

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 November 2023

DOCKET NUMBER: AR20230003221

APPLICANT REQUESTS: retroactive award of the Combat Action Badge.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 2 April 2020
- DA Form 199, 24 April 2020
- 2 DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Self-Authored Statement, 14 February 2023
- Memorandum, U.S. Army Human Resources Command (AHRC), 14 August 2020
- DA Form 4187 (Personnel Action), 9 January 2020
- Orders 03-365-00150, 88th Regional Readiness Command, 31 December 2003
- Orders 04-319-00059, 88th Regional Readiness Command, 14 November 2004
- Permanent Order 044-001, Headquarters, U.S. Army Fort Dix, 13 February 2004
- North Atlantic Treaty Organization Travel Order 044-001
- 4 First Person Accounts
- Third Person Account
- DA Form 2823 (Sworn Statement), 14 December 2005
- Memorandum, Headquarters and Headquarters Detachment, 3d Battalion, 304th Regiment (USMA), 6 January 2020
- DA Form 638 (Recommendation for Award), Permanent Order Number 222-80, Army Commendation Medal, 9 August 2004
- 8-page document of Abu Ghraib Prison Complex Mortar and Small Arms Fire Attacks with map
- Memorandum, 94th Military Police Company, 9 January 2006

FACTS:

1. The applicant states, in effect, he thinks AHRC misinterpreted Army Regulation 600-8-22 (Military Awards), paragraph 8-8d(2). He believes an injustice exists since his initial request from 2005 was misplaced and therefore not included with his peers whose

badges were approved. Had his packet been included with his peers, he believes he would have been awarded the badge. He claims, in effect:

a. He requested to be awarded the Combat Action Badge based on an enemy attack during his 2004 deployment to Iraq. During the deployment he served as a military police Soldier with the 428th Military Police Company of South Bend, IN. This was not the company he was a member of prior to deployment. He was involuntarily transferred, or "cross-leveled" into this unit for the purposes of deployment to Iraq in support of Operation Iraq Freedom. His home unit was the 94th Military Police Company of Saco, ME. His status as a cross-level was a contributing factor to him not receiving the badge back in 2005.

b. Upon arriving in Iraq, his unit was attached to the 391st Military Police Battalion and was stationed at Forward Operating Base (FOB) Abu Ghraib Prison in February 2004. The prison was also referred to as the Baghdad Coalition Correctional Facility (BCCF). This timeframe is significant because it was after the events of the "Abu Ghraib Scandal," but before those events were made public. Their mission was unofficially dubbed "Operation Restoring America's Honor" by some of the leadership within the battalion.

c. Once the events of the scandal was made public, Abu Ghraib experienced a drastic uptick to the already frequent enemy attacks. The prison had protests at the gates by day, and mortar attacks by night. In his request for the Combat Action Badge, he focused on a single event. This event was an attack on the prison consisting of mortars, rockets, and small arms fire. The attack in question happened on 20 April 2004. It consisted of an initial volley of mortars, and rockets into the detainee camp area of the FOB with rocket and small arms fire, which were mostly directed at perimeter towers, as well as being lobbed into the camps. Several of the mortars targeted small plywood structures that were used as command posts at the access control points of each of the eight detainee camps within the larger detainee camp area. Other mortars landed within the camps themselves seemingly targeting the detainees. After the initial volley, U.S. personnel scrambled to provide aid to the injured detainees and to secure the camps, which began rioting in an effort to escape. Their individual camps consisted of a simple barrier of triple strand concertina wire separating 5600 detainees from the outnumbered U.S. Soldiers. While this was going on a second wave of mortars came in, in a clear effort to catch the military police in the open. It was successful.

d. He was initially stationed at the in-processing area for the first phase of the attack and began treating casualties. He then moved from the in-processing building to the camps to assist in transporting casualties and providing security in the event of escape due to the rioting. It was there that he was caught in the open for the second phase of the attack. He had 122mm mortars landing well within 100 meters of his position. He, and his peers, were effectively inside the kill range of these weapons. He ended his shift

that day by performing retina scans of the deceased detainees for identification, and then stacking their body bags on trucks. The end result of this attack was approximately 22 detainee deaths, 93 detainees wounded, four U.S. Soldiers earned the Purple Heart, and 17 plus Soldiers earned the Army Commendation Medal with "V" Device.

e. He is confused as to why the Awards and Decorations Branch denied his request based on an excerpt of Army Regulation 600-8-22, paragraph 8-8d.(2), rather than looking at the complete section of the regulation. He was personally present during the events of 20 April 2004 at Abu Ghraib Prison. This is corroborated by Achievement #4 of his DA Form 638 which recommended him for the Army Commendation Medal. He was under hostile fire, performing satisfactorily in accordance with the prescribed rules of engagement, and he was in an area where hostile fire pay, or imminent danger pay was authorized. He believes this to be true without question and is again supported by both the above referenced DA Form 638, DD Form 214, and orders.

