

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230006666

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command, Award and Decorations Branch, denial of the Purple Heart. He also requests a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4187 (Personnel Action)
- Memorandum, U.S. Army Human Resources Command (AHRC), 18 January 2023
- 36-page Rating Decision, Department of Veterans Affairs (VA), 1 March 2023
- 11-page letter, VA, 2 March 2023
- 2-page letter, VA 27 March 2023
- Narrative and Citation to Accompany the Award of the Purple Heart
- Letter, AHRC, Combat-Related Special Compensation (CRSC), 29 June 2023
- 2 DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- 12-page DD Form 2860 (CRSC)
- DA Form 67-9 (Officer Evaluation Report)
- 16 pages of medical records
- Witness Statement, 8 September 2022
- Witness Statement, 17 September 2022
- Military Personnel (MILPER) Message Number 22-215
- Orders 150-69, Headquarters, 82nd Airborne Division, 30 May 2002
- Orders 191-02, Headquarters, 82nd Airborne Division, 10 July 2002
- Orders 213-06, Headquarters, 82nd Airborne Division, 1 August 2002
- 0004412839.00, Permanent Change of Assignment Orders, 5 April 2023
- Officer Record Brief (ORB), 16 August 2002

FACTS:

1. The applicant states, in effect, he received his injuries in the early stages of the conflict when the only conventional units on the ground were two Brigade sized elements. The only medical support was organic to the unit in Afghanistan with the next higher triage in Germany. The Brigade surgeon was located in Kandahar and his injuries occurred on Forward Operating Base Salerno. The only medical attention afforded him at the time was a combat medic level evaluation and diagnosis of his injuries. His narration and witness statements confirm he received medical treatment because of the severity of his injuries. He requests the Board consider when the injuries occurred, the environment in Afghanistan was not established with medical levels of triage and the proper medical professionals. It was an austere environment with only two Army Brigades attempting to establish a foothold for future combat operations.

2. The applicant retired honorably on 1 January 2023, in the rank/grade of lieutenant colonel/O-5. Evidence shows, among his many combat deployments, he served in the imminent danger pay area of Afghanistan from 9 July 2002 to 15 January 2003.

3. The applicant provides a/an:

a. DA Form 4187, narrative, and citation to accompany award of the Purple Heart which states, in effect, on 20 October 2002, the applicant and members of his platoon received heavy mortar artillery fire from an enemy position approximately 400 meters from Combat Outpost Salerno. The applicant was evaluated by the platoon medic as having drainage from his right ear and a ruptured eardrum. He subsequently was diagnosed with severe hearing loss, tinnitus in his right ear, severe migraine headaches, and a traumatic brain injury (TBI).

b. Witness statement from LTS, retired first sergeant, 8 September 2022, who served under the applicant during their deployment to Afghanistan. He states, in effect, on 20 October 2002 they were attacked by enemy artillery fire. After the attack he noticed the applicant appeared disoriented with glassy eyes and slurring his speech. He also noticed the applicant had fluid coming from his ear. He instructed the applicant to see the platoon medic. Later in the day he witnessed the applicant with a dressing covering his right ear. The applicant stated he had just gotten a little shaken up during the attack and he continued to perform his duties for the remainder of the deployment. After the attack, the applicant displayed drastic mood swings and he did not attend Jump Master Refresher due to the wounds he suffered during deployment.

c. Witness statement from FD, retired colonel, 17 September 2022, who served over the applicant during their deployment to Afghanistan. He states, in effect, on 20 October 2002, they were attacked by enemy artillery fire. After the attack, the platoon medic treated all casualties. He and the applicant were among the personnel treated for

injuries. The applicant was disoriented with glassy eyes and stated that he was seeing stars and his ears were ringing. He was speaking very loudly and shouting at times. The medic placed a bandage on his right ear, and he went to his sleeping area to get rest. After the attack the applicant further stated to him that he had bad headaches and loss of concentration. The applicant was able to complete his tour, but with issues and moderate difficulty. Three years after the attack they joked about how they both had to wear hearing aids from the mortar attack and the long-term effects it has had on them.

d. 16 pages of medical records:

(1) 21 June 2018, chief complaint: headaches suffered for over five years since a blast exposure with altered consciousness on one of his seven deployments. Previously treated with Botox for one year with minimal benefit. Estimates five military concussions, at least three with brief loss of consciousness with symptoms resolving within a few weeks except for persistent headaches which began approximately five years ago. Assessed with a history of several mild TBI events; a mixed headache syndrome with persistent post-traumatic tension type daily headaches as well as migraine without aura; sleep issues.

(2) 22 October 2018, chief complaint: hearing loss in right ear causing change to H2 level hearing. Applicant reported constant tinnitus right greater than left. Indicates moderate handicap. Denied otalgia, drainage and dizziness. Type A Tympanograms noted in each ear indicative of normal middle ear functioning. Word recognition 76% in right and 100% in left ear. Agreed to hearing aid trial.

(3) 11 September 2019, follow up for migraine without aura, concussion with loss of consciousness of 30 minutes or less, personal history of TBI, PTSD, chronic. Refilled medications, appears alert, stable, normal. Will PCS in nine days. Applicant reached treatment goals and is discharged from Warrior Recovery Center. Will follow up with neurologist.

