

IN THE CASE OF: ██████████

BOARD DATE: 21 December 2023

DOCKET NUMBER: AR20230002461

APPLICANT REQUESTS: reconsideration of his previous request for entitlement to the Purple Heart 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 281-046, Headquarters, XVIII Airborne Corps and Fort Bragg, 7 October 2004
- 5 pages of Standard Form (SF) 600 (Chronological Record of Medical Care), 2008
- MFR, U.S. Army John F. Kennedy Special Warfare Center and School, 7 March 2013
- Sales Shipment Invoice, 8 March 2013
- Memorandum for Record (MFR), Character Reference, 13 March 2013
- Memorandum, Womack Army Medical Center, 28 March 2013
- MFR, Headquarters and Headquarters Company, 20th Engineer Brigade, 5 April 2013
- Self-Authored Statement, 29 April 2013
- DA Form 4187 (Personnel Action), 7 May 2013
- Officer Record Brief (ORB), 15 May 2013
- DA Form 2823 (Sworn Statement), JJR, 23 July 2013
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 December 2013
- Memorandum, ████████, 21 September 2014
- Letter, ██████, 7 April 2015
- DD Form 215 (Correction to DD Form 214), 26 October 2020
- Privacy Release Form, 6 October 2022
- Email, ██████, 21 February 2023
- Letter, Army Review Boards Agency (ARBA), 23 February 2023
- Email, ██████, 27 October 2023
- Letter, ARBA, undated
- Letter, ARBA, 13 November 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190001499 on 3 November 2020.

2. The applicant provides new evidence or argument which warrants consideration by the Board.

3. The applicant states, in effect, in 2004-2005, nobody was screened for a traumatic brain injury (TBI). If you did not have a bullet wound or shrapnel, you were considered able to continue on the mission. In May 2005, he was subject to both a vehicle borne improvised explosive device (VBIED) and Improvised Explosive Device (IED) which left him dazed and confused to the point where his first sergeant (1SG) knew something was wrong with him. A week after the explosions he found himself walking in his sleep without a weapon due to combat stress. He still has dizzy spells, hearing loss, and tinnitus from the explosions. It was not until 2012 that his command sergeant major (SGM) submitted him for the Purple Heart. This reconsideration request contains sworn statements from multiple Soldiers who were on his team in Iraq and witnessed his behavior immediately following the blasts as well as medical records showing hearing loss and TBI.

4. The applicant was appointed as a U.S. Army Reserve Commissioned Officer of the Army, Engineer Corps, on 18 May 1997. Evidence shows he served in the following locations:

- Iraq from 19 November 2004 to 28 October 2005
- Iraq from 8 July 2007 to 8 January 2008
- Haiti from 19 January 2010 to 12 March 2010
- Afghanistan from 20 October 2010 to 18 October 2011

5. Having sufficient service for retirement, on 31 December 2013, he retired. The DD Form 214 he was issued does not reflect award of the Purple Heart.

6. The applicant previously provided:

a. Personal statement, 29 April 2013, in which he provided the details surrounding his TBI. He stated, in effect, on 24 May 2005, while leading a convoy on a return mission to Camp Victory, Baghdad, from Camp Anaconda, Balad, they were halted due to an IED explosion outside of the Taji area. When the blast occurred, he was a troop commander, positioned in the lead vehicle. He was standing outside the vehicle when the IED exploded. Based on his years of experience as an engineer officer he assumed he was fine because there was no shrapnel damage. They cleared the area and

continued the mission. On 5 May 2005, during a return mission from Balad Airbase, the convoy had three separate enemy encounters, requiring him to use controlled fire to move through two IED/ambush sites, and one possible VBIED. There was another event where he was stopped in a traffic jam with Iraqi Soldiers out in front, when an extremely loud IED explosion caused ringing in his ears, but there was no significant damage because civilian vehicles shielded them from any shrapnel. He experienced numerous similar events during his deployment, which left him with ringing ears, and spending a day or so feeling like his head was stuffy or ears plugged. He assumed his hearing would return to normal and he felt that it did. After the deployment, he knows he underwent testing that showed hearing loss but there is nothing in his records that shows he was ever looked at following his first deployment. However, following his second deployment a medical examination showed he had hearing loss, which will affect him for the rest of his life. He struggles daily with his hearing loss and worries that not being awarded a Purple Heart will hamper any attempts to receive medical assistance in the future.

b. Medical Documents which included the following:

(1) Medical Review Statement, dated 5 April 2013, provided by the Brigade Senior Physician Assistant (PA), Captain (CPT) JJR, with a comparable sworn statement. During the deployment the PA was serving as the SGM, assigned to Headquarters and Headquarters Company, 20th Engineer Brigade, with duty at the XVIII Airborne Corps Staff Engineer Section, Iraq. The applicant was his commander during the period December 2004 to November 2005. As SGM, his duties included monitoring the Significant Activities logs. Amongst those reports were several incidents involving the 20th Engineer Brigade Combat Support Team (CST), which the applicant commanded. He further states:

- the CST's vehicles had minimal small arms protection, no blast protection, no sonic isolation, and no air conditioning
- the CST was exposed to multiple IED blasts, several small arms engagements, and rocket propelled grenade (RPG) attacks
- the CST personnel received various injuries, some visible, others not so visible
- the applicant, as team commander, was often left exposed to blasts and fire
- any physical damage from the constant sound of high-volume radio traffic, friendly fire within inches of his head, and RPG warheads detonating on the roadway beneath him, was not noticed in the heat of battle or during the constant missions during his deployment
- the applicant was not concerned about the ringing in his ears and believed that if he was breathing and still standing, that he needed to stay in the fight
- upon the applicant's request, he reviewed the applicant's medical records to determine the approximate time he suffered from hearing loss

- hearing loss appeared in January 2007, and the provider attributed the loss to his deployment
- there was no medical record showing high intensity noise exposure in the 14 months between redeployment in November 2005 and the January 2007 documented audiogram
- the criteria for combat awards such as the Purple Heart specify that the injury must be caused by enemy action that results in a need for medical attention; a review of the medical records within the context of deployment would suggest that his hearing loss was indeed caused by the enemy IEDs, and RPGs detonations, even though medical attention was not immediately applied
- medical records indicate the applicant was much more severely injured by the enemy actions than originally diagnosed, having been seen dozens of times for his sensorineural hearing loss, caused by enemy action, over a seven-year span, which required extensive medical attention

(2) Chronological Records of Medical Care, which show the applicant was treated for hearing loss and evaluated for hearing aids, during the period 25 February 2008 to 14 March 2013. He also provided a receipt for hearing aids he received in March 2013.

(3) Memorandum, 28 March 2013, from the Chief of Audiology, Womack Army Medical Center, stating, the applicant had classic noise induced hearing loss, secondary to service-connected noise exposure, and Global War on Terrorism related. The degree of hearing loss fell within the range of mild to moderate loss.

c. Character reference dated 7 March 2013, from Sergeant First Class (SFC) RS, the noncommissioned officer in charge for the 20th Engineer Brigade Combat Security Detail (CSD), during the period 2004 to 2005, with comparable sworn statement. He recounts a mission on 24 May 2005, when the applicant was standing outside his vehicle when an IED went off, and a second occasion during the summer of 2005, when the applicant was clearing traffic a short distance from a VBIED when it went off. During their missions the team was exposed to enemy fire and explosion, which he is confident led to the applicant's hearing loss. At the time only shrapnel and bullet wounds were considered for award of the Purple Heart.

d. Character reference dated 13 March 2013, from SFC [REDACTED], operations sergeant, Headquarters and Headquarters Company, 20th Engineer Brigade during the period 2004 to 2005, with corresponding sworn statement. This individual stated, in effect, that while deployed to Iraq, their CSD was exposed to enemy gunfire and explosions. However, only shrapnel and bullet wounds were submitted for the Purple Heart. He is confident that the applicant's duties as the CSD leader, where he faced numerous

incidents from direct contact with the enemy, led to his significant hearing loss. He was proud to serve by his side in combat.

e. Witness statement dated 7 April 2015, from retired 1SG [REDACTED], Headquarters and Headquarters Company, 20th Engineer Brigade, during the period 2004 to 2005. He stated, in effect, that on 24 May 2005, the CSD encountered an IED just outside of Camp Taji and the Explosive Ordnance Disposal (EOD) team had to be called in to detonate the IED. The IED went off as the EOD arrived on site. At the time of the explosion, the applicant was moving around to ensure all the troops were safely inside their vehicles and he was standing directly next to the lead vehicle that was just 50 to 70 meters in front of the IED when it exploded. The applicant stated he was shaken up a little, but he did not have any shrapnel wounds, so they continued on the mission. A second incident occurred a few weeks later where the applicant exited his vehicle to clear a path through traffic and there was a massive explosion from a VBIED. The applicant made it back to the vehicle but, again, he was clearly shaken up. He was allowed to miss the next few days/missions because of headaches and dizziness. The overall thought was that he would get back to leading missions. He noticed that over the course of the next few months the applicant lost his appetite and suffered from headaches that he treated with a few Motrin in order to complete the mission. One morning the applicant reported that he had awakened the previous night only to find himself a far distance from his sleeping quarters, and without his weapon. The applicant asked for his assistance, and he referred the applicant to the Combat Stress Facility. It was private, which would allow the applicant to be treated without the fear of senior leadership finding out. The applicant was subscribed a sleep aid so he could reestablish a sleep pattern. His appetite also came back. His headaches continued but they contributed them to the heat and being dehydrated. The month of May was the unit's worse month for enemy encounters, and he believes that the applicant's issues resulted from his close proximity to the two major blasts that occurred while conducting operations, and the stresses associated with combat. Had they known about the seriousness of TBI at that time, they would have immediately sought medical attention. Unfortunately, in the early stages of the war seeking medical attention for injuries such as TBI, and post-traumatic stress disorder (PTSD), were perceived as signs of weakness and many Soldiers, such as the applicant, were reluctant to do so.

