

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 February 2024

DOCKET NUMBER: AR20230005801

APPLICANT REQUESTS:

- reconsideration of his prior request for award of the Purple Heart (PH)
- a video/telephonic appearance before the Board

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Orders 09-323-00007, dated 19 November 2009 (Transfer Orders)
- Three DA Forms 2823 (Sworn Statement)
- Two DA Forms 1156 (Casualty Feeder Card)
- Medical Records (16 pages)
- Three DD Forms 2796 (Post-Deployment Health Assessment (PDHA))
- DD Form 2900 (Post-Deployment Health Re-Assessment (PDHRA))
- Two DA Forms 2173 (Statement of Medical Examination and Duty Status)
- DD Form 2796, dated 7 September 2011
- [REDACTED] Neurological Assessment, 21 July 2011
- U.S. Army Human Resources Command (HRC) Denial Letter, 1 September 2015
- MILPER Message 11-125 (Awarding of the Purple Heart)
- ABCMR Denial Letter, dated 15 February 2018

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 AR20170014609 on 13 February 2018.
2. The applicant states he is requesting the ABCMR reevaluate the dates of the incident through the dates of service to reconsider the denial of the PH for combat related injuries sustained in the improvised explosive device (IED) blast that occurred 25 meters from his vehicle on 24 June 2010, right outside of Baghdad, Iraq.

a. On 24 June 2010, he and his team encountered an IED attack at approximately 2045. He was treated at the Troop Medical Clinic (TMC) of Forward Operation Base (FOB) Prosperity and was retained for 24-48 hour observation. In November 2010, he redeployed to Fort Lewis, WA where he was seen by the Traumatic Brain Injury (TBI) clinic who stated since he was a reservist, he could continue treatment with the Department of Veterans Affairs (VA) in his hometown. He redeployed again in February 2011 from Fort Carson, CO, where he was medically flagged and was not cleared due to the IED incident. In September 2011, Dr. [REDACTED] the attending physician at Fort Carson, CO, stated he did in fact have mild TBI (mTBI) and had been misdiagnosed. He submitted his PH packet January 2015, after his leadership advised he was deserving of the award. He was denied the PH in September 2015 by HRC and again by the ABCMR on 15 February 2018. He firmly believes his award meets the criteria for injuries sustained while deployed.

b. The applicant further notes It has been depressing knowing that a technicality hinders a Soldier in deserving such an award. Regardless of the technicality, his life has been affected by the injury and he suffers from continuous ringing in the ears, post-traumatic stress disorder (PTSD) and mTBI; yet he continues to serve as a Soldier and a leader in such capacity to continue to do great things. There are many Soldiers like himself, who suffer and either continue to serve or have departed the military with no honorable recognition. He does believe in guidelines for such instances; however, the definition of a combat related injury should justify any combat related injury and not limit those injuries to certain guidelines. The applicant's self-authored statement is available for review by the Board. A timeline of events provided in his self-authored statement, among additional details, are as follows:

- February 2010 – deployed to Iraq
- 24 June 2010 – began combat patrol mission at approximately 2015
- 24 June 2010 – the second vehicle in convoy engaged an IED approximately 25 meters from the vehicle the applicant was in; gunner sustained injuries
- 24 June 2010 – applicant initially treated at FOB Shield and subsequently treated at FOB Prosperity at 2200 by Colonel (COL) [REDACTED] told to rest and return in the morning, prescribed ibuprofen for his headache
- 25 June 2010 – followed up with COL [REDACTED] due to dizziness, head pain, and ringing in ears; released without limitations
- 26 June 2010 – fellow Soldier tasked with retrieving medical documents after COL [REDACTED] was heard “making rude comments” about incident
- October 2010 – redeployed and noticed medical documentation by COL [REDACTED] was inaccurate, indicated IED blast within 50 meters, not 25 meters and further noted complaint was common cold vice symptoms of IED blast
- November 2010 – DD Form 2796 cleared of TBI, follow up with VA

- 9 February 2011 – was completing Soldier Readiness Processing (SRP) at Ft. Carson in preparation for mobilizing and was informed he would be further evaluated due to symptoms of mTBI and provided with options for care
- 29 September 2011 – accepted to AGR program and due to selection, had to clear mobilization order where medical records were updated to reflect mTBI
- 1 September 2015 – HRC denied PH packet
- 15 February 2018 – notified ABCMR denied PH packet

3. The applicant provides:

a. As new evidence, not previously considered by the Board, the applicant provides

■ a link to a 2011 article by the American Forces Press Service which he believes shows the DoD allows award of the PH even if a service member was not treated by a medical officer, as long as a medical officer certifies that the injury would have required treatment by a medical officer had one been available.

