

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230004213

APPLICANT REQUESTS: award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 6 May 2013
- U.S. Army Human Resources Command (HRC) Letter, 6 April 2020
- Three Witness Statements
- Permanent Order 137-030, 17 May 2007 (Combat Action Badge)
- Excerpt of DA Form 638 (Recommendation for Award) (Army Commendation Medal), 29 December 2007
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings)
- Service Medical Records

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 he incurred a traumatic brain injury (TBI) during his 15-month deployment to Iraq serving as an Explosive Ordnance Disposal Technician.

a. He deployed to Iraq on 1 January 2007 and was operating out of Camp Taji and Camp Liberty. During his deployment, he was exposed to countless improvised explosive device (IED) blasts. His Combat Action Badge was awarded for the incident on 2 February 2007, where he and his team were investigating a possible IED. Upon rendering safe one IED a secondary IED detonated underneath their vehicle. It was hours before they were able to return to Camp Taji and be evaluated. At the time of evaluation, his adrenaline had overcome his other symptoms.

b. During the deployment, there were other times he was exposed to an IED blast, twice on convoys, one being on Route Tampa and the other on Route Coyotes. The most significant blast he experienced was during a routine mission to investigate a cache of explosives along Route Penguins. He was sitting in the turret of the vehicle, an IED detonated 5 feet to the rear of his vehicle. It was significant enough to felt three vehicle in either direction. He had headaches and was dizzy the remainder of the day. They had just begun their mission and it would be hours before they were back and he was exhausted and just went to bed.

c. It was not until years later when official diagnosis was made. He has attached a memorandum from the PEB stating cognitive disorder (Residual of TBI) and migraine headaches (Residual of TBI). It is by these findings that he is requesting award of the Purple Heart for injuries sustained in combat operations during Operation Iraqi Freedom.

3. The applicant provides:

a. Three witness statements:

(1) From Sergeant (SGT) D.S. who states he served with the applicant on their deployment to Iraq from 1 January 2007 to 24 March 2008. He was the unit communications specialist and went on many missions with the applicant and his team. On 8 February 2007, the applicant and his team responded to an IED at grid MC3043222659. After conducting a positive action on the primary and secondary IED, a tertiary IED detonated within 3 feet of the team's vehicle. The applicant immediately checked himself and his fellow team members for injuries. After assessing themselves as mission capable, the team finished clearing the site before continuing back to base. The applicant experienced many other concussive blasts during the deployment as an EOD technician.

(2) From SGT (Retired) M.D. who states he served with the applicant in the 707th Ordnance Company Explosive Ordnance Disposal during their deployment to Iraq from 1 January 2007 to 24 March 2008. As EOD technicians, they are exposed to many blasts, and the applicant was the recipient of several substantial blasts. On 8 February 2007, he and his team were investigating an IED and there was a secondary IED detonated near his dismounted position. During that same incident, he and his team went to retrieve biometric information from a rendered safe IED, and another IED detonated directly underneath his vehicle. It was many hours before he could return to the medical clinic (TMC) and be evaluated. This was not the only IED blast the applicant experienced directly. While working in another area of operation south of his normal base, he experienced a severe incident where an IED detonated directly behind his vehicle sending a large piece of fragmentation against the turret where he was sitting. He complained of headaches and dizziness, but continued missions throughout the day.

(3) From Staff Sergeant (SSG) T.R.D. who states he worked with the applicant as an EOD technician while deployed to Iraq on 1 January 2007. They worked primarily out of Camp Taji, but also worked out of Camp Liberty. During the deployment they were exposed to countless IED blasts. His Combat Action Badge was awarded for the incident on 8 February 2007, where his EOD team were investigating a possible IED. Upon rendering safe one IED, a secondary IED detonated approximately 10 feet from their position outside of the vehicle. During the mission they drove up to collect more information on the IED, and another IED detonated underneath their vehicle. It was hours before they were able to return to Camp Taji and be evaluated. He experienced several other significant blasts that he believe contributed to his TBI. The most memorable of them all, and perhaps the scariest, was along Route Penguins in Baghdad. The applicant was sitting in the turret of the vehicle, an IED detonated 5 feet to the rear of their vehicle, the blast wave was large and could be felt at quite a distance away, and a large softball size piece of fragmentation hit the side of the turret where the applicant was sitting. He complained of headaches and was dizzy the remainder of the day. He finished the day and went to bed; they never went to the TMC for that incident.

b. DA Form 638 (page 1 of 3), dated 29 December 2007, reflects he was recommended for award of the Army Commendation Medal for his service while deployed with the 707th Ordnance Company, Multi-National Corps-Iraq.

c. Service medical records:

- his post-deployment health re-assessment, dated 30 October 2008, which shows, in pertinent part, he deployed to Iraq for 15 months and since his return he has maintained/returned to previous state
- Letter from the mental health clinic, dated 30 September 2011, shows based on the nature and severity of his neurocognitive psychological and medical problems he has, it was recommended that serious consideration be given to suspending plans for him to retrain and instead refer him for a Medical Evaluation Board
- SF 600 (Health Record – Chronological Record of Medical Care), dated 6 September 2011, which shows adjustment disorder with anxiety and depressed mood, post-traumatic cognitive disorder, exposure at 10-15 feet of five IED explosions
- SF 600, dated 8 February 2007, which shows his visit for IED blast; he was released without limitations
- SF 600, dated 24 January 2012, which shows he was released with work/duty limitations from the mental health clinic
- TBI questionnaire, which shows the applicant answer “Yes” to being exposed to or near a blast, IED explosion, car bomb, suicide explosion, or exposure to any other combat event that caused a blow or jolt to his head; “Yes” to he was dazed; “Yes” to experiencing headaches; “Yes” to ongoing sleep problems;

“Yes” to weakness, numbness, tingling, or loss of feeling in his face, arms, or legs

4. A review of the applicant’s service record shows:

a. He enlisted in the Regular Army (RA) on 25 April 2004. He was awarded military occupational specialty 89D (EOD Specialist).

b. He served in Iraq from 1 January 2007 to 28 March 2008. He was awarded the Combat Action Badge on 17 May 2007 for actively engaging or being engaged by the enemy on 8 February 2007.

c. He was honorably discharged from active duty on 20 May 2011 to accept commission or warrant in the Army. His DD Form 214 shows he completed 7 years and 26 days of active service. It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal
- Meritorious Unit Commendation
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with campaign star
- Noncommissioned Officer Professional Development Ribbon
- Overseas Service Ribbon
- Combat Action Badge
- Explosive Ordnance Disposal Badge E
- Senior Explosive Ordnance Disposal Badge
- Driver and Mechanic Badge with Driver-Wheeled Vehicle Clasp

d. On 21 May 2011, he commissioned as a second lieutenant (2LT) in the RA.

e. On 1 February 2013, a PEB convened and found the applicant physically unfit and recommended a rating of 60% and that his disposition be placed on the temporary disability retired list (TDRL) with a reexamination date during October 2013.

f. On 6 May 2013, he was honorably retired from active duty for disability, temporary (Enhanced). His DD Form 214 shows he completed 1 year, 11 months, and 22 days of active service with 7 years and 26 of prior active service.

g. On 27 February 2015, a PEB convened and found the applicant physically unfit and recommended a rating of 60% and that his disposition be permanent disability retirement (PDRL).

h. On 6 March 2015, the U.S. Army Physical Disability Agency published Order D 065-23 removing the applicant from the TDRL because of permanent physical disability and permanently retired him in his current grade of rank (2LT).

5. On 6 April 2020, HRC Awards and Decorations Branch, by letter correspondence to the applicant, notified him that they coordinated with the surgeon and determined award of the Purple Heart for this particular event does not meet statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8c. There is no available medical documentation of a diagnosis of or treatment for TBI at or near the date of the incident in question.

6. By regulation (AR 600-8-22), the Purple Heart is awarded for a wound/injury sustained 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
- the medical treatment must have been made a matter of official record

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board determined to be awarded the Purple Heart, the regulatory guidance 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. The Board noted the record is void of and the applicant did not provide evidence to support his traumatic brain injury was caused by enemy action. The Board also noted the record shows the improvised explosive device explosion occurred in the morning and the applicant was seen by a provider in the afternoon and determined the applicant was in no acute distress. Based on the evidence, the Board determined the applicant does not meet the criteria for award of the Purple Heart and denied relief.

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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It provides that the Purple Heart is awarded for a wound sustained 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 a medical officer, and the medical treatment must have been made a matter of official record.

a. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy-placed trap or mine
- Injury caused by enemy-released chemical, biological, or nuclear agent
- Injury caused by vehicle or aircraft accident resulting from enemy fire
- Concussion injuries caused, as a result of enemy-generated explosions
- Mild traumatic brain injury 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

b. Examples of injuries or wounds which clearly do not justify award of the Purple Heart are as follows:

- Frostbite
- Trench foot or immersion foot
- Heat stroke
- Food poisoning not caused by enemy agents
- Chemical, biological, or nuclear agents not released by the enemy.
- Battle fatigue
- Disease not directly caused by enemy agents
- Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

- Self-inflicted wounds, except when in the heat of battle and not involving gross negligence
- Post-traumatic stress disorders
- Airborne (for example, parachute/jump) injuries not caused by enemy action.
- Hearing loss and tinnitus (for example: ringing in the ears)
- Mild traumatic brain injury 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
- Abrasions and lacerations (unless of a severity to be incapacitating)
- Bruises (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer)
- Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth)
- First degree burns

//NOTHING FOLLOWS//