

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230005679

APPLICANT REQUESTS: entitlement to the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant 10-page letter to the Board, 4 May 2023
- DD Form 1610 (Request and Authorization for Temporary Duty Travel of Department of Defense Personnel), 14 January 2009
- Standard Form (SF) 600 (Chronological Record of Medical Care), 26 May 2009
- Radiology Requisition and Report, 27 May 2009
- SF 600, 27 May 2009
- SF 600, 14 September 2009
- Witness Statement, WLE, 1 August 2019
- Memorandum for Record, LLH, 1 August 2019
- Witness Statement, GLH, 15 August 2019
- Witness Statement, WRK, 16 August 2019
- Applicant Statement, 16 August 2019
- Memorandum, U.S. Army Human Resources Command (AHRC), 10 June 2020
- DA Form 4187 (Personnel Action), 14 September 2020
- Memorandum for Record, MDH, 1 October 2020
- Narrative Summary (NARSUM), 16 October 2020
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, 3 December 2020
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 29 December 2020
- 18 Emails
- Officer Record Brief (ORB)

FACTS:

1. The applicant states, in effect, an administrative noncommissioned officer (NCO) committed a grave administrative error by failing to ensure essential documents the applicant had provided were submitted as part of his original submission to AHRC. The

NCO erroneously substituted unrelated documents which were part of a Combat Infantryman Badge award packet which was being submitted simultaneously. The NCO apologized for his error; however, on 10 June 2020, AHRC erroneously disapproved his request for the Purple Heart citing a lack of evidence of mild traumatic brain injury (mTBI). However, there was sufficient medical evidence in the packet submitted that showed he lost consciousness, suffered TBI and sustained physical injuries. AHRC Awards and Decorations Branch unjustly failed to process the error free Purple Heart packet resubmitted by the admin NCO, as referenced in their 1 and 2 September 2020, emails.

2. Evidence shows, as a member of the Regular Army, he served in Iraq from 7 January to 25 April 2004, and in Afghanistan for the periods 11 January to 15 August 2009, and 11 September 2010 to 4 April 2011. On 29 December 2020, he retired honorably due to combat related disability in the rank/grade of major/O-4.

3. The applicant provides a/an:

a. DD Form 1610 deploying him in a temporary change of station status from Fort Bragg, NC, to military bases not in Kabul, Afghanistan, proceeding on 14 January 2009.

b. SF 600, 26 May 2009, which states, in effect, the applicant presented with headaches and blurred vision from an improvised explosive device (IED) blast. Sustained a concussion from the seat detaching and slamming him against the roof and windshield. After the blast the applicant was walking around and coherent but was complaining of headache and light sensitivity. After consulting with battalion, it was determined he should be sent on a routine MEDEVAC and screened for TBI. Vitals in normal limits and Soldier in good spirits.

c. SF 600, 27 May 2009, which states, in effect, the applicant was seen after encountering an IED blast. The applicant was the front right passenger and the IED struck near the vehicle. A short 3-5 second loss of consciousness (LOC) immediately following the blast. Struck the front of his head on the windshield or something. States he was slumped over when the team opened his vehicle door and told him the vehicle was on fire. He was able to dismount unassisted with moderate balance problems while walking. Has headaches, tinnitus, right knee pain, neck and back stiffness. Military Acute Concussion Evaluation (MACE) score 29/30. Diagnosed with a concussion with LOC, tinnitus, right knee contusion, cervicalgia lumbago.

d. Radiology Requisition and Report, 27 May 2009, which states the applicant was involved in an IED blast on 26 May 2009. LOC for 3-5 seconds with headache. No focal deficits. After a non-contrast head computerized axial tomography (CT), no intracranial pathology, permanent arachnoid granulation in left frontal cerebellum.

e. SF 600, 14 September 2009, TBI and Neuro-Rehab Clinic, Womack Army Medical Center, appointment for mTBI. Diagnosed with some memory loss and focusing issues, personal history of TBI also has had numerous other concussions and perhaps a severe TBI in 1988 from a tree falling on him. The current concussion is the first where symptoms continued. Post-traumatic headache, chronic, now has headaches that are migraine-like once a week that responds to Excedrin Migraine. Cervicalgia determined as long-standing but increased lately with TBI. Follow up with physical therapy and several weeks of anti-inflammatory and muscle relaxant have improved symptoms. Sleep disturbances improving without medication. Acute reaction to stress with disturbance of emotions as the applicant has some anxiety about riding in the driver's seat but able to handle. Off anti-depressants and has been through therapy.

