IN THE CASE OF: [redacted]

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230002921

APPLICANT REQUESTS: entitlement to the Purple Heart and a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Permanent Orders Number 204-047, Headquarters, Multi-National Division (Baghdad), Camp Liberty, Iraq, 23 July 2006
- DD Form 2795 (Pre-Deployment Health Assessment), 22 February 2008
- Standard Form (SF) 600 (Chronological Record of Medical Care), 27 March 2008
- DD Form 2796 (Post-Deployment Health Assessment), 24 March 2009
- DD Form 2900 (Post-Deployment Health Re-Assessment), 18 June 2009
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 June 2009
- 3-page letter, [redacted] Neurosurgical Specialists, 27 March 2017
- Department of Veterans Affairs (VA) Rating Decision, 7 September 2017
- 2 Witness Statements, 21 August 2019, 2 October 2019
- 2-page Applicant Narrative, 2 October 2019
- Memorandum, U.S. Army Human Resources Command (AHRC), 22 February 2022
- Memorandum for Record, 391st Military Police Battalion, 21 October 2023

FACTS:

1. The applicant states, in effect, he took indirect fire and received a service-connected disability for migraines related to traumatic brain injury (TBI). He was advised not to return to duty for a period qualifying for the Purple Heart; however, due to the needs of his unit while in a combat zone, he continued serving with his sustained injury. For the past 15 years, the injury has continued to negatively impact him as documented by the VA and his neurologist.

2. The applicant is currently serving in an Active Army Reserve (Troop Program Unit) status in the rank/grade of lieutenant colonel (LTC/O-5). Evidence shows he served in the imminent danger pay area of Iraq from 6 December 2005 to 5 December 2006.

3. The applicant provides:

a. 2-page narrative in which he states, in effect, on 27 March 2008, at approximately 1400 hours he was returning to his company living area on Forward Operating Base (FOB) Rustamiyah, Iraq, when the alarm sounded signaling an incoming indirect fire attack.

(1) Seeking better cover, he entered one of the nearby rooms assigned to Soldiers from the company. Once inside the room he found other Soldiers inside and he remained near the metal door due to limited space. Shortly after entering the room there was a loud and very close explosion that seemed to shake everything around him. The area outside of the room was obscured with smoke and dust leading him to believe the explosion was extremely close to his position.

(2) Immediately following the explosion, he felt a severe headache and his legs became weak causing him to go to a knee inside the room. He saw stars at the onset of the headache however they dissipated shortly after. His body felt weak all over, he began to feel tired as though he could not keep his eyes open, and he had a strange taste in his mouth. As he exited the room smoke and dust remained in the air while efforts to gain entry to the room beside the one he had entered began.

(3) Once entry was gained and the room found empty a large hole near the window of the room was observed with large pieces of metal lying around the room and on the bed. These pieces of metal had writing in a foreign language on them and appeared to be the remaining pieces from a rocket which impacted the area. After clearing the room and ensuring no casualties were in the area, the opposite side of the building, where the impact was believed to have occurred, was inspected. He personally observed a “splattered” looking blast pattern on the wall surrounding the window where the hole had been observed from inside the unoccupied room. The total distance from the impact to where he was standing was approximately 20 feet. While the site exploitation was happening, he spoke with one of the company medics, explained the headache he had and was given Tylenol.

(4) After ensuring the Soldiers were accounted for and still feeling tired with a severe headache, he decided to go to the FOB Aid Station. The time of visit according to his treatment record was 1451 hours on the same day of the attack, 27 March 2008. Following his evaluation, he was instructed to remain on quarters and report back if the headache became worse or lasted several days. Upon leaving the Aid Station he disregarded the quarters and re-visit directive. His company had recently arrived in full

on the FOB and as the company executive officer he was responsible for RIP inventories in order to assume full responsibility for the AO and equipment left in theater. Additionally, he was the senior ranking company representative on the FOB as the company commander was conducting RIP activities in the company AO with their partnered unit. These factors made it difficult, if not impossible, for him to remain on quarters, or spend time revisiting the aid station for an additional evaluation.

(5) Due to casualties from the IDF attack all communication with non-military or mission sources was temporarily halted. During this "blackout" period he sat in on battalion commander update briefs for his company commander and saw his name on a list of casualties related to the attack. He informed the battalion commander that he was fine and capable of doing his job because of the unique situation and time frame of unit arrival in country currently underway on the FOB. He would later be made aware that his family had also received phone calls from the battalion rear detachment advising them that he had been listed as a casualty for an unspecified head injury. His family was advised to prepare for a trip to Germany should he have to be evacuated from theater.

(6) As the next few days passed the headache dissipated though he felt sluggish and overly tired once it had gone. Over the remaining 12-month deployment he would continue to experience headaches mostly located in the frontal part of his head between the temples. The headaches caused extreme tiredness and sensitivity to light and a feeling he was slurring his speech and could not concentrate. He treated the headaches with Tylenol or Motrin and was successful, at times, in reducing the pain he felt. Due to the high operation tempo and his belief the headaches were either dehydration, lack of sleep or stress, he did not pursue other avenues for evaluation or treatment. It was not until returning from deployment to Fort Hood, TX, that he believed there was a deeper issue since his headaches continued.

