

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230003589

APPLICANT REQUESTS:

- In effect, reversal of the U.S. Army Human Resources Command's (HRC) decision to deny him the Purple Heart
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Two DA Forms 4187 (Personnel Action)
- Three DA Forms 2823 (Sworn Statement)
- HRC Memorandum, dated 15 May 2019, Subject: Award of the Purple Heart for [Applicant]
- Temporary Change of Station Orders
- DD Form 2808 (Report of Medical Examination)
- DD Form 2807-1 (Report of Medical History)
- Two Department of Veterans Affairs (VA) letters
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Enlisted Record Brief
- Doctor's note on a prescription form
- Letter from U.S. Senator
- Three Standard Forms 600 (Health Record – Chronological Record of Medical Care)
- Two photographs
- Diagram

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). However, the Army Board for Correction of Military Records (ABCMR)

conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states HRC previously denied his request for the Purple Heart due to a lack of medical documentation; he now submits additional medical evidence, as provided by Dr. [REDACTED], affiliated with a VA hospital, and Dr. [REDACTED], a Board-Certified Psychiatrist.

a. The applicant notes, "The original reports don't use the word 'concussion' despite all the symptoms of a major concussion or 'TBI' (traumatic brain injury) are evident in the reports following a major blast at close range." Symptoms of TBI, such as headaches, nausea, and sensitivity to light, were all present in the medics' post-blast reports.

b. After reviewing the reports prepared by those original medics, both Dr. [REDACTED] and Dr. [REDACTED] concluded the applicant had suffered a major concussion or TBI.

3. The applicant provides:

a. SF 600s reflecting the applicant's medical treatment between 19 and 24 May 2012:

(1) 19 May 2012, 1222 AST (Afghanistan Standard Time):

(a) Appointment Reason for Visit: "Follow-Up Visit."

(b) History of present illness: "[REDACTED]: [REDACTED] old male came to the aid station for follow up on MACE test; Pt (patient) also states he threw up around 0800 after breakfast. Pt also states he is still a little dizzy and having concentration difficulty and headache but states that his symptoms are no better or worse than yesterday when he came in for the Initial MACE test. Pt states he feels fine now, he only vomited once. O: eyes PERRL, neuro exam normal, strength test normal."

(c) "1. Visit for: Follow-Up Exam. Comments:"

- "A: Pt possible TBI"
- "P: Pt is instructed to continue taking the medication he was given yesterday and rest of 24 hrs and return to aid station for follow-up and another MACE test and, should his symptoms worsen, return to aid station"

(d) "2. Headache"; no comments.

(e) "3. Dizziness"; no comments.

(f) "4. Decreased Concentrating Ability"; no comments.

(g) "Released with Work/Duty Limitations."

(h) Physician Addendum: "The patient was exposed to a blast. There was no apparent loss of consciousness, alteration of consciousness or post-traumatic amnesia. The patient continues to complain of post-injury physical and cognitive symptoms. There were no neurologic deficits on re-examination today. We will continue aggressive headache management with acetaminophen 1000 mg po q6h. The patient was instructed to rest and avoid stimulation as...."

(2) 19 May 2012, 1649 AST:

(a) Chief Complaint. "Was sleeping, heard incoming, heard thuds & then door on barracks exploded. Blown out of bed, covered from debris from door."

(b) History of Present Illness. "Pt remembers everything clearly from event. Headache. Decreased concentrating ability."

(c) Past medical/surgical history. "Physical trauma from explosion. No trauma to the head and head trauma with no loss of consciousness."

(d) Neurological. "Remote memory was impaired MACE – Delayed Recall Total Score \_\_3\_\_/5. No decrease in concentrating ability was observed MACE – Concentration Total Score \_\_5\_\_/5. No disorientation was observed MACE – Orientation Total Score \_\_5\_\_/5. Recent memory not impaired MACE – immediate Memory Total Score \_\_12\_\_/15."

(e) "Released Without Limitations."

(3) 24 May 2012, 1726 AST:

(a) "Appointment Reason for Visit: MACE Procedure."

(b) Subjective. "█ y/o M came in for MACE reevaluation. All symptoms are gone except slight headache. Pt stated that Tylenol takes care of his headache. Pt has no other problems."

(c) "Released Without Limitations."

(d) Physician Addendum: "The patient was exposed to a blast. There was no loss of consciousness, alteration of consciousness, or post-traumatic amnesia. The patient continues to experience a headache that is completely relived (sic) by acetaminophen. The patient was returned to duty."

b. Documents associated the applicant's request for HRC to award him the Purple Heart, which include the following:

(1) DA Form 2823 dated 26 March 2013 and completed by Staff Sergeant (SSG) [REDACTED]. SSG [REDACTED] states, on 18 May 2012 and while deployed in Afghanistan, the enemy fired about ten 82mm (millimeter) (mortar) rounds at his forward operating base (FOB).

