

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230006406

APPLICANT REQUESTS:

- reconsideration of his prior request for reversal of the U.S. Army Human Resources Command's decision to deny him 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 Appeal Statement
- Medical Records (39 pages)
- Neurological Effects of Blast Injury Article, May 2010
- Delayed But Not Denied, Officer Receives PH Following Traumatic Brain Injury (TBI) Article, December 2021
- Original PH Packet Submitted in ABCMR Decision AR20220007798
- ABCMR Decision AR20220007798

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 AR20220007798 on 17 January 2023.

2. The applicant states he is requesting approval of the PH for a diagnosed TBI due to an enemy mortar attached sustained on 14 June 2009. He would like to appeal the decisions made by HRC and the ABCMR as he believes, the language used to deny his award does not appear in the regulation.

a. The applicant further noted the Board incorrectly added, and applied, new elements to Army Regulation 600-8-22 (Military Awards). In the denial letter, the Board states on page 5 that his "injury was not severe enough at the time to require additional treatment." The basis for denial does not come from regulation; it is an unstated requirement that the Board applied and for this reason, reconsideration is requested.

b. He specified since the Board only chose to focus on contesting the third element listed below, he believed the Board did not contest the remaining elements.

- proof the wound was incurred as a result of enemy action and;
- the wound required treatment by a medical officer and;
- the medical personnel made such treatment as a matter of official record and;
- TBI/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 of greater than 48 hours from the time of the concussive incident

c. He further believes, Army Regulations are written to speak in plain language so the meaning of the text is clear and unambiguous requiring no need for further interpretation. The Board added to the plain language of the text when they added a time requirement, this is evident when it is stated that his injury was not severe enough **at the time** of the event. "At the time" is an added qualification to the element and regulation, and it should not bear decisional weight. The third element was, in fact, met twice, first by the medics and then by clinical diagnosis. It was also noted in section 2b and 2c of the ABCMR. The severity of the mild TBI (mTBI) event led to continued concussion symptoms more than a year later. Although assessed 18 months later, MRI and neuro-psych testing show physical and clinical evidence of brain trauma due to the event.

d. The applicant also adds that the Board determined "additional treatment" as a requirement. Again, nowhere in the regulation does it determine the standard, level, quantity of, or qualifying treatment required. Section 2-8j provides a nonexclusive list for three examples of treatment that meets the standard for treatment for the PH and he believes he met ALL three parts. Technically, any treatment by qualifying medical personnel satisfies this element. Yet in the denial, the Board attempted to establish an unknown and unknowable baseline of treatment standard for the award when the nonexclusive list provided was met. Initial treatment by the medics was dismissed at the time of the initial trauma; however, he was seen by a neurologist and went through 3 months of physical therapy upon redeployment.

e. Finally, the applicant encourages the Board to review the evolving medical understanding of brain trauma considering mTBI is characterized as the signature wound from the Global War on Terrorism. The Board needs to be cognizant that medical studies have now conclusively found brain trauma caused by blasts or explosions results in no less than two insults (shockwave and blunt force) to the brain within microseconds. In summary, he appeals the Board's previous decision on two grounds; application and precedence. The board applied new elements in their decision on my case which he believes he has proven and the "08JAN20 attack established TBI

treatment can be linear, it does not have to be treated at the time of the injury.” The award precedence set by the Army needs to be applied in his case.”

f. The applicant annotated “TBI” as an issue/concern related to his request.

3. The applicant provides:

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

- Medical Records (39 pages) – for medical treatment received from approximately 24 November 2010 through 13 May 2011
- Neurological Effects of Blast Injury Article, May 2010 – summarized the current scientific basis for understanding blast-induced traumatic brain injury (bTBI), the NIH convened a workshop in April, 2008
- Delayed But Not Denied, Officer Receives PH Following Traumatic Brain Injury (TBI) Article, December 2021 – a TBI was not the only wound sustained from that missile attack, [the subject] received inner ear damage which affected his balance and caused severe migraines

b. His previously submitted PH packet with the below listed documents having been considered in ABCMR Decision AR20220007798:

- DA Form 4187 (Personnel Action), 28 November 2009 – Combat Action Badge recommendation
- DA Form 4187, 15 July 2021 – PH recommendation
- DA Form 2823 (Sworn Statement), 20 November 2009 – Second Lieutenant (2LT) AMS sworn statement of mortar attack 14 June 2009
- DA Form 2823, 21 November 2009 – Sergeant First Class (SFC) [REDACTED] sworn statement of mortar attack 14 June 2009
- DA Form 2823, 3 December 2009 – SFC [REDACTED] sworn statement of mortar attack 14 June 2009
- Automated Record Brief (ARB), 5 March 2021
- Significant Activity (SIGACT) Report, 5 June 2009 – detailed a 60mm mortar attack at “COB MAK” on 14 June 2009, no injuries were reported
- Memorandum, [REDACTED] Narrative, 19 November 2009 – identified the applicant as one of the individuals at the location of the 60mm mortar impact
- Permanent Orders (PO) 098-106, 8 April 2009 – ordered the temporary change of station (TCS) for units of the 1st Armored Division, applicant listed
- Photographs (x2), 11 August 2009 – images of the room and ceiling impacted
- Supporting Statements (x2) – additional witness statements of 14 June 2009 mortar attack
- Applicant’s Affidavit, 21 July 2021 – applicant details attack of 11 rounds of 60 mm mortars between 0225 and 0300 on 14 June 2009 at COB MAK