f. Letter of Support, undated, from retired CPT [REDACTED], who states he is a multiple Purple Heart recipient and life member of the Military Order of the Purple Heart, West Virginia, as well, as a Silver Star and Bronze Star Medal with "V" Device recipient. He was not an eyewitness to the events involving the applicant; however, he has looked closely at the 24 May 2005 incident where the applicant was involved in an IED attack. He feels strongly that the medical professionals based [their diagnosis] upon medical records from the Department of Veterans Affairs, and that this blast was the primary cause of the TBI, which is documented in his records. In 2005, TBI was not fully understood, and he has had many Soldiers who were originally thought to have PTSD,

actually have a TBI caused by an IED blast. Unfortunately, in the confusion of war it has become difficult to get these Soldiers' issues noted, and to get them the proper treatment and recognition for their combat injuries. He has known the applicant for years and the applicant is a man of unquestioned integrity. He finds valor in the applicant's actions based on the witness statements which clearly show that the applicant exposed himself to enemy fire to clear the kill zone and save Soldiers. It is his belief, based on his review of the medial records, eyewitness accounts, including one from a former 1SG, his personal experience in combat, and being Purple Heart recipient, that the applicant suffers from a TBI caused by an enemy IED blast in Iraq on 24 May 2005. Therefore, he meets the criteria for award of the Purple Heart. He also finds that the level of valor shown on 24 May 2005 should be considered for award of the Bronze Star Medal with "V" Device.

7. On 30 November 2015, the U.S. Army Human Resources Command (AHRC), Soldiers Programs and Services Division, notified his state senator that they remained unable to take favorable action regarding awarding the applicant the Purple Heart. The AHRC, Surgeon General reviewed the medical documentation provided and the applicant's medical records and determined there was insufficient information to support an award of the Purple Heart for incidents that occurred on 5 May 2005 and 24 May 2005.

a. The applicant was evaluated on 8 November 2005, and 31 January 2008, following his deployments to Iraq and he did not indicate any injuries or medical complaints. In February 2008, he was evaluated with sensorineural hearing loss and claimed a history of past head injuries but did not show any signs or symptoms of a concussion or TBI.

b. On 7 October 2009, he was evaluated at a TBI clinic after sustaining a head injury during a routine training jump, it was noted that he had multiple documented head injuries, including being knocked unconscious on landing; however, he was not diagnosed with a concussion or TBI as a direct result of enemy action.

8. On 28 November 2018, the AHRC, notified the applicant and his state senator, that they remained unable to award the applicant the Purple Heart, based on the AHRC Surgeon General's review of the medical documents provided, and the applicant's medical records.

9. The applicant provides new evidence in the form of an email from retired CPT [REDACTED], 21 February 2023, in which he states, in effect, that he is the past National Commander of the Military Order of the Purple Heart and has worked on the applicant's case for years. He is perplexed by the denials based on a lack of treatment in theater specific to the wounding of the applicant because he possesses a treatment he was given related to an incident and his issues are part of the common characteristics of a TBI which he

was later diagnosed with. The applicant has multiple statements including one from a Soldier who is now a physician, he has the eyewitness accounts, have found reports related to his blast and clearly had he been wounded after 2011, he would have been treated and properly awarded the Purple Heart. He has seen many TBI Purple Hearts get approved with much less documentation and it's troubling to him and his organization because they know that to be factual. He is not sure given his first-hand knowledge of this process, perhaps it's something very simple that a good staffer can figure out and get corrected. He hopes so. As a 3-time recipient of the Purple Heart and former National Commander of the Military Order of the Purple Heart who has seen dozens of recent TBI Purple Hearts processed, he can swear under oath that he has seen much lesser packets with no treatment outside of a combat lifesaver statement get their awards in much less time. His previous statements stand; he believes without any doubt that the applicant is entitled to the Purple Heart.

10. The ABCMR previously considered and denied the applicant's request in Docket Number AR20190001499, on 3 November 2020.

11. Army Regulation 600-8-22 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.

12. 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 a concussion injury severe enough to cause either loss of consciousness or 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. In the absence of evidence confirming the applicant experienced a concussive injury of such severity that it met all criteria, the Board determined there is an insufficient basis for overturning AHRC's decision to deny award of the Purple Heart.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20190001499 on 3 November 2020.

2/27/2024

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

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 Purple Heart 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 Purple Heart, 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 Purple Heart include concussion injuries caused as a result of enemy-generated explosions resulting in a mTBI or concussion severe enough to cause either LOC 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 Purple Heart include PTSD, hearing loss and tinnitus, mTBI or concussions that do not either result in LOC 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 Purple Heart 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 Purple Heart), 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 Purple Heart for concussions (including mTBI and concussive injuries that do not result in a LOC). The directive also revised Army Regulation 600-8-22 to reflect the clarifying guidance.

a. Approval of the Purple Heart 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 Purple Heart 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 Purple Heart 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 Purple Heart:

- (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 or magnetic resonance imaging scan).

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

- (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.
- (5) Hearing loss.

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 (ABCMR) 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//