

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230005997

APPLICANT REQUESTS: with counsel, reconsideration of her previous two requests for entitlement to the Purple Heart. They further request she receive a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- letter from Counsel, 5-pages, undated
- Permanent Orders 105-206, Headquarters, 24th Infantry Division (Mechanized) and Fort Riley, 15 April 2003
- Standard Form 600 (Chronological Record of Medical Care), 17 November 2003
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 June 2005
- DD Form 215 (Correction to DD Form 214), 30 June 2009
- DA Forms 2823 (Sworn Statement), 22 November 2010, 16 December 2010
- Memorandum, [REDACTED] Army National Guard, 14 June 2011
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20120021770, 18 June 2013
- ABCMR Docket Number AR20190012303, 18 August 2020
- DA Forms 2823, 20 January 2023, 2 February 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Numbers AR20120021770 on 18 June 2013 and AR20190012303 on 18 August 2020.
2. The applicant provides new evidence or argument through counsel, which warrants consideration by the Board.
3. The applicant states, in effect, she is requesting reconsideration of her previous requests to be awarded the Purple Heart due to new documentation showing her wounds were treated by a medical doctor (MD) medical officer in addition to the medical noncommissioned officer. She previously stated a medic treated her for her injuries, but

upon speaking with her, the applicant now understands that the medic was assisting the doctor who entered the treatment and diagnosis on her SF 600. The applicant further states she is currently in the Air Force National Guard, Charlotte, ■■■, serving as a chaplain.

4. Counsel states, in effect:

a. The previous Board denied her petition because the attending medical personnel were not adequately senior or credentialed. They have provided, for the first time, an additional statement by that attending medic that states she was assisting a commissioned officer medic who signed the official record of medic treatment. They ask that the Board correct this injustice and correct the applicant's record to reflect receipt of the Purple Heart.

b. The applicant enlisted in the Regular Army (RA) on 1 March 2002, and she served in Iraq from 29 April 2003 to 28 March 2004. On 17 November 2003, she was injured in a mortar attack and treated by Sergeant (SGT) ■■■, 91W (Health Care Specialist), and her statement from the SF 600 was previously considered by the Board. There are two distinct styles of handwriting on the SF 600. One is signed by SGT ■■■, "As per MD." This is a reference to the attending physician whose treatment notes and signature are clearly visible on the front of the form. SGT ■■■ provided an updated statement dated January 2023 confirming that she was assisting the MD consistent with her contemporaneous notes. This statement is consistent with the treatment record, which includes diagnosis and treatment notes in the doctor's handwriting and is signed by the doctor.

c. Previous Boards have accepted that the applicant was injured by an enemy mortar attack, which is not in dispute. Army Regulation 600-8-22 (Military Awards), paragraph 2-8h.(3)(b)8, states the SF 600 is a medical record required to accompany requests for authorization to wear the Purple Heart. Page 3 of the applicant's first application to the Board states that there is "a lack of evidence showing her scratches required medical treatment by medical personnel or that treatment was made a matter of official record." This sentence refers to her SF 600 which is an official record bearing the diagnosis and treatment notes of a medical doctor.

d. An analogous case, *Haselwander v. McHugh*, 774 F. 3d. 990 (DC Cir.2014) was decided in 2014 by the Federal Court of Appeals for the D.C. Circuit. In that case, the applicant's petition was unreasonably denied by this Board because the evidence presented in support of the applicant's claim were "insufficient." The Court went on to chastise the Board for unreasonably interpreting evidence and ultimately found that "Haselwander's request for correction of his military record and an award of the Purple Heart are supported by contested, creditable evidence." Here, [the applicant's] application satisfied all the requirements for issuance of a Purple Heart, but her claim

was unreasonably denied because the Board simply refused to acknowledge the evidence. The Board reviewed the same SF 600 that it did in 2013 and in 2020. The Board found that the medic referred to in the petition didn't qualify as a medical officer and ignored the note by that medic that said, "per the MD" and the extensive notes on the front page of the SF 600, clearly signed by a medical doctor. [The applicant] reapproaches now with new and specific evidence in the form of an affidavit from the medic that it was the medical doctor that diagnosed and treated her, with the medic assisting and carrying out various parts of that treatment.

e. The applicant's petition is compelling and was supported by her leadership who saw the circumstances and supported her petition. The requirements to grant the Purple Heart to the applicant have been met. She was injured while on active duty in the Army. Her injuries came because of enemy attack. Her injuries were serious enough to require treatment by a medical officer who signed her SF 600 after entering extensive diagnosis and treatment notes. That SF 600 was entered into her medical record. Thankfully, her injuries healed quickly and did not require extensive follow-on care. However, extensive follow-on care is not required under the statute or Army policy. The standard has been met by clear and contested evidence. This Board's refusal to acknowledge the evidence arbitrarily raises the standard and inserts additional requirements, which is beyond its powers and duties. Like Mr. [REDACTED], the applicant is entitled to wear the Purple Heart because she was wounded in action with the enemy while serving her country in Iraq. This Board should act to correct the injustice that she has had to endure for almost two decades.

