IN THE CASE OF: [redacted]

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230002137

APPLICANT REQUESTS: entitlement to the Purple Heart (PH) and a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders: BG-332-0003, U.S. Army Installation Management Command, 28 November 2017
- Orders: BG-332-0003 (A1), U.S. Army Installation Management Command, 24 September 2018
- 32 pages of medical documentation, 15 November 2018 to 5 February 2019
- 3 DA Forms 2823 (Sworn Statement), 8-12 November 2021
- Memorandum for Record (MFR), Defense Health Agency, 7 January 2022
- Enlisted Record Brief (ERB), 29 June 2022
- DA Form 4187 (Personnel Action), 8 July 2022
- Memorandum, U.S. Army Human Resources Command (AHRC), 28 September 2022

FACTS:

1. The applicant states, in effect, he has in depth records of lasting effect, post injuries, sustained in direct combat with the enemy. He was unable to be treated at a higher echelon of care following the incident due to continuing combat conditions which lasted several days post injury. The applicant experienced loss of consciousness (LOC) and would have been restricted from full duty for a period of greater than 48 hours if the conditions during the incident would have allowed him being medically evacuated. The applicant has continued to suffer from physical issues from the incident as detailed in his PH packet.

2. The applicant is currently serving in the Regular Army in the rank/grade of staff sergeant (SSG/E-6). Evidence shows he served in the imminent danger pay area of Afghanistan from 29 March 2018 to 2 September 2018.

3. The following 32 pages of medical documentation, dated between 15 November 2018 and 5 February 2019, show:

a. 15 November 2018, slight headache, requests to be taken off jump status. Reports being involved in 1 vehicle accident, 4 major bomb explosions, 200 minor explosions, and falling out of a truck at 3-4 feet while under ambush. Previously seen by Traumatic Brain Injury (TBI) clinic. Review of note does not suggest limitation of duty, though some is likely reasonable.

b. 21 November 2018, multiple symptoms worsened since redeployment. History of malaria in September 2016. Also found to have pituitary microadenoma. Applicant is an explosive ordnance disposal technician with a history of multiple blast exposures. Reported to have extreme fatigue, poor sleep, nightmares, headaches, dizziness, blurry vision, word finding difficulty, mood liability, anxiety, and trouble concentrating. Symptoms ongoing for over a year, worsening.

c. 23 November 2018, referral from primary care manager for TBI due to a history of blast exposures causing TBI with residuals. Magnetic Resonance Imaging (MRI) brain impression: Persistent focus of abnormal signal in the posterior pituitary, but unchanged since 17 March 2017. Differential diagnosis has been discussed and is not significantly different than discussed prior imaging.

d. 26 November 2018, Sleep Study Lab for hypersomnia, unspecified. Diagnosed with TBI a couple weeks ago. History of TBI and deployments with concomitant insomnia and nightmares. Diagnosed with other sleep disorders, insomnia, unspecified, nightmare disorder, somnolence, snoring. Released without limitations.

e. 30 November 2018, Intrepid Optometry Clinic, Unspecified Visual Disturbance. Findings most likely related to applicant's injuries. Refraction Status: low; Binocular Status: Low blur; Accommodative Status: Insufficient Amps; Light Sensitivity: Outdoors, none inside per applicant; Ocular Health: Unremarkable.

f. 5 December 2018, Neuro-Rehab Physical Therapy, Unsteadiness on feet. Initial Evaluation. Applicant claimed 4 significant blasts in a 10 minute span while deployed in 2018. Daily on/off headaches, 1x2 migraines a week, dizziness – vertigo type random. Symptoms worsen with lack of sleep. Diagnosed with balance deficits, prognosis good.

g. 18 December 2018, Neuro-Rehab Physical Therapy, reevaluation with no new claims. Applicant claimed no change in headache/dizziness upon exit. Demonstrated balance deficits.

h. 26 December 2018, Neuro-Rehab Physical Therapy, tolerated treatment well. Applicant claimed headache 2/10. Diagnosed with unspecified intracranial injury with

loss of consciousness of unspecified duration, subsequent encounter; personal history of TBI, highest level of severity unknown; headache; unsteadiness. Released without limitations.

j. 3 January 2019, Intrepid Optometry Clinic, follow up sensorimotor evaluation. Applicant still having trouble reading for prolonged periods; balance issues. Return if symptoms return or arise. Otherwise discharged from Neuro-Optometry.

k. 14 January 2019, Neuro-Rehab Physical Therapy, headache 0/10; tolerated treatment well. Struggled with balance control towards his left side.

l. 22 January 2019, Sleep Disorders Clinic, polysomnography with 4 plus additional sleep parameters.

m. 5 February 2019, Concussion Care Clinic, telephone consult for applicant to be cleared for duty from TBI. Released from both vestibular and vision therapy. Follow up to get discharged for TBI. Post-Traumatic Stress Disorder, unspecified; released without limitations.