b. The below listed documents having been considered in ABCMR Decision AR20170014609:

- a number of orders which show the applicant was mobilized and deployed in support of Operation Iraqi Freedom, to be referenced in the service record
- three DA Forms 2823 completed between 24 and 30 June 2010 from unit members and the applicant that provide a synopsis of 24 June 2010 events
- two DA Forms 1156, show the applicant was a casualty caused by hostile action by the enemy on 24 June 2010 and endorsed by the unit medic
- medical records (16 pages) – document concussion with no loss of consciousness from approximately June 2010 through July 2010; the applicant is further released without limitations
- three DD Form 2796 – 12 October 2010, 9 November 2010, and 10 November 2010, wherein applicant self-reports symptoms of mTBI
- two DA Form 2173 – incomplete and not signed by unit commander with reports of TBI, hearing loss, and dizziness for IED blast on 24 June 2010
- DD Form 2796, 7 September 2011 – indicating no evidence of risk for TBI
- UCLA assessment, 21 June 2011 – applicant assessed for symptoms related to IED blast on 24 June 2010
- HRC letter, 1 September 2015 – denied PH on basis that diagnosis and treatment in the medical documentation did not meet criteria for award of PH
- MILPER Message 11-125, identified in the references
- ABCMR letter, 15 February 2018 – denied PH, ROP referenced but not included with attachments

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

a. He enlisted in the U.S. Army Reserve on 5 December 2000.

b. The service record was void of a DA Form 2-1 (Enlisted Personnel Record) and/or an Enlisted Record Brief.

c. The applicant served three honorable periods of active duty, as evidenced by the DD Forms 214 (Certificate of Release or Discharge from Active Duty):

- 5 February 2001 to 13 June 2001 – initial active duty training
- 3 February 2004 to 22 March 2005 – service in Iraq from 28 February 2004 to 24 February 2005
- 4 February 2009 to 9 December 2009 – premobilization training

d. Orders 09-328-00001, dated 24 November 2009, ordered the applicant to active duty in support of Operation Iraqi Freedom (OIF) for approximately 400 days with a report date of 10 December 2009.

e. A Statement of Service, dated 18 October 2010, shows the applicant was deployed to Baghdad, Iraq from 11 February 2010 through 27 October 2010.

f. Orders 313-0017, dated 9 November 2010, released the applicant from active duty, not by reason of physical disability, with an effective date of 23 January 2011.

g. He was honorably discharged from active duty on 23 January 2011. His DD Form 214 shows he completed 1 year, 1 month, and 14 days of active service. It also shows his foreign service dates in Iraq as 11 February 2010 through 7 November 2010, and among his awards, the PH is not listed. He was assigned separation code MBK and the narrative reason for separation listed as "Completion of Required Active Service."

h. Orders A-12-034460, dated 16 December 2010, ordered the applicant to active duty for operational support for a period of approximately 365 days with a report date of 4 February 2011.

i. Orders 252-0001, dated 9 September 2011, released the applicant from active duty, not by reason of physical disability, with an effective date of 25 September 2011.

j. He was honorably discharged from active duty on 25 September 2011. His DD Form 214 shows he completed 7 months and 22 days of active service. He was assigned separation code MBK and the narrative reason for separation listed as "Completion of Required Active Service."

k. Orders R-01-209367, dated 31 January 2022, ordered the applicant to active duty in Active Guard/Reserve (AGR) status with a report date of 8 August 2022. The applicant remains in an AGR status.

5. On 13 February 2018, the ABCMR rendered a decision in Docket Number AR20170014609. The Board noted on 24 June 2010, the applicant's unit was involved in an enemy IED detonation. It appears he was not evacuated at the time of the incident, and it appears he did not immediately receive any medical care. He was further evaluated by COL [REDACTED] on 5 July 2010, who entered on his SF 600 "concussion with no loss of consciousness." There is no evidence of a medical diagnosis in proximity to the incident date, at or near the time of the incident and made a matter of record, that confirms the applicant had problems with hearing, vision, balance, coordination, or memory. There is no evidence of loss of consciousness. For that reason, the Board denied the applicant's request for award of the Purple Heart.

6. By regulation (AR 15-185), 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.

7. By regulation (AR 600-8-22), paragraph 2-8h provides examples of injuries or wounds which clearly do not justify award of the PH which includes:

- battle fatigue
- post-traumatic stress disorder
- mild traumatic brain injury or concussions that do not either result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function

8. MEDICAL REVIEW:

a. Request: The applicant is requesting reconsideration of his prior requests for award of the Purple Heart (PH).