5. The applicant enlisted in the RA on 1 March 2002. She served in military occupational specialty (MOS) 63H (Track Vehicle Repairer). Evidence shows she served in Kuwait/Iraq in support of Iraqi Freedom from 29 April 2003 to 28 March 2004.

6. A 3-page SF 600 dated 17 November 2003, notes two scratches to the left side of the neck from shrapnel. Superior scratch approximately 1.5 inches, inferior scratch approximately 1 inch in length. The applicant stated she was on guard within the tower when she was involved in a mortar attack. She stated a mortar landed approximately 50 meters from the base of the tower which propelled her to the floor of the tower. While in the motion of falling, possible shrapnel, rock, or debris caused scratches across the left side of her neck. She noted when touching the left side of her neck, the pain was 7-8 on a 1-10 pain scale. She was diagnosed with two scratches to the left side of her neck, the area was inflamed with no active drainage. The wound was treated with a Betadine scrub, flushed with normal saline, and dressed with Bacitracin. The applicant was instructed to clean the area/change the dressing daily, as needed if soiled, until wound was sealed. She was further instructed she may continue to apply gauze if clothing/equipment irritates area until healed, but she should leave it uncovered to allow it to air dry when off duty. The applicant was to return to the clinic if increased or continued redness or drainage was noted.

7. On 2 June 2005, she was honorably released from active duty upon the completion of her required active service. The DD Form 214 and subsequently issued DD Form 215 (Correction to DD Form 214) she was issued shows she was awarded or authorized the:

- Army Lapel Button
- Army Commendation Medal
- Army Achievement Medal
- Valorous Unit Award
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Global War on Terrorism Expeditionary Medal
- Army Service Ribbon
- Combat Action Badge
- Driver and Mechanic Badge with Driver-M and Driver-W Bars

8. On 22 July 2005, she enlisted in the Army National Guard of the United States. On 8 May 2013, she was honorably discharged from the Army National Guard of the United States and as a Reserve of the Army.

9. A DA Form 2823 from the applicant, dated 22 November 2010, states, in effect, on 16 November 2003, she was on guard duty in Tower 5 at approximately 2000 hours when approximately 8 mortars were launched. A mortar hit half a meter from the base of the tower she occupied which propelled her to the floor. Some shrapnel hit the left side of her neck causing 2 scratches, some redness, swelling and pain to the touch. She was instructed by her company commander to go to the clinic where she was treated for her injury.

10. A DA Form 2823 from SGT [REDACTED], dated 16 December 2010, states, in effect, on 16 November 2003, the applicant was injured by indirect enemy mortar fire. Following the attack, she reported to the 125th Forward Support Battalion (FOB) Aid Station for treatment of the injuries to her neck and was released.

11. On 18 June 2013, the ABCMR denied her application to the Board in Docket Number AR20120021770 for entitlement to the Purple Heart, stating that her SF 600 indicated she was only told to keep her scratches clean and dry. Therefore, it was determined there was a lack of evidence showing her scratches required medical treatment by medical personnel or that treatment was made a matter of official record.

12. On 18 August 2020, the ABCMR denied her application to the Board in Docket Number AR20190012303 for reconsideration of entitlement to the Purple Heart. After reviewing her application and all evidence, the Board found insufficient evidence to

grant relief and amend the decision set forth in Docket Number AR20120021770 on 18 June 2013. The Board determined that although the applicant provided some evidence that she received medical treatment for her lacerations, the nature of the injury was not severe enough to require a medical professional to treat her injury. Per regulation, 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 (to include Special Forces medics). Medics (such as combat medics – MOS 68W) are not physician extenders. The Board considered that the applicant's wound was caused by shrapnel from a mortar attack but agreed that the Purple Heart is not awarded for lacerations that are not severe enough to require medical treatment by a medical professional. The medical record indicates that medical personnel told her to keep her scratches clean and dry but did not require treatment by a physician or a physician extender (medical officers). Therefore, the applicant did not meet the regulatory requirements for award of the Purple Heart.