f. He believes that he was performing a defensive act by providing security to rioting detainees and aid to those wounded in the attack. Further, he was engaged by the enemy by being present in the area specifically targeted by the second volley of the attack as corroborated by his eyewitness accounts. The enemy specifically targeted an area of the prison which housed detainees in large open camps. Many mortars landed in close proximity to the individual camp command posts at access control points, which were manned by military police. This indicates precise targeting with specific intent to harm U.S. Soldiers. He was present in this area during the attack and believes that they were personally engaged.

g. In November 2005, the 428th Military Police Company redeployed to the United States, and eventually to their homes. The cross-leveled Soldiers that they picked up along the way (the applicant included) received extension orders and were left in Iraq for several more months. The cross-levels were consolidated into a newly formed Alpha Company, 391st Military Police Battalion. He later learned that months after redeployment, members of the 428th Military Police Company were awarded the Combat Action Badge for their participation in the attack on 20 April 2004. However, the cross-leveled Soldiers who were extended, were not included in those requests since they were long forgotten about, having re-joined their home units after their own deployments ended. Out of sight, out of mind. The same scenario played out again when the remainder of the cross-leveled Soldiers all redeployed to their homes. They later learned that the Soldiers organic to the 391st Military Police Battalion were also awarded the Combat Action Badge after they returned home, and again the cross leveled Soldiers were forgotten about. Once more, out of sight, out of mind.

h. When he was originally transferred out of his home unit, four other Soldiers were transferred with him. They attempted to compile their own Combat Action Badge request packets and submitted them to their Reserve civilian unit administrator. He later

learned that out of the five of them, only three were approved. This was confusing as all five of them had referenced the same exact event. It was not until almost 15 years later, that they discovered the two packets that did not result in award of the badge were left sitting in the bottom of an old filing cabinet in the (now former) unit administrator's office. The applicant's included. It appears that they were erroneously separated, and never actually submitted higher for approval. They were not even signed. It is extremely frustrating that some Soldiers received the Combat Action Badge for this attack, and others did not solely based on the timeframe in which their requests were submitted. Even the criteria of the request packets has changed. To the best of his knowledge, today's Combat Action Badge packet requires more documentation, and must be approved by a much higher authority. Had the company admin section included his Combat Action Badge request with those of his peers, he would have earned the badge alongside them. He was omitted through no fault of his own and was denied proper recognition due to what can be described as a clerical error, or negligence.

i. He could have chosen a number of these attacks that he believes qualify him for the award. He has been in buildings directly struck by mortar and rocket fire. He has been caught in the open during other attacks as mortars fell around him. He has sought shelter in bunkers and watched mortars land near his position, been walked on target towards his bunker, and peppered the bunker walls with shrapnel. However, he was only able to obtain the then 15-year-old sworn statements for the attack of 20 April 2004 which he pulled from his original Combat Action Badge packet. He suffers from invisible wounds from his year spent in those prison walls. Finally, being awarded the Combat Action Badge will serve not only as recognition of his experiences, but also as a validation for the struggles he faces today. He believes that an injustice has occurred in denying him the badge that he has earned.

2. The applicant was released from assignment and duty because of physical disability and placed on the retirement list in the rank/grade of Staff Sergeant/E-6, effective 12 June 2020. Evidence shows he served in military occupational specialty 31B (Military Police), in Iraq from 15 February 2004 to 5 February 2005 and 8 July 2010 to 28 April 2011.

3. The applicant provides the following 5 statements from other Soldiers addressing the events that occurred on 20 April 2004:

a. Sergeant (SGT) JMR claims, on 20 April 2004, he was assigned to the hard site section of the BCCF as a guard. As the prison came under attack with small arms, mortar, and rocket fire, he was ordered outside to assess building damage and to watch for escaping prisoners. He could see the other camps within the prison and observed the applicant and other Soldiers pulling guard and tending to injured detainees.

b. SGT ZPC who claims, on 20 April 2004, he was roving around the prison looking for any sign of detainee uprising. The towers relayed a message that men had been spotted with what looked like mortars and AK-47s. They immediately began taking fire inside the camp from mortars, rockets, and small arms fire. He was told to respond to the scene where much of the devastation was taking place and he noticed detainees breaking down the concertina fence trying to escape. He observed the applicant and other Soldiers pulling security and providing medical aid under enemy fire, some landing within 100 meters of them.

c. Specialist (SPC) APR claims, on 20 April 2004, he and the applicant received incoming mortar and small arms fire while responding to the detainee camps at BCCF, Abu Ghraib. Despite the incoming fire, they placed themselves in harm's way to assist with the treatment of wounded detainees.

d SPC BEH claims, in effect, on 20 April 2004, shortly after lunch, the prison sustained heavy fire from insurgents and observed the applicant and others in the open. They were maintaining security to prevent escapes and riots while incoming rounds landed with 50 to 100 meters from them.

e Third person account which basically mirrors the previous statements and is authenticated by each above.

