



- Letter, Headquarters, 104th Division (Leader Training), Staff Sergeant (SSG) [REDACTED] U.S. Army Reserve Center, Inspector General's Office, 11 August 2015
- Memorandum for Record (MFR), Office of the Assistant Secretary of the Army, Financial Management and Comptroller, 1 November 2016
- Letter, Department of Veterans Affairs (VA), 6 April 2022
- Statement of Support, Lieutenant Colonel (LTC) (Retired) [REDACTED], 16 October 2022
- Purple Heart coversheet
- Letter of Support and Addendum, Major (MAJ) (Retired) [REDACTED], undated
- Order, Docket Number 17-45 589, Board of Veteran's Appeals, 25 May 2022

### FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20170009376 on 9 May 2019.
2. The applicant provides new evidence or argument which warrants consideration by the Board.
3. The applicant states, in effect, that he sustained injuries during combat operations by an improvised explosive device (IED) blast in Tikrit, Iraq on 31 January 2006. The documents that were submitted were not properly reviewed and all evidence in support of entitlement for the Purple Heart was met and documented. The Reserve brigade commander denied the first submission. The commander stated that just because he got a bad back, bloody nose, and headache does not mean he gets a Purple Heart. At the time, the injury could not be fully assessed and diagnosed due to lack of medical equipment and command climate. The former commander and Colonel (retired) [REDACTED] explained the reason he was not medically evacuated to a higher medical command staff and was not recommended for a Purple Heart was per the brigade climate at the time.
4. Having prior service in the U.S. Marine Corps Reserve, he enlisted in the Regular Army on 17 January 2002. He served in military occupational specialty (MOS) 13B (Cannon Crewmember). Evidence shows he served in Iraq in support of Iraqi Freedom from 27 February 2003 to 7 February 2004 and 18 September 2005 to 11 September 2006.
5. On 18 January 2007, he was honorably discharged upon the completion of his required active service. The DD Form 214 he was issued does not reflect award of the Purple Heart.

6. The applicant previously provided:

a. Sworn statement from SSG [REDACTED], 31 January 2006, who states, in effect, a remote control detonated IED struck the applicant's vehicle 10-40 meters between his vehicle and the lead vehicle. He witnessed the applicant with a bloody nose and the applicant complained that he hit his head on the steering mount, saw "stars" and had a very painful back and head. He was subsequently interviewed and evaluated by MAJ [REDACTED].

b. SF 600, 31 January 2006, evaluation from Corporal (CPL) [REDACTED], Medic, noting lower back pain following and IED strike. Pain 7/10 radiating down left leg. Noticeable discomfort to include pain and stiffness. Applicant stated he never lost consciousness and recalls events. Diagnose with possible trauma to lower vertebra or spinal column; muscular tension due to impact; referred for further evaluation.

c. DA Form 4187 with Permanent Order 059-004D, Headquarters, 101st Airborne Division (Air Assault), 28 February 2006, awarded him the CAB for the above noted incident.

d. DD Form 2796, 13 September 2006, in which his post-deployment health assessment notes back pain and muscle aches.

e. MFR from his former battalion commander, 31 January 2008, who states, in effect, due to limited medical technologies, no further medical evaluations could be determined in theater. Upon redeployment to Fort Campbell, KY, he underwent a computerized tomography (CT) scan which revealed degenerative hypertonic changes to his lumbar spine and resulted in service-connected disability from the VA.

f. Memorandum from the Chief, Awards and Decorations Branch, 5 November 2009, who returned his request for the Purple Heart due to lack of chain of command endorsement and appropriate supporting documentation.

g. Sworn statement from SPC [REDACTED], 16 June 2010, who states on 31 January 2006 the applicant's vehicle was struck by an IED slamming the applicant into the steering wheel. After the strike, he remembered the applicant having some back pain.

h. Email traffic from June 2011, in which it appears the applicant's chain of command did not feel award of the Purple Heart was justified. COL [REDACTED] stated he would not recommend approval and did not understand why the action was not taken care of in theater. He further stated, "a bloody nose and sore back I do not define as wounded. 67 years ago today, 100K men hit the beaches at Normandy, I wonder how many got the Purple Heart for a bloody nose and sore back. I know 5,000 got one by giving up their life. We have thousands of amputees from Iraq I wonder what they would think."