13. A DA Form 2823 from [REDACTED], dated 20 January 2023, states, on 16 November 2003, in Baghdad, Iraq, she treated the applicant for shrapnel wounds from an enemy mortar that exploded roughly half a meter from her guard tower position. The applicant was instructed to go to the clinic at Camp Payne where they were stationed to be treated for her wounds. She treated her under the supervision and instruction of the doctor. She specifically put on the SF 600 that the doctor was present and gave specific instructions for treating the applicant since she was acting as the doctor's assistant. After treating the applicant, the doctor felt, looked over, inspected, and treated the applicant on the abrasion areas she missed, then required the applicant to keep her wounds dry and clean and to place healing ointment on the affected areas and to return if the wounds got worse per typical protocol for treating shrapnel abrasions.

14. A DA Form 2823 from [REDACTED], dated 2 February 2023, states he had written a statement on this event before. He was the applicant's NCO Team Leader on 16 November 2003 and accompanied her to the 125th FOB Aid Station at Camp Payne. He states a commissioned officer who was a doctor treated her for shrapnel abrasions on her neck from an enemy mortar attack.

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. In *Haselwander v. McHugh*, the D.C. Circuit reviewed an ABCMR decision denying an applicant's request to correct his medical records to reflect that he had been wounded in action in Vietnam, which would qualify him to receive a Purple Heart.

17. Army Regulation 15-185 (ABCMR) states an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the reference to the decision in Haselwander v. McHugh insufficient based upon unrelated facts in the two cases. In that case, medical records could not be located. Here, the available medical record confirms the applicant received treatment from medical personnel for two small scratches that resulted from hostile action. The medical record also indicates the two small scratches only required basic first aid. While she may have received treatment under the direction of a commissioned medical officer, the Board found these injuries did not rise to the level of requiring treatment, not merely examination, by a medical officer as specified in the criteria for the Purple Heart. Based on a preponderance of the evidence, the Board determined the applicant is not entitled to the Purple Heart for the scratches she incurred on or about 17 November 2003.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AR20120021770 on 18 June 2013 and AR20190012303 on 18 August 2020.

2/12/2024

X [REDACTED]

CHAIRPERSON

[REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. Criteria for the Purple Heart states:

a. The Purple Heart is awarded to members of the Armed Forces of the United States who have been wounded, were killed, or who have died or may hereafter die of wounds received as a result of hostile enemy action.

b. Paragraph 2-8c of the regulation states to qualify for award of the Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer. 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.

(1) Treatment of the wound will be documented in the member's medical and/or health record.

(2) Award may be made for a wound treated by a medical professional other than a medical officer provided a medical officer includes a statement in the member's medical record that the severity of the wound was such that it would have required treatment by a medical officer if one had been available to provide treatment.

(3) 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 (to include

Special Forces medics). Medics (such as combat medics – MOS 68W) are not physician extenders.

(4) A medical officer is defined as a physician with officer rank. The following are medical officers:

(a) An officer of the medical corps of the Army.

(b) An officer of the medical corps of the U.S. Navy.

(c) An officer in the U.S. Air Force designated as a medical officer in accordance with Title 10, United States Code, section 101.

c. Paragraph 2-8e, states 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.

d. Paragraph 2-8f, currently in effect, states some examples of enemy-related actions which justify eligibility for the Purple Heart are as follows:

(1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(2) Injury caused by enemy emplaced trap, mine, or another improvised explosive device.

(3) Injury caused by chemical, biological, or nuclear agent released by the enemy.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract.

(6) Concussions (and/or 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.

e. Paragraph 2-8g, currently in effect, states some examples of injuries which do not justify eligibility for the Purple Heart are as follows:



- (1) Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951).
- (2) Trench foot or immersion foot.
- (3) Heat stroke.
- (4) Food poisoning not caused by enemy agents.
- (5) Exposure to chemical, biological, or nuclear agents not directly released by the enemy.
- (6) Battle fatigue, neuro-psychosis, and post-traumatic stress disorders.
- (7) Disease not directly caused by enemy agents.
- (8) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.
- (9) Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.
- (10) First degree burns.
- (11) Airborne (for example, parachute/jump) injuries not caused by enemy action.
- (12) Hearing loss and tinnitus (for example: ringing in the ears, ruptured tympanic membrane).
- (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.
- (14) Abrasions or lacerations (unless of a severity requiring treatment by a medical officer).
- (15) Bruises or contusions (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer).
- (16) Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).

2. In *Haselwander v. McHugh*, the D.C. Circuit reviewed an ABCMR decision denying an applicant's request to correct his medical records to reflect that he had been wounded in action in Vietnam, which would qualify him to receive a Purple Heart.

3. 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//