4. On 8 November 2021 the applicant rendered a sworn statement, wherein he states, in effect:

a. On 27 May 2018, he was on a classified combat mission in Afghanistan. The element had been in contact with the enemy and had sustained and evacuated casualties before dawn. At 1100 hours, his element was ambushed by an assessed 12 fighters with machine guns and rocket propelled grenades (RPG). Several of the partner force were injured and a U.S. contractor was killed. The applicant and a medic began rendering aid to the partner force and went forward to recover the contractor. During this time, they were engaged by two RPG strikes within 10 meters of their position, which resulted in enough pressure he thought his teeth were blown out. The second strike caused his ears to ring and forced him to a knee. After retrieving the contractor, their element dropped Aerially Delivered Munitions (ADM) at danger close range to defeat the ambush. Two ADMs were called in, one at 46 meters and one at 52 meters of his position. The resulting overpressure from the ADMs caused structural damage to the building they were using for cover and caused him to briefly lose situational awareness and coherence. He does not remember if he lost consciousness but has a gap in his memory. The next thing he remembered was loading the contractor on a litter and carrying him to the helicopter landing zone while taking effective sniper fire. After signaling the helicopter to evacuate the area, he moved to the medic's position and passed out for approximately 6 hours with a few moments of regained consciousness due to sniper fire. They subsequently exfiltrated under the cover of darkness.

b. Neither elected to receive a TBI evaluation because they did not want to miss any upcoming missions and were not showing any obvious symptoms. However, while at his promotion board on 1 November 2018, members of the board noticed him swaying at the position of attention and recommended he get evaluated for TBI. On 7 November 2018, he received a Neurology consult and was diagnosed with TBI. He was treated at Intrepid Spirit until 14 February 2019. The treatment included neurophysical and visual rehabilitation due to frequently losing balance, weekly migraines, and headaches, losing sense of direction, and having visual distortions. His symptoms improved and he was eventually deemed fit for duty. He recently found out the medic also sustained a TBI or multiple TBIs, likely from the same event. His injuries were apparent on brain scans and evaluation for which he is receiving a medical retirement.

5. Sworn statements from SSG ████, the medic, dated 9 November 2021 and SSG ████, the Joint Terminal Attack Controller, dated 12 November 2021, essentially mirror the applicant's statement of events.

6. The Defense Health Agency rendered a memorandum for record, dated 7 January 2022, Subject: Traumatic Brain Injury (TBI) Diagnosis and Treatment, wherein the Chief, Department of Brain Injury Medicine, Director, Intrepid Spirit Center, states, in effect, the applicant completed an initial evaluation on 13 November 2018, for several conditions that began or worsened after sustaining a mild (m)TBI during his deployment to Afghanistan in 2018. The applicant's account of his treatment by medical providers at the time of initial evaluation is consistent with the statements other Soldiers present at the time of the injury event. Following initial evaluation, the applicant received multi-disciplinary treatment within the Intrepid Spirit Center for a number of symptoms, including disturbances in vision and balance performance, as well as recurrent headaches and sleep disruption. He completed multi-disciplinary treatment and was discharged with no duty restrictions or limitations on 19 February 2019.

7. A DA Form 4187, dated 8 July 2022, shows he was recommended for award of the PH for wounds/injuries received in action, directly caused by the enemy, on 27 May 2018, in Afghanistan.

8. On 28 September 2022, the Chief, Awards and Decorations Branch, AHRC, disapproved his request for the PH for injuries received while deployed in support of Operation Freedom's Sentinel. After a thorough review of the information provided, the forwarded recommendation for award of the PH did not meet the statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8g., stating, "the PH is not authorized for mTBI or concussions that do not either result in extended loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function." He further stated they could not use a later diagnosis of mTBI to justify the award as they cannot conclusively link it to the specific incident in question.

