

IN THE CASE OF: ██████████

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230003600

APPLICANT REQUESTS: entitlement to the Purple Heart (PH), 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)
- 4-page Applicant Narrative, 17 February 2023
- Military Personnel (MILPER) Message Number 11-125, 29 April 2011
- Orders: BL-235-0023, Headquarters, Fort Bliss, 23 August 2011
- 2 DA Forms 2823 (Sworn Statement)
- Initial Casualty Report, Report Number 275-01, 1 October 2011
- Standard Form (SF) 600 (Chronological Record of Medical Care), 1 October 2011
- 3 Photographs
- SF 600, 24 October 2011
- PH Information Paper
- DA Form 4187 (Personnel Action), 1 October 2011
- Officer Record Brief (ORB), 1 October 2011
- DA Form 1156 (Casualty Feeder Card), 1 October 2011
- Order 300-58, U.S. Army Installation Management Command, 27 October 2014
- Applicant Narrative, 8 February 2016
- Memorandum, U.S. Army Human Resources Command (AHRC), 9 January 2017
- 4-page letter, Sage Counseling Centers, 15 September 2022
- Department of Veterans Affairs (VA) Rating Decision, 9 February 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); 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, in effect:

a. On 1 October 2011, he was riding in the back of a Mine Resistant Ambush Protected (MRAP) vehicle. The vehicle was destroyed by a single, deep buried, improvised explosive device (IED). He lost consciousness for an unknown period of time. When he regained consciousness, he had a headache, his ears were ringing, but he did not receive any medical attention while at the IED site. He assumed this was because he did not exhibit immediate life-threatening injuries and he was functioning normally compared to the Soldiers who were injured to the point they needed medical evacuation. He first received medical attention more than 90 minutes later, at Combat Outpost Sulten Khel. He was given medication and placed on mandatory rest by a physician.

b. According to the attending physician, he was diagnosed with and treated for symptoms of traumatic brain injury (TBI) and mild mTBI. According to MILPER Message Number 11-125, 29 April 2011, he believes he should be awarded the PH. He was initially recommended for the PH in 2011 after the IED blast. He was never informed in writing as to why the submission was denied. He was recommended for the PH a second time in 2016 but was denied in January 2017, specifically due to the physical injuries he sustained, but not for TBI or mTBI. This submission is for TBI and mTBI. He was unaware of MILPER Message 11-125 until recently and how this message specifically outlines the requirements for awarding of the PH for TBI and mTBI.

3. The applicant is currently serving in the U.S. Army Reserve in the rank/grade of major (MAJ)/O-4. Evidence shows he served in the imminent danger pay area of Afghanistan from 1 January 2009 to 1 January 2010; 26 September 2011 to 27 May 2012; and 30 December 2013 to 14 September 2014.

4. The applicant provides:

a. DA Form 4187, 1 October 2011, in which his immediate commander recommended approval for award of the PH for his involvement in a combat logistical patrol that came in contact with an IED on 1 October 2011, Wardak Province, Afghanistan.

b. DA Form 1156, 1 October 2011, that states, in effect, on 1 October 2011, while on a mounted patrol in Afghanistan, the applicant's MRAP was hit by an IED. The applicant was seen by medics in COP Sultan Khel and placed on 24-hour rest.

c. Initial Casualty Report Number 275-01 which states the applicant was wounded in action on 1 October 2011 by enemy forces in Mashin, Afghanistan, when his MRAP was hit by an IED. He was seen by medics and placed on 24-hour rest.

d. SF 600, 1 October 2011, in which the applicant stated, in effect, while riding down the highway, they hit a roadside IED. The applicant stayed in the truck and assisted the gunner. He remembered everything with no loss of consciousness (LOC) or blackout. Military Acute Concussion Evaluation (MACE) score of 27/30. Received a laceration on the bridge of his nose. No concussion. Received Tylenol 500mg and Motrin 800mg. Physician stated the applicant was without evidence of mTBI but with symptoms.

e. 3 photographs (presumably of the applicant), his ORB, PH submission checklist and temporary change of station orders.

f. SF 600, 24 October 2011, applicant complained of left side rib pain from an IED blast on 1 October 2011. Level 4 pain when working out, 0 when at rest. Upon examination, pain went to 5 or 6. Possible rib fracture/bruising. The applicant refused further treatment or medication.

g. Sworn statement from Captain (CPT) [REDACTED], 4 November 2015, in which he states, in effect, after the IED strike, the applicant was assessed for a possible broken nose. He was ground evacuated and treated for his injuries.

h. Sworn statement from Lieutenant Colonel [REDACTED], 4 February 2016, in which he states, in effect, that he was in the third vehicle with the applicant when the IED exploded. The applicant received cuts on his nose and forehead and was evaluated and treated for his wounds at the aid station and released.

i. Applicant's narrative for the PH, 8 February 2016, in which he states, in effect, he rode in the third vehicle and was engaged by a single IED which detonated under the front portion of the MRAP forcing it off the road. Once the MRAP stopped, all Soldiers were removed from the vehicle and treated. The applicant received a laceration on his nose and a noticeable welt on his forehead.

5. On 9 January 2017, the Chief, Soldier Programs and Services Division, AHRC, disapproved his request for the PH for injuries received while deployed in support of Operation Enduring Freedom. After a review of the information provided, the award of the PH for this particular event, did not meet the statutory guidance in accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-8h, (13) and (14). The associated medical documentation from 1 October 2011 reflects that the applicant was seen that scans were negative, and that he was given Tylenol to use as necessary. Although unfortunate, lacerations do not meet the requirement for award of the PH.

6. The applicant also provides:

a. Applicant's narrative for retroactive approval of the PH, 17 February 2023, in which he states, in effect:

(1) He is requesting the award of the PH under extenuating circumstances. His previous submissions for the PH were for physical injuries sustained, not for TBI or a mTBI that he sustained as the result of an IED blast on 1 October 2011. The attending physician annotated he had the symptoms and was treated for mTBI. According to the MILPER Message Number 11-125, dated 29 April 2011, this meets the criteria for approval of the PH.

(2) During the movement to COP Sulten Khel near the village of Salar, his MRAP was destroyed by a single, deep buried IED. The severity of the blast was so powerful it blew the vehicle off the road and launched the M240 machine gun mounted to the top of the MRAP approximately 75-100 feet from where the MRAP stopped.

(3) After the vehicle stopped, they were approximately 25-50 feet off the road to the right side of Highway 1. He lost consciousness for undetermined amount of time. When he regained consciousness, he had a headache, his ears were ringing and the ribs on his left side were hurting. He looked to the front of the MRAP and noticed MAJ ■ was hunched over to the left and not moving. He initially thought he was dead, but MAJ ■ was knocked unconscious. He then heard people outside the MRAP yelling commands to the occupants in the vehicle. He was disoriented, but eventually navigated his way out of the vehicle while also assisting the gunner out as well. Once out of the vehicle, he had an immediate rush of energy he attributed to adrenaline.

(4) He then partnered up with CPT ■ and two other Soldiers to conduct a sweep of the immediate area to search for where the IED could have been detonated from and the IED trigger man. At this point CPT ■ told him about the injury to his nose and that the bridge of his nose was bleeding. He does not recall how long it took to complete the sweep, but he would estimate it took 10-15 minutes. Upon returning to the destroyed MRAP, other Soldiers from the Combat Logistical Patrol had arrived to assist with the recovery of the MRAP and eventual medical evacuation of multiple Soldiers to include MAJ ■.

(5) When he returned to the destroyed MRAP, he began to notice his headache and ear ringing were really significant. Furthermore, his initial disorientation and dizziness returned. He did not receive any medical attention immediately following the blast. He assumed this was because he initially did not exhibit any life-threatening injuries and the medics were treating the seriously injured. Once the MEDEVAC and recovery of the MRAP were complete, they continued to COP Sulten Khel. His disorientation and dizziness had subsided, but his headache was persistent, his ears were still ringing, and his head hurt from the injuries to his face and forehead. He was given a MACE test; however, he felt rushed by the process as they had to return to FOB Sayad Abad.

(6) The initial medical evaluation diagnosed him with the symptoms of a concussion and mTBI. He was given medication and placed on mandatory rest by the physician upon his return to FOB Sayad Abad. Specific answers to the questions on his medical evaluation are misleading. Question b., states that he remembered everything. He remembered helping the gunner out of the truck, but he was disoriented. He initially did not know why they were on the side of the road. He answered the question as remembering everything because, he was still dealing with the trauma of knowing he survived an IED blast.

(7) He answered question c., if he was dazed or confused as right then at the evaluation, not at the IED blast site. Additionally, all the other members in the MRAP were medically evacuated to Bagram Air Base and could not answer or speak on his behalf to the physician. Question d. asked if he hit his head. His response was no, but his answer was actually, "I don't know." He attributes this as a mistake on the physician's part either not hearing him or he may not have spoken clearly. Photographs clearly show head trauma. Question d., number VI asked if he lost consciousness. He again answered this question to the best of his knowledge. However, he initially did not know why they were on the side of the road and was never asked about any confusion or disorientation that occurred at the time of the IED blast. He absolutely exhibited a LOC or altered consciousness in the immediate aftermath of the IED blast. Additionally, question d., number VII asked if anyone else could report a period of LOC or altered confusion. The physicians could not ask the other riders in the MRAP because all the other members in the MRAP were medically evacuated to Bagram Air Base. Furthermore, the physicians did not ask him if anyone that patrolled with him could verify if he had exhibited an altered state of mind immediately after the IED blast. If they had, he could have identified Soldiers that could verify his altered state of mind.

(8) He does not recall if he was seen by medical personnel for a follow up the day after the IED blast because he does not have any medical documentation stating whether medical personnel saw him. He does have medical paperwork from three weeks later, on 24 October 2011. At this follow up he mentioned the pain to his ribs on the left side were still bothering him. Within the first 24 hours he had difficulty breathing and limited mobility due to the pain surrounding his ribs. He was offered medication for the pain but refused as he already had over the counter medication and did not want anything stronger that could possibly slow my senses or reaction time.

(9) His initial PH submission was on or around 6 October 2011. He does not recall as to why the submission was denied. In 2016, a second PH submission was submitted to AHRC. He received correspondence denying the request on 9 January 2017, specifically due to the lacerations he sustained, but not for TBI or mTBI. According to the medical documentation he provided, he was not evaluated at COP Sulten Khel until approximately 90 minutes or longer after the initial exposure to the blast, and he was still exhibiting concussion like symptoms. This diagnosis falls under

the conditions for approval of the PH according to MILPER Message Number 11-125. Specifically, he was diagnosed with symptoms of mTBI. He had a limited period of loss or decreased level of consciousness. He had neurological deficits in the forms of temporary loss of balance and headaches. He was not sent to a Level 2 or 3 medical facility to determine if he received any intracranial lesions. Therefore, it is uncertain whether he had any intracranial lesions.

(10) According to MILPER Message Number 11-125, the standard of treatment required for approval of the PH for concussions, TBI, or mTBI, are limitation of duty as directed by a medical officer following the incident and pain medication to treat an injury such as a headache. He received both. Furthermore, he still suffers from anxiety due to the IED blast to the point he tightens up when he sees roadside debris. He sought professional help multiple times, but it was not until 2022, when Dr. ■■■ examined him for possible post-traumatic stress disorder (PTSD) relating to the IED blast and other deployment experiences. In order to evaluate his diagnosis, he conducted a series of tests and questions about his experiences overseas. He left active duty in July 2017 and joined the USAR. In February 2023, the VA rated him at 90 percent service-connected disability.

b. 4-page Sage Counseling Centers letter, 15 September 2022, from an outpatient therapist who diagnosed the applicant with PTSD. The therapist recommended, given the presence of chronic PTSD symptoms (moderate to severe range), as a result of physical and emotional wounds inflicted in combat, the recommendation is for the applicant to receive any and all compensation due a person who has served his country with courage and valor, including the presentation of a PH.

7. 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.

8. 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 noted that the criteria for the Purple Heart for TBI stipulate 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. In this case the Board found no evidence corroborating the applicant’s claim that he lost consciousness during the incident on 1 October 2011. The Board also found the evidence does not show that the applicant suffered from impaired brain functions for a period greater than 48 hours from the time of the concussive incident. Based on a preponderance of the evidence, the Board determined the applicant’s injuries incurred on 1 October 2011 did not meet the criteria for the Purple Heart.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

2/12/2024

X 

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, U.S. Code, 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. 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. 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 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//