(7) Since leaving the active component and entering the US Army Reserve, he continues to experience headaches that cause the same tired and sluggish feelings first felt following the explosion. He has also become increasingly irritable, mostly when a headache is coming on or present, and now experiences an extreme sensitivity to light. He has since received a VA service-connection for his headaches after being evaluated by Atlantic Neurological Specialists on 13 March 2017 and diagnosed with post-concussive syndrome.

b. SF 600, 27 March 2008, shows he was seen for an injury from a terrorist explosion (blast). Developed a headache minutes after blast wave. Applicant was in a room near a recent rocket impact about an hour ago. He instantly complained of an 8/10 headache which was primarily frontal. Denied any nausea or emesis. Denied tinnitus or loss of balance. Primarily felt tired. Took 975mg Tylenol given to him by his medic several minutes after being exposed to the blast. Neurological symptom was

lightheadedness. Scored 29/30 on the Military Acute Concussion Evaluation (MACE). No coordination/cerebellum abnormalities were noted. Second mild headache alleviated with Tylenol, recommended 24 hours quarters, Tylenol 500mg every six hours for pain. Report to the aid station for any change in neurologic signs and evaluation for progression of headache and classification as Grade 1 concussion after 24 hours (Cantu Scale).

c. Post-Deployment Health Assessment, 25 March 2009, notes service in Iraq from 9 March 2008 to 13 March 2009. Applicant noted his health was somewhat worse now than before he deployed. Answered he was wounded, injured, assaulted, or otherwise hurt during the deployment and that he was still having problems related to the event. Noted he was still bothered by bad headaches, numbness or tingling in hands or feet, trouble hearing, ringing in the ears, forgetful or trouble remembering things and increased irritability. Noted that he had experienced a blast or explosion and immediately felt dazed, confused, or "saw stars" and had a concussion.

d. Doctor's notes from [redacted] Neurosurgical Specialists, 27 March 2017, in which the applicant was assessed with post-concussive migraines related to an incident in Afghanistan. Stated he has approximately 5-6 episodes per month and each episode can last from 1 to 4-5 hours. Headaches aggravated by light and noise. Currently taking Maxal for headaches. Recommended the applicant needed to be managed by a migraine specialist.

e. VA Rating Decision letter, 7 September 2017, in which the VA assigned a noncompensable evaluation for his post-concussive migraines (claimed as TBI).

f. Witness statement on behalf of the applicant dated 21 August 2019, from the former commander of 1st Battalion, 66th Armor Regiment who recalls the applicant's name appeared on a casualty briefing he received during a Commander's Update Brief. Although he did not remember when the applicant returned to duty, he knew that the applicant completed the remainder of his deployment.

g. Witness statement on behalf of the applicant dated 11 September 2019, from Retired First Sergeant GWT who claims, in effect, on the afternoon of 27 March 2008, he and the applicant were returning to their living quarters when an alarm sounded warning of incoming enemy rockets. They attempted to make it to their building when the first rocket impacted close by, at which time they immediately hit the ground outside the building as the second rocket impacted on the other side of the building approximately 10 to 15 meters away from them. After the "all clear" was sounded, the applicant complained of a severe headache and went to the Battalion Aid Station to get checked out. Explosive Ordnance Disposal post-blast assessment determined the projectile had been a Chinese 122mm rocket.

h. DA Form 4187, 2 December 2021, in which the applicant requests consideration for the Purple Heart due to injuries sustained in combat on 27 March 2008. His commander or authorized representative recommended disapproval and the Commanding General, 200th Military Police Command disapproved his request noting that it did not meet the criteria for the Purple Heart.

4. On 22 February 2022, the Chief, Awards and Decorations Branch, AHRC, disapproved his request for the Purple Heart for injuries received while deployed in support of Operation Iraqi Freedom. After review of the documentation provided, the forwarded recommendation for award of the Purple Heart did not meet the statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8g. c. "To qualify for award of the Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer." Combat theater and unit command policies, or medical protocols, mandating rest periods, light duty, or "down time" and/or the administration of pain medication (for example, acetaminophen, aspirin, or ibuprofen) in the absence of persistent symptoms of impairment following concussive incidents do not constitute qualifying treatment for a concussive injury and do not justify award of the Purple Heart.

5. Army Regulation 600-8-22 contains the regulatory guidance pertaining to entitlement to the Purple Heart 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.

6. 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 the available evidence insufficient to establish that the applicant incurred an injury of sufficient severity to meet the criteria for the Purple Heart. Based

on a preponderance of the evidence, the Board determined the decision by AHRC to disapprove award of the Purple Heart to the applicant was not in error or unjust.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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.

2/12/2024

X [redacted]

CHAIRPERSON

[redacted]

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 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 Purple Heart 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 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 loss of consciousness). 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 (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 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.

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. The MACE is a standardized mental status examination that is used to evaluate mTBI, or concussion, in theater. This screening tool was developed to evaluate a person with a suspected concussion and is used to identify symptoms of a mTBI. Future MACE scores can be used to determine if the patient's cognitive function has improved or worsened over time. To be most effective, all service members experiencing concussion, or mTBI, should have the MACE administered within the first 24 hours of the event in order to make certain that proper care is administered in a timely fashion. The MACE, in combination with a medical exam, can be used to help determine if it is safe for a service member to return to duty. However, this standardized testing/evaluation was not utilized by the military until 2006.

4. 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//