1348.33, Vol III, *Manual of Military Decorations and Awards*. The Medal is awarded to any Service member who is killed or wounded as a result of enemy action. The wounds must have required treatment by a medical officer. The Purple Heart differs from other decorations in that a member is entitled to the decoration upon the awarding authority determining the specified award criteria have been met.

The applicant's request has been denied twice by 9AF (AFCENT) per the memoranda dated 10 June 2021 and 16 September 2021, as his request does not meet the criteria. Specifically it states, "No medical documentation was provided or identified from the time of the injury or TMDS for this event. You did complete a Post Deployment Health Assessment following your deployment. You reported experiencing a blast or explosion and noted you saw a provider three

times, but no symptoms were reported post incident on this form. In order to reconsider this submission, the Commander will require additional medical or other applicable documentation....”

As the documentation, provided by the applicant with his submission, is dated prior to the denials from 9AF (AFCENT), it appears that there is no new medical or other applicable documentation describing the specific injuries sustained and treatment rendered that has not already been reviewed by 9AF (AFCENT). The applicant does not meet the established criteria for the award of the Purple Heart; therefore, absent new relevant medical documentation, there is no evidence of an error or injustice.

The complete advisory opinion is at Exhibit C.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 March 2023 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant’s contentions. In this regard, the Board determined the documentation provided by the applicant in his application pre-dates the AFCENT denials and therefore does not contain any new medical or other applicable documentation describing the specific injuries sustained and treatment rendered that has not already been reviewed. As such, the Board finds the applicant does not meet the established criteria for the award of the Purple Heart according to AFMAN 36-2806. Therefore, the Board recommends against correcting the applicant’s records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board’s understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03445 in Executive Session on 18 May 2023:

, Panel Chair
, Panel Member

, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 22 October 2021.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DP3SP, dated 19 August 2022.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 March 2023.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR