

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230004797

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command, Awards and Decorations Branch denial of her award of the Purple Heart (PH) and an appearance hearing before the Board.

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

- ACTS online application in lieu of DD Form 149 (Application for Correction of Military Record), 15 April 2023
- Signature page, 15 April 2023
- DA Form 4187 (Personnel Action), 8 December 2021 (with attachments)
 - memorandum for record (MFR), Officer of the Staff Judge Advocate, U.S. Army Training Center, Fort Jackson, 20 April 2022 subject: Legal Review of (Applicant) for the PH
 - narrative for the PH (Applicant)
 - Officer Record Brief (ORB)
 - Permanent Order E0287, Headquarters (HQ), U.S. Army Infantry Center, Fort Benning, 5 August 2005
 - MFR, KBB____, MSN, APRN, 9 November 2021, Subject: (Applicant) Medical Statement to Accompany the PH Award
 - personal statement of Retired (Ret) MSG DG____, 9 November 2021
 - personal statement of USAF Ret MSgt JV____, 9 November 2021
 - memorandum, U.S. Army Human Resources Command (AHRC), Awards and Decorations Branch (ADB), 24 May 2022, subject: Award of the PH for (Applicant)
 - Department of Veterans Affairs (VA) Initial Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, 31 October 2022
 - DA Form 3947 (Medical Evaluation Proceedings) (MEB), 10 January 2023
- Orders 097-1303, U.S. Army installation Management Command, HQ, U.S. Army Garrison, Fort Jackson, 7 April 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 4 July 2023

FACTS:

1. The applicant states, in effect:

a. She is requesting an exception to policy. She was injured by an improvised explosive device (IED) blast and sustained traumatic brain injury (TBI), neck, and back injuries. At the time there were no TBI protocols while on the road. She was the only medic in the convoy and they did not have access to a physician.

b. As a medic she made the decision to stay in the convoy with her troops. For this reason she did not have medical documentation from that time as to her injuries immediately after the IED exploded underneath her truck. She was medically retired 15 years later for injuries sustained during that explosion to include TBI, including vertigo, severe PTSD, migraines, neck and back injuries. It is unjust not to award the PH because particular protocols were not in place at the time of her combat injuries.

3. The applicant provided:

a. A DA Form 4187 application for the PH, approved by the Commanding General, USATC, Fort Jackson. This application is accompanied with the following attachments:

(1) A legal review from the OSJA, U.S. Army Training Center, Fort Jackson, dated 20 April 2022, which found not legal objection to awarding the applicant the PH based on the facts provided.

(2) A brief narrative of the IED incident which occurred on 19 December 2005. The applicant was a combat medic assigned to a convoy traveling from Forward Operating Base Speicher (FOB) to FOB Q-West. The narrative indicates the applicant lost consciousness and after regaining consciousness, checked on the other personnel, dismounted the vehicle, and prepared the vehicle for recovery. She sustained a concussion, TBI, and back and neck injuries.

(3) An MFR from KBB___, MSN Nurse Practitioner, TBI Clinic Moncrief Army Health Clinic, which reads, in part, the applicant received treatment for TBI in October 2019 and was diagnosed with military TBI (mTBI). The applicant recollected losing consciousness briefly and has difficulty recalling the moments following the explosion.

(4) A statement from Ret MSgt DG___, dated 9 November 2021, outlining the IED incident on the night of 19 December 2005, while traveling in a convoy with the applicant and three other Soldiers. The statement reads, in part, he was serving as the Truck Commander (TC) of the vehicle when their gun truck rolled over an IED which detonated directly beneath their truck. The engine had blown up, the frame of the truck was on the ground, and the tires had blown off. The truck was not able to move. The

gunner Senior Airman W___ was in the turret when the IED went off, his face was black from the smoke of the explosion. He said he was ok but he was in shock and couldn't move. They rested at FOB Q-West overnight. They were all banged up from the explosion so their medic, SGT C___ (Applicant), gave them Motrin and told them to let her know if the pain became worse. They kept moving so they could complete the mission.