9. Army Regulation 600-8-22 contains the regulatory guidance pertaining to entitlement to the PH and 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. Additionally, when based on a TBI, the regulation stipulates the TBI or concussion must have been severe enough to cause a loss of consciousness; or restriction from full duty due to persistent signs, symptoms, or clinical findings; or impaired brain functions for a period greater than 48 hours from the time of the concussive incident.

10. Army Regulation 15-185 (ABCMR) states an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found insufficient evidence to support a conclusion that the applicant incurred TBI severe enough to cause a loss of consciousness; restriction from full duty due to persistent signs, symptoms, or clinical findings; or impaired brain function for a period greater than 48 hours from the time of a concussive incident. Based on a preponderance of the evidence, the Board determined the decision by the Chief, Awards and Decorations Branch, AHRC, to disapprove award of the Purple Heart was not in error or unjust.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	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 correction of the records of the individual concerned.

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. Army Regulation 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The PH 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.

b. A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required. However, the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound will be documented in the Service member's medical and/or health record. Award of the PH may be made for wounds treated by a medical professional other than a medical officer, provided a medical officer includes a statement in the Service member's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

c. When contemplating an award of the PH, the key issue that commanders must take into consideration is the degree to which the enemy caused the injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite but is not the sole justification for award.

d. Examples of enemy-related injuries that clearly justify award of the PH include concussion injuries caused as a result of enemy-generated explosions resulting in a mTBI 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.

e. Examples of injuries or wounds that clearly do not justify award of the PH include post-traumatic stress disorders, hearing loss and tinnitus, mTBI or concussions that do not either result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function.

f. When recommending and considering award of the PH for a mTBI or concussion, the chain of command will ensure that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

2. Army Directive 2011-07 (Awarding the PH), dated 18 March 2011, provides clarifying guidance to ensure the uniform application of advancements in medical knowledge and treatment protocols when considering recommendations for award of the PH for concussions (including mTBI and concussive injuries that do not result in a loss of consciousness). The directive also revised Army Regulation 600-8-22 to reflect the clarifying guidance.

a. Approval of the PH requires the following factors among others outlined in Department of Defense Manual 1348.33 (Manual of Military Decorations and Awards), Volume 3, paragraph 5c: wound, injury or death must have been the result of an enemy or hostile act, international terrorist attack, or friendly fire; and the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound shall be documented in the Soldier's medical record.

b. Award of the PH may be made for wounds treated by a medical professional other than a medical officer provided a medical officer includes a statement in the Soldier's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

c. 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 Navy, or an officer in the Air Force designated as a medical officer in accordance with Title 10, United States Code, Section 101.

d. 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 (for example, independent duty corpsmen and Special Forces medics). Basic corpsmen and medics (such as combat medics) are not physician extenders.

e. When recommending and considering award of the PH for concussion injuries, the chain of command will ensure that the criteria are met and that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

f. The following nonexclusive list provides examples of signs, symptoms or medical conditions documented by a medical officer or medical professional that meet the standard for award of the PH:

(1) Diagnosis of concussion or mTBI;

(2) Any period of loss or a decreased level of consciousness;

(3) Any loss of memory of events immediately before or after the injury;

(4) Neurological deficits (weakness, loss of balance, change in vision, praxis (that is, difficulty with coordinating movements), headaches, nausea, difficulty with understanding or expressing words, sensitivity to light, etc.) that may or may not be transient; and

(5) Intracranial lesion (positive computerized axial tomography (CT) or MRI scan.

g. The following nonexclusive list provides examples of medical treatment for concussion that meet the standard of treatment necessary for award of the PH:

(1) Limitation of duty following the incident (limited duty, quarters, etc.);

(2) Pain medication, such as acetaminophen, aspirin, ibuprofen, etc., to treat the injury;

(3) Referral to a neurologist or neuropsychologist to treat the injury; and

(4) Rehabilitation (such as occupational therapy, physical therapy, etc.) to treat the injury.

h. Combat theater and unit command policies mandating rest periods or downtime following incidents do not constitute qualifying treatment for concussion injuries. To

qualify as medical treatment, a medical officer or medical professional must have directed the rest period for the individual after diagnosis of an injury.

3. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

//NOTHING FOLLOWS//