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- The applicant enlisted in the U.S. Army Reserve on 5 December 2000.
- The applicant served three honorable periods of active duty, as evidenced by the DD Forms 214:
- 5 February 2001 to 13 June 2001 – initial active-duty training
- 3 February 2004 to 22 March 2005 – service in Iraq from 28 February 2004 to 24 February 2005

- 4 February 2009 to 9 December 2009 – premobilization training
- A Statement of Service, dated 18 October 2010, shows the applicant was deployed to Baghdad, Iraq from 11 February 2010 through 27 October 2010.
- Orders 313-0017, dated 9 November 2010, released the applicant from active duty, not by reason of physical disability, with an effective date of 23 January 2011.
- On 13 February 2018, the ABCMR rendered a decision in Docket Number AR20170014609. The Board noted on 24 June 2010, the applicant's unit was involved in an enemy IED detonation. It appears he was not evacuated at the time of the incident, and it appears he did not immediately receive any medical care. He was further evaluated by COL [REDACTED] on 5 July 2010, who entered on his SF 600 "concussion with no loss of consciousness." There is no evidence of a medical diagnosis in proximity to the incident date, at or near the time of the incident and made a matter of record, that confirms the applicant had problems with hearing, vision, balance, coordination, or memory. There is no evidence of loss of consciousness. For that reason, the Board denied the applicant's request for award of the Purple Heart.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, self-authored statement, medical records, [REDACTED] Neurological Assessment dated 21 July 2011, ABCMR Record of Proceedings (ROP), and DD Forms 214. The VA electronic medical record and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he is requesting the ABCMR reevaluate the dates of the incident through the dates of service to reconsider the denial of the PH for combat related injuries sustained in the improvised explosive device (IED) blast that occurred 25 meters from his vehicle on 24 June 2010, right outside of Baghdad, Iraq. On 24 June 2010, he and his team encountered an IED attack at approximately 2045. He was treated at the Troop Medical Clinic (TMC) of Forward Operation Base (FOB) Prosperity and was retained for 24-48 hour observation. In November 2010, he redeployed to Fort Lewis, WA where he was seen by the Traumatic Brain Injury (TBI) clinic who stated since he was a reservist, he could continue treatment with the Department of Veterans Affairs (VA) in his hometown. He redeployed again in February 2011 from Fort Carson, CO, where he was medically flagged and was not cleared due to the IED incident. In September 2011, Dr. [REDACTED], the attending physician at Fort Carson, CO, stated he did in fact have mild TBI (mTBI) and had been misdiagnosed. He submitted his PH packet January 2015, after his leadership advised he was deserving of the award. He was denied the PH in September 2015 by HRC and again by the ABCMR on 15 February

2018. He firmly believes his award meets the criteria for injuries sustained while deployed.

e. In Sworn Statements by soldiers who witnessed the incident on 24 June 2010, they described both the pre and post impact of events of the blast exposure:

- On 30 June 2010, the convey medic, reports the lead gunner (not the applicant) who was closest to the blast and the only soldier who was returned for further medical evaluation the next morning since all other personnel had recovered.
- On 24 June 2010, a soldier who was present, reports following the blast the convey medic checked all personnel in the vehicles and found no immediate injuries but suggested further medical evaluation, all were seen at the medical facility.
- On 24 June 2010, the applicant in his statement reported the blast exploded approximately 25 meters away, however, no damage was done to the vehicle. No serious injuries were reported, other than ear pain and slight head pain.

f. Pertinent medical records related to the incident include:

- Screening note dated 24 June 2010 indicates the applicant was on a convoy and an IED went off 50 meters in front.
- On 25 June 2010, during a medical follow-up the applicant reported symptoms of tinnitus, headache, ear pressure, decreased balance and decreased hearing. The applicant was examined during this visit and all physical findings were normal. He was released without limitations.
- On 02 Jul 2010, he presented to medical due to ankle pain related to a preexisting condition. The applicant was provided Ibuprofen 800 mg and released without limitations.
- On 05 July 2010, he was seen for a follow-up and reported ringing in the ears (tinnitus) that had decreased and dizziness; pressure in his ears had resolved and he denied headaches. He was diagnosed with concussion with no loss of consciousness and released without limitations.
- On 31 July 2010, applicant was seen for a follow-up related to his concussion with no loss of consciousness. The applicant was provided with a neurological screening and no abnormalities were noted; he was released without limitations.

g. Post-Deployment Health Assessment dated 12 October 2010 indicates the applicant reports excellent health, denied experiencing loss of consciousness, no profile and TBI risk assessment notes no evidence of risks. However, an assessment on 9 November 2010 changed the TBI risk assessment to potential TBI due to applicant's self-report of ongoing ringing in his ear.