(a) One of the rounds hit the AHA (Ammunition Handling Area); a fire started, and ten to fifteen 155mm artillery rounds simultaneously exploded, causing numerous casualties. At the time, the applicant was in the transient barracks, located about 50 to 70 meters from the AHA. Mr. [REDACTED], a law enforcement professional (LEP), was in the same barracks as the applicant, and he sustained a concussion and broken ribs.

(b) The unit immediately conducted TBI screening for all Soldiers who were within the blast area. "Over the course of the subsequent checks, it was deemed that [applicant] was fine and that no further testing was needed at that time. I asked [applicant] directly about his condition due to his close proximity, and he communicated to me that he felt fine and was not exhibiting any alarming symptoms at the time."

(c) Upon the unit's return to Fort Carson, SSG [REDACTED] started noticing that the applicant was exhibiting short-term memory loss. For example, during an equipment layout, the applicant could not remember where he had left a number of items he was supposed to include in the layout. Additionally, the applicant disclosed he had been having headaches, in addition to the memory loss, and that he had experienced similar problems after 18 May 2012, but he was reluctant to say anything for fear that the leadership would "remove him from theater"; the applicant did not want to leave his unit behind.

(2) DA Form 2823 dated 5 September 2013 and completed by Mr. [REDACTED], LEP; Mr. [REDACTED] recounted the events occurring on 18 May 2013, as remembered by him and LEP [REDACTED].

(a) Both LEP [REDACTED] and LEP [REDACTED] were at the FOB to investigate a homicide; a U.S. Army officer had been murdered by a member of the Afghanistan Army, and several other Soldiers had sustained injuries. Sleeping quarters at the FOB were very limited, so LEP [REDACTED] and LEP [REDACTED] were assigned the same billets as the applicant; (the

billets were called "B-Huts," and they were large wooden rooms with cots and wall lockers inside).

(b) When LEP [REDACTED] and LEP [REDACTED] arrived at the B-Hut, the applicant advised that there were several empty cots available; the B-Hut was located about 40 to 50 meters north of the 155mm and mortar gun line and not far from the ammunition storage pit (AHA). Because they were so close to the gun line, the firing of the 155mm guns and mortar tubes created loud explosive noises and everything inside the B-Hut would vibrate and rattle. As a result, no one wanted to stay there; LEP [REDACTED], LEP [REDACTED], and the applicant were the only occupants.

(c) On the night of 17 May 2012, a very heavy thunderstorm moved through the area; at around 0600 the next morning, the 155mm artillery guns and mortar rounds stopped; shortly thereafter, the first indirect 105mm rocket hit close to the B-Hut, and LEP [REDACTED] realized they were under enemy attack. There were no bunkers or bomb shelters near the B-Hut, so they had nowhere to go.

(d) "I was still laying on my back when I suddenly saw a very bright white light mixed with clouds of fire right behind it, exploding into the room, and I noticed it all happening very fast but also in slow motion. (I know that is hard to understand). The accompanying explosion was so loud and strong that it shocked my body and brain. At the same time I saw the north B-Hut door and south doors had both imploded and were flying through the air, both heading towards the center of the B-Hut. I also noticed a large flame or fire right behind them with all kinds of debris in the fire flying towards me. I felt the heat and pressure from the explosion as it hit my face and body."

(e) Mr. [REDACTED] later learned his B-Hut had been struck by a massive explosion of 4,000 to 5,000 pounds of artillery shells, gun powder, and mortar rounds, all of which had been stored in the AHA. After finding Mr. [REDACTED], both started looking for the applicant; they went to the part of the B-Hut where the applicant had been sleeping and, after digging through the debris of cots, wall lockers, bed frames, and ceiling rafters, they found the applicant. Although in total shock, the applicant appeared to be alive and in one piece.

(f) "Several U.S. service members were killed in the attacked (sic) and numerous others suffered serious burns, and other bodily injuries. LEP [REDACTED] and (LEP) [REDACTED] advised [applicant] to seek medical help for his injuries. [Applicant] was last seen walking towards the TOC (Tactical Operations Center). Neither LEP [REDACTED] nor (LEP) [REDACTED] ever knew what happened to him, because they were both flown out of (the FOB) the following night."

(3) Applicant's DA Form 2823 dated 21 November 2014.

(a) At about 0600 hours, the applicant's FOB came under attack by enemy 105mm recoilless rockets; the Taliban fired the rockets from a location in the mountains above the FOB.

