

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007142

APPLICANT REQUESTS:

- reversal of the U.S. Army Human Resources Command, Awards and Decorations Branch that denied him award of the Purple Heart for injuries sustained from an improvised explosive device (IED)
- correction of his separation orders and DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his rank and grade as sergeant (SGT)/E-5
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- two witness statements
- Standard Form (SF) 600 (Chronological Record of Medical Care)
- Enlisted Record Brief (ERB), dated 17 November 2014
- Memorandum for Record, subject: (Applicant's) Reintegration into Promotion Points System, dated 10 September 2014
- letter from the U.S. Army Human Resources Command (AHRC), Soldiers Programs and Service Division, dated 22 August 2016
- Department of Veterans Affairs (VA) rating decision

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He believes he should have been awarded the Purple Heart for injuries received from an IED led blast in Afghanistan on 1 January 2011. He has submitted supporting documents and explained anything that may be missing. He also knows this may be

over the time limit, but he recently discovered paperwork showing he was to be promoted to SGT upon being medically discharged. He is not looking for, wanting, or requesting anything other than a correction of his record.

b. He feels the aid station and his leadership failed him in making sure he was taken care of in regard to being awarded the Purple Heart. His two battle buddies who were in the truck with him did receive the Purple Heart for the same injuries he received. His leadership knew for six months that his battle buddies were getting the award and knew that his information did not get saved in the Armed Forces Health Longitudinal Technology Application (AHLTA) but did nothing to inform him of what was going on. He does not know why this injustice happened, but he feels it its only right that it should be remedied.

c. On 1 January 2011, his platoon was traveling north on Highway 1 in the Ghazni Province of Afghanistan. They completed their mission and were a few hours behind route clearance, whose job was to clear the roadways of IEDs. Because they were a few hours behind, this gave insurgents time to place an approximately 400lb IED under the roadway in a culvert. The IED was detonated just before their truck reached the bomb and they ended up hitting the blast hole at approximately 45 miles per hour. This caused him, who was in the gunner position, the driver (SGT C), and the truck commander (SGT M) to all experience whiplash, concussions, and a traumatic brain injury (TBI). He has included their written, signed, and dated statements. After the ensuing firefight, the quick reaction force showed up to assist them in recovering the truck and escorting their platoon back to the forward operating base (FOB).

d. Once back at the FOB, and even after meeting with the platoon medic, he was left to his own devices instead of being told to get medical attention. He went back to his bunk because of extreme neck pain, confusion, migraine, and overall exhaustion, most likely from the concussion. Due to these injuries, they were unable to engage in mission critical activities for a period of two to three days. At the time, he did not know where SGT C and SGT M had gone after getting back to the FOB. He later found out that they had gone to the aid station and were going back for a follow up a few days later. He joined them this time and the aid station did an evaluation and confirmed they were all experiencing mild TBI (mTBI), concussion, and whiplash from the blast. He also continued to see them for medication and help with his neck pain. Unfortunately, he did not find out for about six months that the aid station had not entered anything in their system regarding his visits. Since SGT M and SGT C had their information in the system, they were awarded the Purple Heart for the injuries they received that day.

e. Once back in the United States, he received further treatment for migraines, memory issues, and neck pain and he was able to get the follow ups included in his medical records. For years, he received treatment and when he was medically discharged, the VA started giving him Lidocaine shots in his neck and scalp to help

numb and dull the pain. It was not until about eight years after the blast that he was seen through the VA's community care program, where they found he had occipital neuralgia. It is nerve damage between his neck and cranium. He is now receiving regular treatments of ablations to help keep the neck pain at bay for anywhere from 6 to 12 months at a time. The spinal doctor stated that he is suffering from degenerative spinal arthritis, bulging disks, and degenerative disk disease.

f. He believes it was an injustice not receiving the Purple Heart as his chain of command knew for six months that SGT M and SGT C were to receive their awards. They also knew for six months that the aid station had failed to include his visits in AHLTA, as they would have had to get the medical records from the same aid station in order to submit the awards for SGT M and SGT C. They knew and did nothing rather than letting him know so that he could also get the award he feels was kept from him. By the time it came to light, and the rest of the unit started to see what happened, they let him know about the records not being kept. By the time he was able to get in contact with the aid station to try to get it resolved, the unit that was in charge of the aid station at the time of my injuries had moved on and a new unit was in their place. They would not help him at that time as they had never seen him.

g. He is in the middle of a move and most of his documents are in storage, and he does not have access to them at the moment. If needed, he has more medical records from his time in the Army, sworn statements that were given to him from members of his platoon/battery, as well as documents showing SGT M and SGT C were awarded the Purple Heart. While he is unable to provide them right now, he can and will provide them at a later date, if needed.

3. The applicant enlisted in the Regular Army on 17 March 2009. His ERB shows he was promoted to specialist (SPC)/E-4 on 1 November 2010. His ERB also shows he served in Afghanistan from 4 July 2010 to 30 June 2011 and 7 January to 10 July 2013.

4. On 17 July 2014, a Physical Evaluation Board (PEB) found the applicant unfit for further military service due to left knee instability secondary to anterior cruciate ligament and meniscus tear status post-surgery. The PEB recommended a 10% disability rating and his separation with severance pay. The PEB found him fit for 17 additional conditions that include TBI.

