

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230005656

APPLICANT REQUESTS: award of the Purple Heart.

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

- Two DD Forms 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Screenshot of Department of Veterans Affairs (VA) eBenefits Rated Disabilities
- Unit Battle Roster
- Letter of Support
- Applicant's letter to the Chairman, Joint Chiefs of Staff
- Redacted Record of Proceedings (ROP), Army Board for Correction of Military Records (ABCMR) Docket Number AR20040000111, dated 25 January 2005 (Not the Applicant)
- Headquarters, U.S. Army Engineer Center and Fort Leonard Wood Permanent Orders with by-name listing
- Engineer Battalion Unit History for Operations Desert Shield/Desert Storm
- Infantry Division (Mechanized) Operation Desert Storm Post-Attack Summary
- Two Department of the Army General Orders (DAGO)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). However, the 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, while deployed in support of Operations Desert Shield/Desert Storm, he was exposed to sarin gas (a highly toxic nerve agent), depleted uranium particles, and other toxins created by the weaponized burning of oil fields; as a result, he incurred sarcoidosis in his lungs and esophagus. The applicant declares, "My service has cost me everything: family, friends, career. All I have is my legacy...I served...I was exposed 'in combat,' and I have sarcoid in my lungs and on my

esophagus. I have no purpose or future. My service left me a partial paraplegic." He adds, "Don't take my legacy too."

3. The applicant provides documentary evidence to support his request, which includes the following:

a. Letter addressed to the Chairman, Joint Chiefs of Staff and dated 8 February 2023.

(1) The applicant notes this letter is a supplement to his formal request for the Purple Heart and is one of a number of letters he has sent to the President of the United States, his U.S. Senator, and various other recipients. He explains he is a 100 percent service-connected combat Veteran who has been labeled a partial paraplegic; however, while on active duty and during Operations Desert Shield/Desert Storm, he was an Army Sapper (a combat engineer trained to lay/clear minefields and build defenses, bridges, roads, and airfields).

(2) The applicant states he incurred sarcoidosis after exposure to toxins on the battlefield, and, because his medical condition is service connected, it provides "the 'nexus' needed to justify the Purple Heart." Between 24 and 28 February 1991, the Khamisiyah Bunker site in Iraq was demolished and the resulting smoke spread a sarin gas plume across the surrounding area; additionally, he saw a report showing the Iraqis set fire to 650 oil wells in an attempt to maim, kill, and confuse coalition forces.

(3) In his other letters, the applicant described how the weapons of war, along with science and technology, have changed the nature of the injuries Soldiers can sustain; specifically, radiological, biological, and chemical weapons have transformed the battlefield. "I suggest that the severity of the illness is directly tied to the concentration of the toxins that are inhaled; so, it's possible that the illness may not be discovered for years. However, regardless of the time that has passed...once the illness has been diagnosed and there is a nexus to the battle(s) and exposure...the Purple Heart should be awarded; although it's not intended to be awarded...it's entitled."

(4) The applicant continues, "This is what happen(ed) to me. The sarcoidosis was discovered on October 23rd, 2009 during a service connected surgery; and was later diagnosed with a biopsy. I'm reporting that each procedure was done at (a hospital in Missouri); but I have already provided the needed records to get it service connected. My records clearly report that the Sarcoid was caused by the inhaled toxins during the Gulf War."

(5) The applicant describes a conversation he had with a retired brigadier general who had served as a nurse during the Gulf War. The general explained that the government cannot just hand out Purple Hearts to every Veteran diagnosed with

cancer, suggesting that doing so "somehow tarnishes the award"; (the applicant found the explanation "obscene" but believes it expresses the attitudes of most general officers, and he maintained that there was a big difference between service in the rear as a nurse and what he and his buddies had to endure).

(6) The applicant adds the following stipulations: he served in the 24th Infantry Division for the duration of the Gulf War; he hand-placed explosives on/in various vehicles, items of equipment, and in bunkers; and the battlefield was "covered in the toxins." The applicant compares Agent Orange exposure during Vietnam to what he experienced, and he declares, "what happened in Vietnam can't be conflated with what happened during Desert Shield and Storm...." "Unfortunately, the Veterans from Vietnam, who requested the Purple Heart, did not have the nexus I have provided...." The applicant notes that, while he was fortunate to have survived the concentrations he inhaled, he is now suffering from the results of those exposures.