(b) When the attack began, the applicant was sleeping in his hut, which was located about 50 meters from the 155mm gun line. As the first enemy rounds landed, the explosions roused the applicant from his sleep. As he opened his eyes, a massive explosion splintered the front door, and the blast wave blew him out of bed and slammed his back into the ground; he was covered in debris.

(c) He later learned one of the 105mm rounds had landed in the AHA, and it set off an overpressure blast that hit the applicant's hut. After the blast, the applicant's roommates dug him out of the debris, and the applicant immediately started having headaches and dizziness; he later vomited and experienced memory issues.

(d) "The medics examined me and told me that I was most likely suffering from a severe concussion and gave me 1000 milligrams (of pain medication). The back pain, dizziness, vomiting, and headaches continued for a few days. The dizziness and vomiting subsided, but the back problems, headaches, and memory issues continue to this day. Documentation of service-connected back injury...the origins of this back injury were traced to the blast on 18 May 2012."

c. HRC memorandum, dated 15 May 2019 and addressed to the applicant's TPU commander.

(1) The memorandum states HRC has disapproved the request to award the applicant the Purple Heart.

(2) HRC continues, "After a thorough review of the information provided and consulting with the HRC Office of the Surgeon General, we are unable to authorize an award, due to the lack of medical documentation from or near the time of the event. The injury must have been of such severity as to have required treatment by medical officer and that treatment must have been documented in official medical records. The medical documentation provided does not indicate diagnosis of and treatment for a qualifying injury."

d. Documents provided by the applicant's physicians:

(1) Prescription Form dated 8 June 2020. "Pt brought notes from 5/20 & 5/24/12. Notes are consistent c̄ concussion."

(2) VA Letter from MBBS (Bachelor of Medicine, Bachelor of Surgery) [REDACTED], dated 19 June 2020. "Reviewed [applicant's] medical records from May 19/ 2012. He

has history of TBI, exposed to blast while he was in service, status-post concussion and has chronic headaches and difficulty with concentration."

4. A review of the applicant's service record reveals the following:

a. On 7 October 2009, the applicant enlisted into the Regular Army for 3 years and 30 weeks (i.e., 6 months and 28 days); upon completion of initial entry training and the award of military occupational specialty 35F (Intelligence Analyst), orders assigned the applicant to Fort Carson, CO, and he arrived at his new unit (an infantry battalion), on or about 1 June 2010.

b. On 5 March 2012, the applicant deployed to Afghanistan. On 20 May 2012, Permanent Orders (PO) awarded him the Combat Action Badge for qualifying service, on 4 May 2012. On 4 November 2012, the applicant redeployed to Fort Carson.

c. On 4 May 2013, the Army honorably released the applicant from active duty and transferred him to the USAR to complete his remaining military service obligation. His DD Form 214 shows he completed 3 years, 6 months, and 28 days of his 3-year, 30-week enlistment contract. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the following:

- Army Commendation Medal
- Army Good Conduct Medal (1st Award)
- National Defense Service Medal
- Afghanistan Campaign Medal with two bronze service stars
- Global War on Terrorism Service Medal
- Army Service Ribbon
- North Atlantic Treaty Organization Medal
- Combat Action Badge

d. Effective 19 December 2013, HRC reassigned the applicant to a USAR TPU, following the applicant's voluntary request. Through subsequent reenlistments, the applicant currently serves in the USAR.

5. Army Regulation (AR) 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

6. AR 600-8-22 (Military Awards), currently in effect, states the following, in paragraph 2-8 (Purple Heart):

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 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. Some examples of enemy-related actions which justify eligibility for the Purple Heart include "Concussions (and/or mild traumatic brain injury (mTBI)) caused as a result of enemy-generated explosions that result in 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."

c. "When considering award of the PH for a mTBI or concussion that did not result in the loss of consciousness, the chain of command will ensure the diagnosed mTBI resulted in a disposition of 'not fit for full 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."

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. A majority of the Board found the evidence does demonstrate that the applicant suffered from impaired brain function for a period greater than 48 hours after the incident on 18 May 2012. Based on a preponderance of the evidence, a majority of the Board determined the applicant's injury met the criteria for the Purple Heart.
3. The member in the minority noted the applicant was only treated with pain medication and after being examined following the incident in question was released with no restrictions. The member in the minority found insufficient evidence to support award of the Purple Heart for TBI and determined the decision by HRC to deny 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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by awarding him the Purple Heart for an injury incurred as a result of hostile action on 18 May 2012 and adding the Purple Heart to his DD Form 214 for the period ending 4 May 2013.

2/12/2024

X █

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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. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 600-8-22, currently in effect, states:

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 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.

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4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//