5. Orders issued on 9 September 2014 directed the applicant's separation with entitlement to severance pay, in pay grade E-4, effective 16 November 2014.

6. The applicant's DD Form 214 shows he was discharged on 16 November 2014, in the rank and grade of SPC/E-4, by reason of disability, severance pay, combat zone (enhanced). His DD Form 214 shows in:

- Blocks 4a (Grade, Rate or Rank) SPC and 4b (Pay Grade) E-4
- Block 12i (Effective Date of Rank) 2010-11-01
- Block 13 (decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized)
 - Afghanistan Campaign Medal with 2 bronze service stars
 - Joint Service Commendation Medal
 - Army Commendation Medal
 - Army Achievement Medal (2nd Award)
 - Meritorious Unit Commendation
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Army Service Ribbon
 - Overseas Service Ribbon
 - NATO Medal
 - Combat Action Badge

7. The applicant's ERBs, dated 19 September 2014 and 17 November 2014, respectively, do not show he was in a promotable status.

8. The applicant provided a letter from AHRC, Soldiers Programs and Service Division, dated 22 August 2016, disapproving his request for the Purple Heart. The letter states:

a. After careful consideration and consultation with the AHRC Surgeon's office, your request for an award of the Purple Heart for injuries received while deployed in support of Operation Enduring Freedom is disapproved.

b. After a thorough review of the information provided, the award of the Purple Heart for this particular event does not meet the statutory guidance in accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-8h(13). A review of AHLTA by the AHRC Command Surgeon did not reflect a diagnosis of TBI. The lack of supporting medical documentation in AHLTA combined with the submitted documentation makes it impossible to connect an injury to the incident.

c. If you believe this determination to be unjust, you have the right to appeal to the ABCMR.

9. The applicant also provided:

a. Statements from former members of his unit (SGT C and SGT M), attesting to the applicant's recollection of events which took place in Afghanistan on 1 January 2011. *The complete statements were provided to the Board for their review and consideration.*

b. A self-prepared SF 600. The form was not authenticated by a hospital or medical facility.

c. A Memorandum for Record, subject: (Applicant's) Reintegration into Promotion Points System, dated 10 September 2014, issued by his former unit commander, indicating that he was in a promotable status prior to entering the Disability Evaluation System (DES). This memorandum is not signed.

d. A VA rating decision showing he was granted service-connected disability compensation for various conditions that include TBI with post-traumatic stress and generalized anxiety disorder (also claimed as depression, adjustment disorder, and combat stress).

BOARD DISCUSSION:

1. 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. 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. The Board agreed with HRC's determination that a review of the applicant's AHLTA records by the Command Surgeon did not reflect a diagnosis of TBI and that the lack of supporting medical documentation in AHLTA combined with the submitted documentation make it impossible to connect an injury to the incident.

b. The Board reviewed the applicant's record but did not find evidence he was in a promotable status or recommended for promotion to SGT. He provides an unsigned memorandum from his commander, dated 10 September 2014, indicating he was promotable prior to entering the DES. However, nowhere in his record, specially his multiple ERBs, does it show he was promotable. In the absence of additional

documentary evidence confirming his promotable status, the Board determined consideration of a higher grade is unwarranted.

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.



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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 600-8-22 states the Purple Heart is awarded for a wound sustained in action against an enemy or as a result of hostile action. Substantiating evidence must

be provided to verify 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.

a. 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.

b. 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.

c. Examples of injuries which do not justify eligibility for the Purple Heart includes 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.

d. When considering award of the Purple Heart for a mTBI or concussion that did not result in the loss of consciousness, the chain of command will ensure the diagnosed mTBI resulted in a disposition of "not fit for full duty" by a medical officer for a period of greater than 48 hours based on persistent signs, symptoms, or findings of functional impairment resulting from the concussive event. The following nonexclusive list provides examples of medical treatment for mTBI or concussion that meets the standard of treatment necessary for award of the PH:

(1) Referral to neurologist or neuropsychologist to treat the diagnosed mTBI or concussion.

(2) Rehabilitation (such as occupational therapy, physical therapy, and so forth) to treat the mTBI or concussion.

(3) Restriction from full duty for a period of greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function due to the mTBI or concussion.

e. Combat theater and unit command policies, or medical protocols, mandating rest periods, light duty, or "down time" and/or the administration of pain medication (for example, acetaminophen, aspirin, or ibuprofen) in the absence of persistent symptoms of impairment following concussive incidents do not constitute qualifying treatment for a concussive injury.

3. Army Regulation 600-8-19 (Enlisted Promotions and Reductions), dated April 2010, revised in December 2011, in effect at the time, states in:

a. Paragraph 1-20a, Soldiers in the DES process who are pending a medical fitness determination (referral to a Medical Evaluation Board or PEB) remain otherwise eligible for promotion consideration.

b. Paragraph 1-20d, per the provisions of Title 10, U.S. Code, section 1212 (Disability severance pay), Soldiers who are on a promotion list at the time of separation for disability with entitlement to disability severance pay will be paid such compensation at the promotion list grade. Further, the Soldier will be promoted effective on the Soldier's separation date.

4. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record.

a. Paragraph 2-9 states 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 evidence.

b. Paragraph 2-11 states 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.

//NOTHING FOLLOWS//