(5) A statement from USAF Ret MSgt JV___, dated 9 November 2021, which reads, in part, he was providing gun truck security on the main supply route between FOB Speicher and FOB Q-West on 19 December 2005. He was the vehicle operator in gun truck 3 when the vehicle took a direct hit. Sgt DG__ was the TC, Sgt C___ (Applicant), was the medic, Airman First Class W___ was the gunner. He kept the accelerator pressed down as the vehicle could go for a couple of hundred meters until it could not roll any further. The vehicle was immobile due to fluid leaks and the engine overheating. Sgt C___ (applicant) checked on all of the Soldiers for injuries, in which no one had any visible injuries. He recalled his team having headaches and back aches for days afterwards. Once Sgt C___ (Applicant) assessed them again at a safe location, their convoy team established immediate perimeter security in case of a possible ambush.

(6) An AHRC memorandum of disapproval for the PH.

(7) A VA PTSD Disability Benefits Questionnaire completed on 31 October 2022.

(8) The findings of a MEB proceedings completed on 10 January 2003, showing she did not meet retention standards for PTSD, premenstrual dysphoric disorder, and left-elbow lateral epicondylitis.

4. A review of the applicant's service records shows:

a. On 22 November 2002, she enlisted in the Regular Army for 3 years beginning in grade/pay grade private first class/E-3 under the last name W___.

b. She served in Iraq from: 15 September 2003 to 8 March 2004 and 6 October 2005 to 1 October 2006

c. She reenlisted on: 31 March 2002 under last name C___; 14 April 2006 under last name C___; and 14 April 2009 under last name W___

d. On 15 December 2010, she was honorably discharged under last name W___ in order to accept a commission in the Regular Army. Her DD Form 214 for this period shows she attained the grade/pay grade staff sergeant/E-6, she completed 7 years, 10 months, and 4 days, and she was discharged under the last name F___.

e. On 16 December 2010, she was appointed a commissioned officer in the Adjutant General's Corps, Regular Army, under last name F____.

f. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), dated 5 April 2023, shows she was physically unfit and recommended a rating of 100% and that her disposition be placed on the temporary disabled retired list with a reexamination during December 2023. This form further shows:

- the medical conditions determined to be unfitting were incurred or aggravated in the line of duty in a duty status authorized by Title 10, USC 1201(c) or Title 10, USC 1204
- she was diagnosed with PTSD and premenstrual dysphoric disorder with an 100% disability rating and the diagnosis were not permanent/were not stable
- she was diagnosed with elbow lateral epicondylitis-flexion with a 20% disability rating and the diagnosis was permanent and was stable
- she was diagnosed with elbow lateral epicondylitis-supination and pronation with a 20% disability rating and the diagnosis was permanent and was stable
- the disability disposition was based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict
- the disability disposition did result from a combat-related injury under the provisions of Title 26, USC 104 or Title 10, USC 10216

g. On 3 April 2023, the PEB Liaison Officer advised her of the findings and recommendations of the Informal PEB and she received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto. Having been advised of the findings and recommendations of the PEBLO, she concurred and waived a formal hearing of her case on the same date.

h. On 5 April 2023, a representative of the U.S. Army, Physical Disability Agency, Secretary of the Army approved the findings of the Informal PEB.

j. Orders 097-1303, issued by the U.S. Army Installation Management Command, HQ, Fort Jackson, dated 7 April 2023, released her from assignment, reassigned her for separation processing, and placed her on the TDRL. These orders further show:

- dated placed on the TDRL was 7 April 2023
- retirement type was temporary disability
- percentage of disability was 100%
- statute authorizing retirement was Title 10 USC, Section 1202
- date of retirement was 4 July 2023
- authority was Army Regulation 635-40
- separation Program Designator SEA1

k. On 24 May 2022, the Chief, ADB, AHRC notified the applicant her application for the PH was disapproved. This memorandum reads, in part:

(1) The request for award of the Purple Heart to (Applicant) for injuries received while deployed in support of Operation Iraqi Freedom is disapproved.