h. A neurological assessment dated 21 July 2011, screened for neurological symptoms based on the applicant's self-report, not on objective testing measures. The report evidenced inconsistencies in the applicant's self-report of the event. He reported during the assessment experiencing loss of consciousness during the blast, pain in the chest and abdomen, apparently from the compression wave of the blast, and being propelled into the front of the vehicle where he hit his head. He further reported experiencing post-traumatic amnesia and a fellow soldier slapping his face to wake him up due to loss of consciousness. Despite the applicant's increase in his reported injuries, not otherwise reported, the assessment indicates mild TBI with "probable cognitive-related difficulties" and recommends neuropsychological testing to assist with determining his difficulties. In a behavioral health encounter dated, 19 July 2011, the applicant provided a draft copy of the neuropsychological assessment and reported that he did not believe he had a TBI; the clinician noted discrepancies in the assessment.

i. Per AR 800-8-22, chapter 2-8, concussions (and/or mild traumatic brain injury (mTBI)) caused as a result of enemy-generated explosions that result in either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident, are qualifying. Clarifying guidance on awarding of the Purple Heart for concussions provides that in addition to the criteria in paragraph 2-8, that both diagnostic and treatment factors should be present and documented in the Soldier's medical record by a medical officer.

j. The sworn statements and available medical documentation do not support the applicant sustained a concussion and/or mild TBI that resulted in loss of consciousness, on the day of the concussive event, or required restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours. The blast exposure on 24 June 2010 is acknowledged; however, characteristic TBI signs/symptoms were not documented during the initial clinical examination(s) that took place at the time. The medical record does not support the applicant's account of being retained for 24-48 hour of observation. And although mild residual signs/symptoms of a concussive incident were evident in the medical record, no loss of consciousness or required restrictions were noted.

k. Based on all available information, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient medical documentation to support awarding of the Purple Heart to this applicant.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the regulatory requirements for awarding the Purple Heart for TBI-type injuries and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting awarding the Purple Heart to the applicant.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

5/20/2024

X

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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

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

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.

2. AR 600-8-22 (Military Awards) provides Army policy, criteria, and administrative instructions concerning individual military decorations.

a. The Purple Heart is awarded to any member of an Armed Force of the United States who, while serving under competent authority in any capacity with one of the U.S. Armed Services after 5 April 1917, has been wounded or killed, or who has died or may hereafter die after, being wounded:

- 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 U.S. are or have been engaged
- while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the U.S. is not a belligerent party
- as the result of an act of any such enemy of opposing Armed Forces
- as the result of an act of any hostile foreign force

b. Paragraph 2-8g. provides examples of enemy-related injuries which clearly justify award of the Purple Heart:

- injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- injury caused by enemy-placed trap or mine
- injury caused by enemy-released chemical, biological, or nuclear agent
- injury caused by vehicle or aircraft accident resulting from enemy fire
- concussion injuries caused as a result of enemy-generated explosions
- mild traumatic brain injury or concussion severe enough to cause either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident.

c. Paragraph 2-8h provides examples of injuries or wounds which clearly do not justify award of the Purple Heart which includes:

- battle fatigue
- post-traumatic stress disorder
- mild traumatic brain injury or concussions that do not either result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function

d. Paragraph 2-8i states it is not intended that such a strict interpretation of the requirement for the wound or injury to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel.

3. MILPER Message Number 11-125, dated 29 April 2011, and MILPER Message 11-157, dated 20 May 2011, provided clarifying guidance for award of the Purple Heart. This message did not change the standards for award of the Purple Heart for concussion injuries; it clarified the standards. When recommending and considering award of the Purple Heart, the chain of command will ensure the criteria are met and that both the diagnostic and treatment factors are present and documented in the Soldier's medical records by a medical officer.

a. The following non-exclusive list provides examples of signs, symptoms, and medical conditions documented by a medical officer or medical professional that meet the standards for the Purple Heart: diagnosis of concussion or mild TBI, any period of loss or decreased level of consciousness, any loss of memory for events immediately before or after the injury, neurological deficits (weakness, loss of balance, change in vision, difficulty with coordination, headaches, nausea), and intracranial lesion.

b. The following non-exclusive list provides example of treatment for concussion that meets the standards necessary for award of the Purple Heart: limitation of duty following the incident (limited duty, quarters), pain medication to treat the injury, such as medication for a headache, referral to a neurologist, or rehabilitation (therapy for the injury).

//NOTHING FOLLOWS//