IN THE CASE OF: [redacted]

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230005040

APPLICANT REQUESTS: entitlement to the Purple Heart (PH) and a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- 14 photographs, March 2006
- Standard Forms (SF) 600 (Chronological Record of Medical Care), 11 March 2006
- 2-page Casualty Report, 11 March 2006
- MFR, Headquarters, USA Medical Department Activity, 4 March 2019
- Statement of Support, Sergeant (SGT) retired (Ret)WBS, 10 March 2019
- Statement of Support, Mr. [redacted], 10 March 2019
- MFR, Headquarters and Headquarters Company, 173rd Infantry Brigade Combat Team (Airborne), First Sergeant (1SG) [redacted], 12 March 2019
- Statement of Support, Sergeant First Class (SFC) (Ret) [redacted], 14 March 2019
- Statement of Support, Specialist (SPC) (Ret) [redacted], 17 March 2019
- Statement of Support, Mr. [redacted], 19 March 2019
- Sworn Statement, 19 March 2019
- Statement of Support, Mr. [redacted], undated
- Memorandum, U.S. Army Human Resources Command (AHRC), 8 July 2019
- Past Medical History, 25 July 2019
- DA Form 4187 (Personnel Action), 19 August 2019
- Memorandum for Record (MFR), Headquarters, Carl R. Darnall Army Medical Center, 1 October 2019
- SF 600, 18 November 2019
- DA Form 4700 (Medical Record – Supplemental Medical Data), 18 November 2019
- Enlisted Record Brief, 21 November 2022
- Soldier Talent Profile, 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. He was an Indirect Fire Infantryman who deployed to Iraq from September 2005 to November 2006. On 11 March 2006, his vehicle was hit by an improvised explosive device (IED). He personally does not recall the IED going off; only when he came to from being knocked unconscious. Private First Class (PFC) [redacted] recalled the applicant flying up and hitting the top of the vehicle, then being slammed back down. He noticed the platoon sergeant and another Soldier were no longer in the vehicle as they were projected from the vehicle to the side of the road. Once at the combat support hospital (CSH), the applicant was treated for a battery acid burn and shrapnel cuts to his face. After being treated the doctor handed him paperwork and a coin in the shape of a dog tag. He told him it was the paperwork he needed to receive his PH. The applicant gave the documents to his squad leader and never saw the documents again.

b. AHRC disapproved the original request to award him the PH due to the verbiage about abrasions and lacerations which did not justify approval. He believes two key factors were not considered when his request was denied. First were the multiple statements in reference to him being knocked unconscious, resulting in a traumatic brain injury (TBI). At the time it was not an eligible reason for a PH, unlike today's qualifications. The second was the systems which were used by providers at the time for documenting medical notes. Digital and hard copy notes were required, but the digital platform was unreliable for documenting notes. The hard copy records were the primary means of documenting medical notes. Both factors have now been clarified by the treating physician and an unbiased third party.

c. The lapse in time from AHRC denial of his request to present day is based on one main reason. His oldest daughter who was 12 at the time attempted to commit suicide. He was the one who walked in and found her as she stepped off a chair with a rope around her neck and ceiling fan. As he opened the door she stepped off and he caught her and removed the rope. He then went into a dark place personally and it took him almost two years to admit to himself that he needed to seek behavioral health and get himself back on track. Combined with his impending retirement, it has been a bit overwhelming.

d. He felt once the words "abrasions and lacerations" were seen in his medical records, no further consideration was used to review all of his supporting documents.

On the AHRC website it lists reasons "which clearly justify award of the PH to include, injury caused by enemy bullet, shrapnel, or other projectile created by enemy action, injury caused by enemy placed mine or trap, concussion injuries caused as a result of enemy generated explosions, mild TBI 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 functions for a period greater than 48 hours from the time of the concussive incident.

e. He feels he prematurely submitted his packet to AHRC. His chain of command felt the packet was originally strong enough with the proof provided. Looking back now, he should have attempted to contact the treating physician. He did not make contact with Colonel H until after his request was denied. Even after having his letter clearing up all of the medical records, he wanted more before submitting this request. He asked their TBI clinic to put him in contact with a provider who specializes in TBI outside their organization. His intent behind doing this was to get a completely unbiased third-party provider to review his packet and provide their professional opinion. In doing so he would either further validate his request or destroy it as it would be in his official medical records. This was a risk he welcomed and would 100% support the outcome. He has never wanted anything "given" to him if it was not earned.