4. A DA Form 638 dated 15 August 2004, states, in Achievement #4, the applicant provided first aid for critically injured Iraqi detainees that were missing limbs and bleeding profusely from major trauma during incoming mortar attacks on 20 April 2004. The applicant maintained good order and discipline while providing security for the injured Iraqi detainees during incoming mortar attacks while other Iraqi detainees rioted by throwing rocks in an attempt to cause more confusion and chaos.

5. The applicant provides an 8-page document listing complex mortar and small arms fire attacks on Abu Ghraib Prison from 9 February 2004 to 1 December 2004, with map.

6. A DA Form 2823 from Command Sergeant Major JWV, dated 14 December 2005, wherein he states, in effect, the applicant was present and actively engaged by the enemy at Camp Ganci, Abu Ghraib, Iraq, in either the initial mortar attack and/or subsequent attacks on both 6 and 20 April 2004. All Soldiers were in grave danger while they were maintaining control and providing medical aid while under fire from mortars landing between 100-200 meters away.

7. A Memorandum from the commander of the 94th Military Police Company, dated 9 January 2006, states, as the commander during Operation Iraqi Freedom from 21 April 2003 to 29 July 2004, he fully supported processing the applicant's as well as four other Soldiers Combat Action Badge packets.

8. A DA Form 4187 dated 9 January 2020 shows/states the applicant was within 50 meters from impact of small arms fire, and mortars. It also notes he performed guard and medical duties while under direct fire on 20 April 2004, at Abu Ghraib Prison, Iraq.

9. A Memorandum, Headquarters and Headquarters Detachment, 3d Battalion, 304th Regiment (USMA), 6 January 2020, shows the commander recommended approval of the Combat Action Badge for the applicant retroactively for incidents on 20 April 2004.

10. The applicant provided 2 DA Forms 199 dated 2 April and 24 April 2020, respectively.

11. A memorandum from AHRC, Chief, Awards and Decoration Branch, dated 14 August 2020, disapproved the request for retroactive award of the Combat Action Badge on behalf of the applicant for service performed in support of Operation Iraqi Freedom. After a thorough review of the information provided, the forwarded recommendation for the Combat Action Badge did not meet the statutory guidance outlined in Army Regulation 600-8-22, paragraph 8-8d, (2), "A Soldier must also be performing in an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy."

12. The Combat Action Badge is not intended to recognize Soldiers who simply serve in a combat zone or imminent danger area. Battle participation credit alone is not sufficient; the unit must have engaged or been engaged by the enemy. In order to qualify for the Combat Action Badge, a member must be performing assigned duties in an area where hostile fire pay, or imminent danger pay is authorized; they must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement; and they must not be assigned or attached to a unit that would qualify the Soldier for the Combat Infantryman Badge or Combat Medical Badge. On or after 5 March 2019, a Soldier must also be performing an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and applicable regulatory guidance on the award of the Combat Action Badge. The ABCMR begins its consideration of each case with the presumption of administrative regularity and after due consideration of the request, the Board determined the evidence presented did not meet the burden of proof sufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.

█

█ █

█

█

█

█

REFERENCES:

1. Army Regulation 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. Instructions state the requirements for award of the Combat Action Badge are branch and military occupational specialty immaterial. Assignment to a combat arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations, is not required to qualify for the Combat Action Badge. However, it is not intended to award the Combat Action Badge to all Soldiers who serve in a combat zone or imminent danger area. Award of the Combat Action Badge is not automatic and will not be awarded solely based on award of the Purple Heart. The Combat Action Badge may be awarded to any Soldier. Paragraph 8-8 states specific eligibility requirements which include:

a. Soldier must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement, in an area where hostile fire pay, or imminent danger pay is authorized. For all named conflicts beginning after 5 March 2019, a Soldier must also be performing in an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy. A Soldier must be performing their assigned duties associated with the unit's combat mission in an area where hostile fire pay, or imminent danger pay is authorized.

b. Soldier must be performing assigned duties in an area where hostile fire pay, or imminent danger pay is authorized. The requirement for hostile fire pay or imminent danger pay does not apply to cases determined to be eligible under the conditions described in paragraph 3-8c.

c. Soldier must not be assigned or attached to a unit that would qualify the Soldier for the Combat Infantryman Badge/Combat Medical Badge. For example, an 11B (Infantryman) assigned to Corps staff is eligible for award of the Combat Action Badge. However, an 11B assigned to an infantry battalion is not eligible for award of the Combat Action Badge.

d. In addition to Army Soldiers, the Combat Action Badge may also be awarded to members of other U.S. Armed Forces and foreign military personnel assigned to a U.S. Army unit, provided they meet the above criteria.

e. Award of the Combat Action Badge is authorized from 18 September 2001 to a date to be determined. Award for qualifying service in any previous conflict is not authorized.

f. Second and subsequent awards of the Combat Action Badge are as follows:

(1) Only one Combat Action Badge may be awarded during a qualifying period.

(2) Second and subsequent award of the Combat Action Badge will be indicated by super- imposing one and two stars respectively, centered at the top of the badge between the points of the oak wreath.

g. Retroactive awards of the Combat Action Badge are not authorized prior to 18 September 2001.

2. 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 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//