f. A self-authored statement dated 16 August 2019, in which he claims:

(1) On 26 May 2009, Special Forces Operational Detachment Alpha (SFODA) 3114 was conducting a joint combat patrol from Fire Base (FB) Sweeney, Zabul Province, Afghanistan, to Safidar, a village approximately 20 kilometers southwest of FB Sweeney. There were four or five vehicles in the patrol, one or two Afghan High Mobility Multi Wheeled Vehicles in the lead, followed by three Special Operations Up-Armored Ground Mobility Vehicles (GMV). Approximately 10km south of FB Sweeney, SFODA 3114 intercepted enemy radio chatter describing a pending attack against their patrol.

(2) The patrol halted and cleared a choke point with a dismounted foot patrol and then with a K9 Explosive Detection Team lead by Sergeant EB with his German Shepherd dog named Rex. No issues noted and the patrol moved forward. In the vehicle was the driver, Staff Sergeant (SSG) MS, turret gunner Sergeant First Class (SFC) WK, rear gunner, U.S. Air Force Joint Terminal Air Controller SSgt ME, and himself. The next thing he remembers is being smashed into a small dark space with his ears ringing, smoke, and his heart pounding in his chest. After what seemed like a long time, SFC WK rolled him out of the burning GMV. He remembers SFC WK yelling in his face to get up; asking him if he was ok. SFC WK yelled at him to get up again and said they needed to find everyone else. He heard what he thought was an ambush, driving him to stand up and stagger back to the burning GMV where he pushed the broken parts of the Kevlar seat out of the way, grabbed his M4 and, began looking for the rest of his element. He found SFC WK providing aid to SSG MS, who was on the ground next the GMV with vomit and blood on his chest. Then, SFC RL, a medic, and SFC GH arrived and yelled at him to help move SSgt ME to a casualty collection point away from the fire. When they stopped, SFC GH grabbed him and positioned them both to shield SFC RL as he cared for SSgt ME from the rounds that were striking all around them. It took a minute for him to realize it was not an ambush, but rounds coming from the ammunition cooking off in the GMV fire. He remembers SFC RL pulling SFC GH close to him so they would shield SSgt ME and yelling at him to call for medical evacuation (MEDEVAC).

(3) Next thing he remembers is being in the passenger seat of a GMV calling for MEDEVAC and clearing the helicopter to land. Then, he remembers clearing a bomber to drop on what was left of his GMV and missing; they had to drop another bomb. Next, he remembers riding back to FB Sweeney with his head throbbing, nauseous, and trying to keep calm because his heart was pounding. At FB Sweeney he vomited in the latrine. SFC RL told him and SFC WK that they would be MEDEVAC'd to Kandahar for medical evaluation.

(4) The next day, he had a severe headache, nausea, vomiting, and an incredibly sore back and neck that made it almost impossible to dress. His right leg was swollen above the knee, and he could barely turn his head. He had to wear sunglasses indoors and out as any light hurt his eyes. After a couple of days in Kandahar, he and SFC WK returned to FB Sweeney. They were restricted from duty or physical training for three weeks. For the next several months his nose would bleed anytime he sneezed, and he knew he was having issues with short term memory. Any direct light he did see had a hazy halo around it. SSG MS and SSgt ME were both MEDEVAC'd to the United States for treatment and did not return to Afghanistan. Following the deployment, he was treated for TBI, evaluated for back and knee issues, as well as post-traumatic stress disorder at Womack Army Medical Center.

g. Witness statement, 1 August 2019, provided by SFC WLE which corroborates the statement of the applicant provided above.

h. Witness statement, 1 August 2019, provided by Colonel (COL) LLH, who had mission command responsibility for the applicant's element on 26 May 2009. He further adds SFC RL, U.S. Army Special Forces medic, determined the applicant and SFC WK were both showing signs and symptoms of TBI and were MEDEVAC'd via helicopter to Kandahar, Afghanistan for higher level care and evaluation. They returned days later for several weeks of restricted duty, eventually returning to full duty by mid-June.

i. Witness statement, 15 August 2019, provided by Master Sergeant GLH, Operations Sergeant, who further adds, in effect, the applicant's truck was blown approximately 15 feet up in the air. After extraction, the applicant was disoriented, moving slowly and looked like a zombie. The applicant and others were flown to Kandahar for TBI analysis. The applicant returned a few days later and was stood down from conducting patrols for a few weeks.

j. Witness statement, 16 August 2019, provided by SFC WK, who was in the vehicle with the applicant on 26 May 2009, when it encountered an IED. His statement effectively corroborates the applicant's statement provided above.

k. DA Form 4187 dated 14 September 2020, requesting entitlement to the Purple Heart for wounds/injuries received in action caused directly by the enemy on 26 May 2009, in Afghanistan.

l. Memorandum for Record from COL MDH, M.D., Deputy Commanding Officer, Special Warfare Medical Group (Airborne), U.S. Army John F. Kennedy Special Warfare Center and School, who states COL AM, who was deployed to Afghanistan at the time of the applicant's injury was contacted to verify the treatment protocol established for post-blast injuries and the specific care provided to the applicant. "Clearly the operational scenario, acute evaluation and long-term follow-up indicate that [the applicant] and SFC WK suffered mTBI from an IED blast in May 2009. By Operation Enduring Freedom XIII (that specific rotation) we were well aware of the implications of mTBI and potential consequences of similar head injuries occurring in close succession. It was standard practice to place Soldiers on quarters immediately, for up to two weeks to allow for both physical and cognitive rest. Strong evidence supported the importance of this immediate rest period to minimize long-term effects. We would have prescribed this to the members of SFODA 3114, [the applicant] and SFC WK included, after their IED blast exposure. I can attest to this fact in any forum, and Mr. BV would too. If the original documentation does not spell this out, I intend for this message to clear any question unequivocally." COL MDH further states there is clear evidence that the applicant suffered a mTBI and was placed on quarters for 14 days to both rest and to further protect him from further injury.

m. 9-page NARSUM dated 16 October 2020 and DA Form 199 convened on 3 December 2020, in which the board found the applicant physically unfit recommending a rating of 40% and that his disposition be permanent disability retirement due to degenerative arthritis of the lumbar spine; lumbosacral strain; sacroiliac injury, intervertebral disc syndrome, lumbar radiculopathy of the left sciatic nerve. Onset for this condition was on 26 May 2009, while deployed to Afghanistan as the result of an IED which caused the applicant to be slammed against the roof and windshield when his seating detached. Also found ratable for left hip trochanteric bursitis found unrelated to the 26 May 2009 incident.

n. ORB, and DD Form 214 which shows he retired honorably due to combat related disability on 29 December 2020.

o. 18 emails detailing communications with various personnel and agencies from 26 August 2019 to 18 June 2020, pertaining to his struggle to correctly process his entitlement to the Purple Heart .

4. On 10 June 2020, the Chief, Awards and Decorations Branch, AHRC, disapproved his request for the Purple Heart for injuries received while deployed in support of Operation Enduring Freedom. After a thorough review of the information provided, the

forwarded recommendation for award of the Purple Heart did not meet the statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8g(13), "mTBI that does not 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."

5. Army Regulation 600-8-22 contains the regulatory guidance pertaining to entitlement to the Purple Heart 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.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. Army Regulation 600-8-22 provides, 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.
3. The applicant's records contain a Radiology Requisition and Report, dated 27 May 2009, which states the applicant was involved in an IED blast on 26 May 2009 and was positive for loss of consciousness for 3-5 seconds with headache, he was subsequently diagnosed with concussion/mTBI.
4. The applicant meets the criteria for entitlement to the Purple Heart for wounds he sustained on 26 May 2009.

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 the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- award him the Purple Heart for wounds he received as a result of hostile enemy action on 26 May 2009
- correcting his DD Form 214 for the period ending 29 December 2020, to add the Purple Heart

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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 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 CT or Magnetic Resonance Imaging 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 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.

4. Army Regulation 15-185 states, 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//