(4) 14 January 2020, chief complaint: migraine with aura, not intractable, without status migrainosus. Discussed monitoring sleep and mood and their contributions to headache symptoms. Also discussed restarting Botox injections. Peripheral neuropathy symptoms may be due to nutritional deficits or diabetic neuropathy. Schedule for Botox clinic.

(5) 27 May 2022, reason for appointment: Botox for chronic migraine headaches. Applicant tolerated procedure well. Released without limitations.

4. On 18 January 2023, 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 in accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-8g.c. "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." Post-deployment medical documentation and/or diagnoses cannot be utilized to satisfy this requirement.

5. The applicant also provides a/an:

a. VA Rating Decision, 1 March 2023, with supporting documents dated 2 and 27 March 2023, which shows among his service-connected disabilities service connection for major depression (also claimed as anxiety condition) and TBI with an evaluation of 50 percent; migraines (also claimed as headaches) with an evaluation of 30 percent; tinnitus (claimed as ringing in ears) with an evaluation of 10 percent; bilateral perforated ear drum with an evaluation of 0 percent; right ear hearing loss with an evaluation of 0 percent; a decision on PTSD was deferred.

b. Approved claim for CRSC from AHRC, 29 June 2023, with pertinent verified combat-related disabilities of PTSD with major depression and TBI at 70 percent; tinnitus at 10 percent and right hearing loss at 0 percent. Pertinent disability of migraines was found as not combat-related as no medical documentation in his claim established a definite causal relationship between a combat related event and the resulting disability.

c. MILPER Message Number 22-215, Purple Heart for Perforated Eardrum, 8 June 2022. Effective immediately, the U.S. Army will recognize a perforated eardrum (ruptured tympanic membrane) as a qualifying injury for award of the Purple Heart provided several requirements are met. In particular, commanders will consider two critical factors when considering eligibility for the Purple Heart for perforated eardrum. The two critical factors are the degree to which the enemy or hostile force caused the wound, and whether the wound was so severe that it required treatment by a medical officer.

d. ORB, 16 August 2022, and DD Form 214, 31 December 2022, neither of which list the Purple Heart; deployment and separation orders.

6. Entitlement to the Purple Heart and requires all elements of the award criteria to be met. Additionally, when based on a TBI, 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. The applicant's request for a personal appearance hearing was carefully considered. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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. The applicant contends he was injured on 20 October 2002, when he and members of his platoon received heavy mortar artillery fire from an enemy position approximately 400 meters from Combat Outpost Salerno. He states he was evaluated by the platoon medic as having drainage from his right ear and a ruptured eardrum. He subsequently was diagnosed with severe hearing loss, tinnitus in his right ear, severe migraine headaches, and a traumatic brain injury (TBI).

b. To be awarded the Purple Heart, the regulatory guidance 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.

c. The Board reviewed and agreed with the HRC's finding that the applicant's request does not meet the statutory guidance in accordance with AR 600-8-22. 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. Based on the available evidence the Board determined the applicant does not meet the criteria for award of the Purple Heart.

d. If the applicant believes he qualifies for the Purple Heart specifically based on his injury to his eardrum, his request is premature and the Board recommends he exhausts his administrative remedy by addressing his request to the Command, U.S. Army Human Resources Command first.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

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 computerized axial tomography (CT) or MRI 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. MILPER Message Number 22-215, Purple Heart for Perforated Eardrum, issued on 8 June 2022, announced Purple Heart eligibility for perforated eardrum wounds for personnel who served during qualifying periods established for the award. Effective immediately, the U.S. Army will recognize a perforated eardrum (ruptured tympanic membrane) as a qualifying injury for award of the Purple Heart provided all below-listed requirements are met. Applications for award of the Purple Heart will include the following documentation pertaining to the wound and inflicting force:

a. DA Form 4187 (for currently serving members) or written request (for veterans).

b. Chain of command endorsement (through the first general officer in the Soldier's current chain of command for currently serving members).

c. Deployment orders.

d. DA Form 4037 (Officer Record Brief), Enlisted Record Brief, DA Form 20/2-1/66 (Personnel Qualification Record), or other substantiating personnel qualification records for veterans.

e. One-page narrative describing the qualifying incident and the conditions under which the member was injured or wounded.

f. Statements from at least two individuals, other than the proposed recipient, who were personally present, observed the incident, and have direct knowledge of the event. Alternatively, other official documentation may be used to corroborate the narrative.

g. Casualty report (if available).

h. SF 600 (Chronological Record of Medical Care), SF Form 502 (Clinical Records), or equivalent military medical document.

i. DD Form 214, WD Form AGO 53-55, or WD Form AGO 53-98 (Official Certificate of Release or Discharge from Active Duty) (if applicable).

j. Morning, Unit, and/or Situation Reports.

4. Commanders will consider two critical factors when considering eligibility for the Purple Heart for perforated eardrum. The two critical factors are the degree to which the enemy or hostile force caused the wound, and whether the wound was so severe that it required treatment by a medical officer.

5. Army Regulation 15-185 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//