i. Radiographic Report, 9 January 2013, which states assumed right leg length inequality cannot be excluded, compression fracture deformity with superior end plate compression at L5, acute or chronic is radiographically undetermined and must be correlated clinically. Spondylolytic spondylolisthesis of L3 on L4 by approximately 20 percent. Acute or chronic pars interarticularis fracture cannot be determined. Minimal L3 and L4 degenerative disk disease. Possible lumbosacral facet syndrome which should be correlated clinically.

k. Witness statement from CPL [REDACTED], Medic, 4 March 2015, who states, in effect, on 31 January 2006, he observed the applicant's vehicle struck by an IED within 15 meters of detonation. Immediately after the incident, he conducted a post-blast assessment of the applicant. The applicant was standing with his face in his hands, blood running from his nose. He complained of lower back and neck pain from being jerked backwards. His gait was labored and deliberate. The applicant passed an on scene basic neurological exam. He stated his ears were ringing and was seeing spots. He was oriented to person, place and time and could recount the incident and events leading up to it. He escorted the applicant to the FOB and released him to the care of MAJ [REDACTED].

7 The applicant submitted a second request for entitlement to the Purple Heart to AHRC on 11 June 2015. On 24 July 2015, the Chief, Awards and Decorations Branch, AHRC, disapproved his request for injuries received while deployed in support of Operation Iraqi Freedom. The chief stated that the diagnosis and treatment in the medical documentation provided did not meet the criteria for award of the Purple Heart. While this was an unfortunate event, a request for award of the Purple Heart has several regulatory requirements not met by the documentation provided.

8. On 24 July 2015 by letter, an official of the AHRC Award and Decoration Branch, notified the applicant that his request for an award of the Purple Heart for injuries received while deployed in support of Operation Iraqi Freedom was disapproved. Award of the Purple Heart is limited to members of the Armed Forces of the United States who have been wounded or killed as a direct result of enemy action. The diagnosis and treatment in the medical document provided did not meet the criteria for award of the Purple Heart. While this was an unfortunate event, a request for award of the Purple Heart has several regulatory requirements which were not met by the documentation provided.

9. On 11 August 2015, the applicant received a response from the Inspector General's Office, Headquarters, 104th Division (Leader Training), Joint Base Lewis-McChord, WA, who stated the reason for disapproval was in accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-8 (16), which prohibits soft tissue injuries such as muscle, ligament, sprains, or strains as qualifying for award of the Purple Heart. As his medical documentation and statements from medical personnel provided indicated, he received injuries from an IED blast that caused lower back pain. No further diagnosis

was indicated to determine injury that qualified for the Purple Heart. As a result, the IG closed his case.

10. In a MFR from the applicant's former battalion commander, dated 1 November 2016, he claims, given what he knows today of TBI protocols and the significance of his back injury, he would have ordered his evacuation to a higher-level medical treatment facility and submitted him for the Purple Heart. At the time the culture in the brigade was reluctance for approving the Purple Heart without obvious bullet or fragmentary wounds. Regrettably, he did not process him for an award, despite thinking he was worthy of consideration.

11. On 18 June 2019, the ABCMR denied his application to the Board in Docket Number AR20170009376 for entitlement to the Purple Heart, stating, "after reviewing the application and all supporting documents, the Board found that relief was not warranted. Based upon the documentary evidence, specifically the AHRC advisory finding the diagnosis and treatment in the medical document provided does not meet the criteria for award of the Purple Heart, the Board concluded there was no error or injustice which would warrant making a correct to the applicant's record. For that reason, the Board recommended denying the applicant's request for relief."

12. A Portion of VA Rating Decision, undated, assigned 10 percent service-connection for radiculopathy of the right lower extremity of the sciatic nerve (previously rated as right lower extremity radiculopathy of the femoral nerve), and 20 percent service-connection for degenerative changes to the lumbar spine now claimed as degenerative disc disease, fractured lower lumbar and compressed discs.

13. Undated letters from MAJ [REDACTED], state, in effect, the one issue that he feels the Board should reconsider in this award packet is the fact there is a compression fracture to the L-5 vertebral body and overall minimal degenerative changes. Compression fractures can and usually present as lower back pain at the site and locally, spasm and stiffness. The body is trying to protect the injured area by "locking it down" to movement. Compression fractures are usually stable and treated conservatively unless they become problematic at a later date. Surgery is not indicated. Compression fractures are not usually associated with minimal degenerative disc disease, but trauma. The applicant could have sustained this injury in the combat action documented in this application. The latest VA documentation shows a claim of degenerative disc disease, fracture lower lumbar spine and compressed discs. The applicable regulation states injury caused by vehicle or aircraft resulting from enemy fire is eligible. He believes a compression fracture resulting from an IED blast should be considered for award of the Purple Heart.