(2) After thorough review of the information provided, the forwarded recommendation for award of the Purple Heart does not meet the statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8g.c [should read paragraph 2-8c] "To qualify for award of the PH the wound must have been of such severity that it required treatment, not merely examination, by a medical officer." Post-deployment medical documentation and/or diagnoses cannot be utilized to satisfy this requirement.

(3) If (Applicant) believes this determination to be unjust, she has the right to appeal to the Army Board for Correction of Military Records, the highest appellate authority on personnel matters.

l. On 4 July 2023, she was retired. Her DD Form 214 shows she completed 12 years, 6 months, and 19 days of net active service this period with 7 years, 10 months, and 4 days prior active service. The separation authority was Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), the separation code was SEA, and the narrative reason for separation was "disability, combat related."

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. 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. 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.

b. While he presents evidence, in the form of statements regarding the IED incident, based on the information provided, the Board agreed with HRC's finding that the forwarded recommendation for award of the Purple Heart does not meet the statutory guidance outlined in AR 600-8-22, in that 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. Additionally, the Board also agreed that post-deployment medical documentation and/or diagnoses cannot be utilized to satisfy this requirement. The applicant's sincerity is not in question, rather it is necessary for all elements of the award criteria for the Purple Heart to be fulfilled. The Board determined award of the Purple Heart is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, paragraph 2-11 reads 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.

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:

(1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(2) Injury caused by enemy-placed trap or mine.

(3) Injury caused by enemy-released chemical, biological, or nuclear agent.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Concussion injuries caused as a result of enemy-generated explosions.

(6) 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:

(1) Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951).

(2) Trench foot or immersion foot.

(3) Heat stroke.

(4) Food poisoning not caused by enemy agents.

(5) Chemical, biological, or nuclear agents not released by the enemy.

(6) Battle fatigue.

(7) Disease not directly caused by enemy agents.

(8) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

(9) Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.

(10) Post traumatic stress disorders.

(11) Airborne (for example, parachute/jump) injuries not caused by enemy action.

(12) Hearing loss and tinnitus (for example: ringing in the ears).

(13) 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.

(14) Abrasions and lacerations (unless of a severity to be incapacitating).

(15) Bruises (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer)

(16) Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).

(17) First degree burns.

c. Paragraph 2-8c provides that to qualify for award of the PH the wound must have been of such severity that it required treatment, not merely examination, by a medical officer.

d. Paragraph 2-8f(6) provides for award of the PH in the case that 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. Refer to paragraph 2–8l for additional information.

d. Paragraph 2-1 provides steps for awarding the PH. It reads, in part:

- recommender completes top section of DA Form 4187, places address of the approval authority in the TO box, places address of intermediate commander in the Thru box, and places parent unit address in the From box
- the company commander/officer in charge/supervisor verified all data on the DA Form 4187 and all enclosures
- approval authority makes final decision on command endorsement of award of the PH

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), currently in effect, established the Army Disability Evaluation System (DES) according to the provisions of Title 10, United States Code, Chapter 61 (Title 10 USC Chapter 61) and Department of Defense Directive 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations.

a. Chapter 4. Scope of the Disability Evaluation System. Public Law 110–181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

b. Disposition authority and action. Unless reserved for higher authority, USAPDA approves disability cases for the SECARMY and issues the disposition instructions to

the Transition Center for Soldiers separated or retired for physical disability from an active duty status. The USAPDA publishes the disability orders on Soldiers of the USAR and ARNG who are not on active duty.

c. Permanent disability retirement. This disposition is directed under Title 10, USC 1201 or Title 10, USC 1204, as applicable, when the Soldier is determined unfit for continued service and has a compensable disability in accordance with the standards of this regulation.

d. Placement on the temporary disability retired list. This disposition is directed under Title 10 USC 1202 or Title 10 USC 1205, as applicable, when the years of service or percentage requirements for permanent disability retirement are met but the disabilities are not determined to be permanent and stable.

//NOTHING FOLLOWS//