(7) The applicant provides descriptions of the hazards he faced on the battlefield, with depleted uranium particles everywhere on vehicles and in bunkers; plumes of sarin gas occurring following the demolition of the Khamisiyah Bunker (he recalls members of his unit moving through the plume); and the presence of toxic smoke from burning oil wells. "I think it's safe to argue that each of these weapons created their own biological wounds...later reflected as illness...but there is also an argument for wounds caused by a combination of inhaled toxins; causing 2nd and 3rd tier effects that were otherwise unexpected. But regardless of how they are diagnosed...injury or illness...'they are wounds of war.'"

(8) In summary, the applicant stated, "I have made my case, there should be no doubt...I'm entitled to the Purple Heart. I suggest that if there is a physical obstacle to me receiving the award...under this set of circumstances...there is a waiver for everything. I clearly meet the spirit which motivated the original authors of the Purple Heart; and their desire to recognize those who had suffered an injury due to the battles they fought in."

b. The redacted ROP for AR20040000111, which concerned a retired master sergeant's request for the Purple Heart; this applicant based his request on his exposure to chemical agents during the Gulf War.

(1) The retired master sergeant argued the Board should award the Purple Heart because a Special Assistant to the Secretary of Defense had sent him a letter acknowledging the applicant may have been exposed to a very low level of chemical agents following the demolition of the munitions at Khamisiyah, Iraq.

(2) After considering the master sergeant's evidence, the Board denied his request, noting he had offered no proof of being wounded in action; additionally, the

Department of Defense (DOD) letter cited by the applicant had only stated the master sergeant "may" have been exposed to chemical toxins, not that he actually was exposed and incurred a resultant wound or injury.

c. Letter of Support from Lieutenant Colonel (Retired) (LTC (R)) B\_\_ A. B\_\_, who affirms he commanded the applicant's company while they were deployed in support of Operations Desert Shield/Desert Storm.

(1) LTC (R) B\_\_ states, "I can attest that all the actions, locations, and engagements of our unit during Operations Desert Shield and Desert Storm, and during redeployment, that are presented by [the applicant] in his previous letters, are in fact true."

(2) LTC (R) B\_\_ adds that he fully understands the regulatory requirements for the Purple Heart, and that the applicant's disabilities do not meet the criteria; however, he believes the applicant's medical conditions are directly correlated to the unit's destruction of ammunition bunkers (some of which contained sarin gas mines and shells) and the depleted uranium that came from the Army's M-1 tank ammunition. He opines that, "on today's modern battlefield, a Soldier can have wounds by secondary and tertiary weapons that go beyond primary wounds of direct engagement. It may be time to update the Purple Heart regulation."

d. A history of the applicant's battalion during its deployment for Operations Desert Shield/Desert Storm. The document describes the unit's background, the circumstances that led to its deployment, and how events unfolded while in Iraq during combat. The document shows the applicant's company was assigned to Task Force 4-64 Armor, and that, during one phase of the operation, the applicant's company was the most heavily engaged with enemy forces.

e. The document additionally confirms the battalion engaged in the "destruction of the Iraqi war machine captured or left behind by the overrun forces." "Expanses of bunkers with ammunition stretched for miles in the desert along with abandoned enemy equipment. Destruction was essential to prevent Iraqi propagation of war when the allied forces left Iraq. For three days, units destroyed these implements of war with demolitions, U.S. munitions, such as AT4's (a Swedish 84 mm unguided, man-portable, disposable, shoulder-fired recoilless anti-tank weapon), and engineer bulldozers."

f. Two DAGO, awarding the Meritorious Unit Commendation to the applicant's battalion, for the period 26 October 1990 to 16 April 1991, and the Valorous Unit Award for the applicant's company, for the period 26 February to 2 March 1991.

4. A review of the applicant's available service record shows the following:

a. On 22 January 1987, the applicant enlisted into the Regular Army for 4 years. Upon completion of initial entry training and the award of military occupational specialty 12B (Combat Engineer), and a 2-year tour in Germany, orders assigned him to the 5th Engineer Battalion at Fort Leonard Wood, MO; he arrived, on 25 July 1989. On 24 October 1990, he deployed with his unit to Southwest Asia; on 13 April 1991, he redeployed to Fort Leonard Wood.

b. On 7 September 1994, following two subsequent immediate reenlistments (respectively on 4 June and 25 November 1992), the Army honorably discharged the applicant. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 7 years, 7 months, and 16 days of active duty service. His DD Form 214 also shows in:

(1) Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):

- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal (2nd Award)
- Army Achievement Medal
- Southwest Asia Service Medal
- Driver and Mechanic Badge with Driver-W (Wheeled Vehicles) Component Bar
- Kuwait Liberation Medal
- Noncommissioned Officer Professional Development Ribbon
- Meritorious Unit Commendation
- Three marksmanship qualification badges

(2) Item 18 (Remarks) does not list the dates of his deployment to Southwest Asia.

5. Army Regulation (AR) 600-8-22 (Military Awards), currently in effect, prescribes policies and procedures for military awards. Regarding the Purple Heart, the regulation states:

a. The Purple Heart is awarded in the name of the President of the United States to any member of an Armed Force of the United States under the jurisdiction of the Secretary of the Army who, after 5 April 1917, has been wounded, killed, or who has died or may hereafter die of wounds received, under any of the following circumstances:

- In any action against an enemy of the United States

- In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged
- While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party
- As the result of an act of any such enemy or opposing Armed Forces
- As the result of an act of any hostile foreign force
- After 28 March 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate armed Services
- After 28 March 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force

b. To qualify for the Purple Heart, the wound must have been of such severity that it required treatment, not merely examination, by a medical officer.

- 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
- A wound is defined as an injury to any part of the body from an outside force or agent. A physical lesion is not required.
- Additionally, the wound's treatment must be documented in the Soldier's medical records.

c. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider is the degree to which the enemy or hostile force caused the wound and was the wound so severe that it required treatment by a medical officer. Some examples of enemy-related actions which justify eligibility for the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy emplaced trap, mine or other improvised explosive device
- Injury caused by chemical, biological, or nuclear agent released by the enemy
- Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract

d. Some examples of injuries which do not justify eligibility for the Purple Heart would include exposure to chemical, biological, or nuclear agents not directly released by the enemy.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. A majority of the Board found lack of evidence to support the applicant having been exposed to hostile fire. A minority of the Board found a connection between his injury conditions and deployment and voted to grant 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.

ADMINISTRATIVE NOTE(S):

1. AR 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all authorized awards and decorations; additionally, the revision, issued on 15 September 2000, added the requirement to show a Soldier's deployment location and dates in item 18 (Remarks).

2. AR 600-8-22, currently in effect, states:

a. The Kuwait Liberation Medal – Saudi Arabia is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf War between 17 January 1991 and 28 February 1991.

b. The Kuwait Liberation Medal – Government of Kuwait is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf War between 2 August 1990 and 31 August 1993.

c. The Southwest Asia Service Medal is awarded to members of the Armed Forces of the United States serving in Southwest Asia from on or after 2 August 1990 to 30 November 1995. A bronze service star is authorized for wear with this medal for participation in each credited campaign, and approved designated campaigns include:

- Defense of Saudi Arabia (2 August 1990 to 16 January 1991)
- Liberation and Defense of Kuwait (17 January 1991 to 11 April 1991)
- Cease-Fire Campaign (12 April 1991 to 30 November 1995)

3. DAGO Number 27, dated 1994, awarded the Valorous Unit Award to Company A, 5th Engineer Battalion, for the period 26 February to 2 March 1991.

4. Based on the foregoing, amend the applicant's DD Form 214, ending 7 September 1994, as follows:

a. Delete the Southwest Asia Service Medal and Kuwait Liberation Medal and add the following awards:

- Southwest Asia Service Medal with three bronze service stars
- Valorous Unit Award
- Kuwait Liberation Medal – Saudi Arabia
- Kuwait Liberation Medal – Government of Kuwait

b. Add the following comment to item 18: "SERVICE IN SOUTHWEST ASIA FROM 19901024 TO 19910413."



REFERENCES:

## 1. Title 10, USC:

a. 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.

b. Section 1556 (Ex Parte Communications Prohibited) provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

2. AR 600-8-22, currently in effect, prescribes policies and procedures of military awards. Regarding the Purple Heart, the regulation states:

a. The Purple Heart is awarded in the name of the President of the United States to any member of an Armed Force of the United States under the jurisdiction of the Secretary of the Army who, after 5 April 1917, has been wounded, killed, or who has died or may hereafter die of wounds received, under any of the following circumstances:

- In any action against an enemy of the United States
- In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged
- While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party
- As the result of an act of any such enemy or opposing Armed Forces
- As the result of an act of any hostile foreign force
- After 28 March 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate armed Services
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//NOTHING FOLLOWS//