- DD Form 214, 1 July 2020 – for his active service from 26 May 2006 to 1 July 2020
- Medical Records, 10 pages, 4 January 2011 – evaluation of cognitive functions to include TBI
- Memorandum, Command Surgeon, undated – recommended approval and further noted unit was too remote to access electronic medical records and his medics did not prioritize paper documentation
- Memorandum, HRC PH Denial, 8 March 2022 – denied on basis that injury did not require treatment by medical officer at time nor documented in his medical records

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

a. Having had prior enlisted service, he was appointed as a Reserve commissioned officer and executed an oath of office on 22 May 2006.

b. Orders 122-68-A-1199, dated 2 May 2006, ordered the applicant to active duty for a period of 6 years with a report date of 26 May 2006.

c. His Officer Record Brief lists the following deployments:

- Iraq – 15 May 2007 to 8 December 2007
- Iraq – 2 May 2009 to 4 May 2010
- Afghanistan – 29 May 2011 to 15 May 2012

d. He was honorably discharged from active duty on 1 July 2020. His DD Form 214 shows he completed 14 years, 1 month, and 6 days of active service. It also shows his foreign service dates in Iraq and Afghanistan and among his awards, the Purple Heart is not listed.

5. On 17 January 2023, the ABCMR rendered a decision in Docket Number AR20220007798. The Board noted for the PH, the wound must have been of such severity that it required treatment, not merely medical examination, by a medical officer. Notwithstanding the opinion of the Command Surgeon, U.S. Army Space and Missile Defense Command, the Board agreed that the injuries the applicant suffered on 14 June 2009 were not severe enough to require additional treatment by a medical officer at the time, nor were they documented in his medical record. For that reason, the Board determined the applicant's injury does not meet the criteria 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 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

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior request for a reversal of the U.S. Army Human Resources Command's decision to deny him 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). Pertinent to this advisory are the following: 1) Having had prior enlisted service, the applicant was appointed as a Reserve commissioned on 22 May 2006; 2) The applicant deployed to Iraq from 15 May-8 December 2007 and then again 2 May 2009-4 May 2010. He then deployed to Afghanistan from 29 May 2011-15 May 2012; 3) The applicant was honorably discharged from active duty on 1 July 2020; 4) On 17 January 2023, the ABCMR reviewed and denied the applicant's request for a PH.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA), VA's Joint Legacy Viewer (JLV), and medical documents provided by the applicant were reviewed.

d. The applicant asserts he meets criteria for a PH for a Traumatic Brain Injury (TBI), which he reports occurred on 14 June 2009. He stated he experienced a TBI as a result of a mortar attack and falling debris. On his previous application, he provided statements from medics, who were present at the time of the incident. The medics reported the applicant did show signs of a concussion, but there was insufficient evidence the applicant lost consciousness. He was monitored and placed on quarters for 48 hours. There is insufficient evidence the applicant required additional treatment for this event for the remainder of the deployment. After returning from this deployment, the applicant reported experiencing the injury and later received treatment for reported problems with memory and concentration. A review of JLV provided evidence the applicant has sought treatment for a TBI. He reported a history of head injuries prior to

his deployments and other exposures to blasts while deployed. The applicant also reported behavioral health symptoms and hearing loss, which has overlapping symptoms with a TBI.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant has evidence a TBI occurring during his military service. The applicant has been provided assessment and treatment for these injuries after returning from deployment. However, there is specific criteria for a PH related to a TBI. While the applicant reported being injured by enemy fire and did provide confirmatory evidence, there was insufficient available medical evidence recorded that he lost consciousness or required additional treatment at the time of the injury. Also, he would have required 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. The applicant only reported requiring 48 hours of restricted duty. Therefore, there is insufficient evidence at this time to recommend a reversal of the U.S. Army Human Resources Command's and the previous ABCMR's decisions to deny him award of the Purple Heart (PH) for the injury reported to have occurred on 14 June 2009.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant has evidence a TBI occurring during his military service. The applicant has been provided assessment and treatment for injuries after returning from deployment. However, there is specific criteria for a PH related to a TBI. While the applicant reported being injured by enemy fire and did provide confirmatory evidence, there was insufficient available medical evidence recorded that he lost consciousness or required additional treatment at the time of the injury. Also, he would have required 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. The applicant only reported requiring 48 hours of restricted duty. Therefore, there is insufficient evidence at this time to recommend a reversal of the U.S. Army Human Resources Command's and the previous ABCMR's decisions to deny him award of the Purple Heart (PH) for the injury reported to have occurred on 14 June 2009.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

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 guidance found within AR 600-8-22 related the qualifying standards for a Purple Heart and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting the overturning of the previous HRC and ABCMR decision.

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.

5/15/2024

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 (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.

//NOTHING FOLLOWS//