3. The applicant enlisted in the regular Army on 2 September 2003. Evidence shows he served in an imminent danger pay area during the following periods:

- Iraq from 17 August 2005 to 25 November 2006
- Iraq from 24 September 2007 to 13 November 2008
- Kuwait from 22 October 2015 to 23 December 2015
- Kuwait from 7 February 2016 to 4 July 2016

4. The Initial Casualty Report shows, on 11 March 2006, the applicant sustained lacerations to the lips and battery acid burns to the face from enemy forces when an IED exploded on the left side of the vehicle he was riding in. The applicant was treated at the 47th CSH and returned to duty the same day.

5. An SF 600, dated 11 March 2006 notes the applicant was injured due to war when an IED struck the left side of the vehicle he was in, exploding the battery and its contents. The applicant was knocked out, but he was later ambulatory at the scene. He was evacuated to the CSH in stable condition where he complained of mild right eye pain. He was diagnosed with injury from terrorist explosion blast, a superficial injury-abrasion to the face, and contact dermatitis due to chemical products-acid.

6. The applicant provides 14 photographs, dated in March 2006, presumably of the applicant and destructive incident, which show the blast area, the damage to the vehicle, and the applicant in the hospital receiving medical treatment to his face.

7. An MFR, dated 12 March 2019, from a current first sergeant and the applicant's former squad leader and section sergeant from 2004-2007, states, during the unit deployment in 2006, he was injured and working as the Rear Detachment Operations Noncommissioned Officer in Charge. On 11 March 2006, he checked the situation reports and verified the Mortar Platoon was in an IED attack. The platoon sergeant was launched from the vehicle and sustained injuries to both legs, the driver was knocked unconscious with a skull fracture and the applicant was knocked unconscious and sustained cuts and battery acid burns to his face.

8. Statements of support from 7 Soldiers involved in or with knowledge of the IED attack on 11 March 2006, dated between 10 March 2019 and 19 March 2019, essentially mirror the points of emphasis previously stated in this Record of Proceedings.

9. On 8 July 2019, the Chief, Awards and Decorations Branch, AHRC, disapproved his request for the PH for injuries received while deployed in support of Operation Iraqi Freedom. After a thorough review of the information provided and consultation with the U.S. Army Human Resources Command Office of the Surgeon General, the forwarded recommendation for award of the PH does not meet the statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8c. The medical documentation only indicates a superficial injury, an abrasion to the face. Abrasions and lacerations do not justify award of the PH.

10. A 5-page Past Medical History, dated 25 July 2019, outlines the applicant's medical history, as previously addressed in this record of proceedings.

11. A DA Form 4187, dated 19 August 2019 shows his immediate commander recommended him for award of the Purple Heart for lacerations/abrasions, chemical burns to the face from shrapnel and battery acid, and loss of consciousness (LOC) on 11 March 2006, when the applicant's vehicle was struck by a pressure plate IED.

12. An MFR from the treating physician, dated 1 October 2019, addresses the applicant's injury by an IED on 11 March 2006. The physician was deployed as an emergency physician/flight surgeon with an aviation unit and was additionally tasked to provide support to the 47th CSH and states, in effect:

a. CSHs were receiving a brisk volume of combat casualties. Documentation during this period was primarily done on a Joint Theater Trauma Record, a handwritten document. The Armed Forces Health Longitudinal Technology Application - Theater (AHLTA-T) was not the primary mode of documentation. Though they were required to do both, the details were often in the trauma flow record and not in AHLTA-T. The applicant's packet only contains the brief AHLTA-T note. He has attempted unsuccessfully to locate his trauma record to no avail.