14. The applicant provides new evidence:

a. VA statement verifying his service-connected disabilities, 6 April 2022, which shows a combined rating of 100 percent for:

- chronic post-traumatic headaches
- bilateral hearing loss
- radiculopathy of the right lower extremity of the sciatic nerve (previously rated as right lower extremity radiculopathy of the femoral nerve)
- right lower extremity radiculopathy of the femoral nerve
- degenerative changes of the lumbar spine
- bipolar disorder with post-traumatic stress disorder and TBI (previously rated as bipolar affective disorder, TBI)
- constrictive bronchiolitis with interstitial lung disease
- blepharitis, conjunctivitis, and keratitis of the right eye
- right ankle strain
- tinnitus
- residual scars, lung biopsy
- abdominal muscle strain
- status post nasal fracture

b. Board of Veteran's Appeals order, dated 25 May 2022, awarded entitlement service-connection for sleep apnea in Docket Number 17-45 589. Entitlement to service-connection for a bilateral hips disorder (claimed as misaligned hips) was remanded. The most probative and competent evidence of record indicated that it was at least as likely as not that the applicant's current sleep apnea was related to Gulf War environmental hazards during his active service.

c. Letter from LTC (Retired) ■■■, 16 October 2022, the applicant's former battery commander during the applicant's deployment to Iraq in support of Operation Iraqi Freedom. The letter states, in effect:

(1) On 30 January 2006, the applicant's vehicle struck an enemy IED. Once the site was secured, the platoon medic SGT ■■■, assessed the applicant and recommended he see the battalion surgeon immediately upon returning to the FOB. The applicant received treatment from the battalion surgeon MAJ ■■■, who realized the applicant had sustained some degree of internal injury and placed him on a "no duty" profile for 48 hours. He spoke with the applicant and MAJ ■■■ during this time and witnessed the applicant's condition. It was an easy decision to ensure the applicant remained off duty the entire 48 hours.

(2) SSG ■■■, SSG ■■■, and SGT ■■■ also witnessed the attack on the applicant's vehicle. At the time, IED attacks were so prevalent that most Soldiers immediately returned to the fight if they were not physically maimed. The command climate also fostered a "shake it off" mentality when it came to IED blasts which did not result in

visible injuries. The National Football League's (NFL's) current concussion policy provides a useful analogy. It was not until recently that NFL players, coaches, and trainers truly understood the serious nature and long-term consequences of concussions. The same could also be said about IED blasts 17 years ago.

(3) The applicant received the CAB for this engagement. According to the applicable regulation, the injuries the applicant sustained warrant the Purple Heart.

15. Army Regulation 600-8-22 states 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 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.

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, a majority of the Board found relief is warranted.
2. A majority of the Board carefully considered the documentation provided by the applicant and found the statements and medical evidence collectively confirm the applicant incurred injuries as a result of hostile action, specifically, compression fractures in his back and TBI, that would have been better assessed had he served in Iraq at a later date when diagnostic capabilities had improved in theater. A majority of the Board noted that he was restricted for duty for a full 48 hours, which is currently a key criterion for determining Purple Heart entitlement based on TBI. Based on a preponderance of the evidence, the Board determined the applicant should be awarded the Purple Heart for injuries he incurred as a result of hostile action on 31 January 2006.
3. The member in the minority concurred with the conclusions reached by AHRC in denying the Purple Heart. The member in the minority determined the evidence does not demonstrate that the applicant incurred injuries on 31 January 2006 that met the criteria for the Purple Heart.

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 that the evidence presented was sufficient to warrant amendment of the ABCMR’s decision in Docket Number AR20170009376 on 9 May 2019. 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 injuries incurred as a result of hostile action on 21 January 2006.

2/12/2024

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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. Army Regulation 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.
  - 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 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 Purple Heart 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 Purple Heart, 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 Purple Heart 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 Purple Heart 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 Purple Heart 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 Purple Heart), 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 Purple Heart 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 Purple Heart 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 Purple Heart 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 Purple Heart 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 Purple Heart:

(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 Purple Heart:

- (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 (ABCMR) 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//