b. The applicant's injuries were caused by an enemy IED that struck the Stryker in which he was travelling. There is no question of the force subjected to the Soldiers in the Stryker. The pictures accompanying his packet speak to the damage and force. At the time he did not have access to those pictures, he did have access to the results of the IED: the applicant and his teammates. The injuries suffered by the applicant were both caused by a hostile IED, and his wounds necessitated treatment by a health care provider.

c. The applicant was knocked unconscious or suffered a from the IED blast. It is a common reflex for Soldiers in the fight to deny being knocked out because they either were unaware of it, or they want to get back in the fight. He documented the applicant denied LOC, but clearly the sworn statements support that he was knocked unconscious. Furthermore, at the time, IEDs were a frequent provider of combat casualties and everyone who survived an IED blast suffered a concussion or a concussive injury. Realize this was years before the attention, research, and resources were directed at the prevention, recognition, and treatment of TBI.

d. The applicant, as part of his trauma evaluation in the CSH, received a computerized tomography (CT) scan of his head and face, which was normal. However, CT scans do not demonstrate concussions, so this is not unexpected. But it is clear that the applicant had a TBI with LOC from an enemy emplaced IED when he evaluated him. His discharge instructions reflect this diagnosis by being placed on quarters (brain rest) for a period of time until cleared by his unit doctor to return to duty.

e. The majority of the applicant's outward trauma was to the side of his face. This came from two sources; the IED blast and the secondary burns from the battery acid when the Stryker battery exploded as a result of the IED blast. Any explosive fragment injuries to the face require looking for metal fragments that might have penetrated his eyes or other deeper structures. He did have abrasions and lacerations external to the side of his face and intra-orally. In addition, the applicant sustained acid exposure to his eyes that required immediate irrigation (along with the rest of his exposed face) until an appropriate clearing and decontamination was reached. A head/face CT imaging was performed on him to assess for any deeper fragments and his eye burns prompted evaluation by the CSH optometrist. These wounds and lesions were subsequently treated with antibiotic and burn ointments. One of his accompanying pictures shows one of the medics applying his burn ointment. It is of note that had he not been evaluated and decontaminated, the battery acid would have continued to burn and injure his face and eyes, likely resulting in severe corneal injuries threatening his vision. Rapid medical intervention and treatment likely prevented more severe injuries from the battery acid.

f. The applicant was injured by an enemy IED. He suffered a closed head injury resulting in LOC and mild TBI (concussion). The explosion caused traumatic abrasions, lacerations and chemical burns that required advanced head imaging, skin, and eye

decontamination to halt further injury and appropriate wound care treatment to prevent subsequent infection. These injuries, in his professional opinion, meet the medical requirement for award of the PH per Army Regulation 600-8-22, paragraphs 2-8f(2) and 2-8f(6).

13. A DA Form 4700 and a partial SF 600 dated 18 November 2019, from the Behavioral Health Clinic, states, in effect, the applicant returned to duty the next day without subsequent evaluation. He reported mild headache that resolved in 1-2 days. Denied other concussion related symptoms. Physician reviewed a packet of sworn statements from the applicant's fellow Soldiers who deployed with him and the physician who treated the applicant. The information indicates the applicant met the criteria for a concussion on 11 March 2006, with the injury resolving in the anticipated fashion and resulting in no persistent post concussive symptoms.

14. The applicant retired honorably in the rank/grade of sergeant first class (SFC/E-7), on 1 October 2023. His DD Form 214 (Certificate of Release or Discharge from Active Duty0 does not reflect the Purple Heart, but it does confirm he deployed during the following periods:

- Iraq from 17 August 2005 to 25 November 2006
- Iraq from 24 September 2007 to 13 November 2008
- Kuwait from 22 October 2015 to 23 December 2015
- Kuwait from 7 February 2016 to 4 July 2016

15. 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.

16. 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 found insufficient medical documentation created on or near the date of the IED incident to confirm the applicant incurred an injury that met the criteria for the Purple Heart. In the absence of additional medical records confirming loss of consciousness during the IED incident or medical records confirming impaired brain functions for a period greater than 48 hours from the time of the concussive incident, the Board determined entitlement to the Purple Heart has not been established in this case.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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 [redacted]

CHAIRPERSON

[redacted]

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. 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.

//NOTHING FOLLOWS//