

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230007475

APPLICANT REQUESTS:

- award of the Purple Heart (PH)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2-1 (Personnel Qualification Record)
- Orders 124-036, dated 4 May 2005 (Deployment Orders)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 29 June 2006
- Memorandum, subject: Award of the Purple Heart for Applicant, dated 7 April 2021 from the U.S. Army Human Resources Command (HRC)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings)
- Memorandum, subject: Permanent Physical Disability Retirement, dated 15 December 2021 from the U.S. Army Physical Disability Agency (USAPDA)
- Orders D 349-01, dated 15 December 2021 (Permanent Disability Orders)
- DA Form 4187 (Personnel Action) – Purple Heart Recommendation
- Self-Authored Narrative
- Three DA Forms 2823 (Sworn Statement)
- Medical Records (35 pages)
- Permanent Order (PO) 060-0003, dated 1 March 2022 (Combat Action Badge)
- Combat Related Special Compensation (CRSC) Statement, dated 23 January 2023

FACTS:

1. The applicant states he would like to appeal the decision made by HRC as he believes the substantiating documentation shows that met the criteria for award of the PH based upon the definition of “treatment,” pertaining to medical treatment, which is contradictory to the denial memorandum. The reason for the denial states “To qualify for award of the PH the wound must have been of such severity that it required treatment, not merely examination, by a medical officer.” The applicant was under treatment for

wounds or injuries caused by an improvised explosive device (IED) generated by the enemy. His treatment included light duty as well as Motrin, at prescription strength 800 mg and follow-on care with Ambien provided for injuries stemming from the concussive blast. The Chronological Records of Medical Care further substantiate proof of “treatment” for the concussive blast injury generated by the enemy.

2. The applicant provides:

a. A letter from HRC, dated 7 April 2021, which notified the applicant after a thorough review of the information provided and consultation with the HRC surgeon general, his request for award of the PH did not meet the statutory guidance outlined in Army Regulation (AR) 600-8-22 (Military Awards), paragraph 2-8g.c., “To qualify for award of the PH the wound must have been of such severity that it required treatment, not merely examination, by a medical officer.” If he believed the determination was unjust, he had the right to appeal to the ABCMR.

b. A memorandum to the applicant, dated 15 December 2021, which notified him of the findings and recommendations of the USAPDA. A determination was made that he would be permanently retired with a disability rating of 50%.

c. A DA Form 4187, dated 26 May 2020, wherein the applicant’s chain of command recommends approval of the PH for injuries sustained during an IED attack while on route clearance patrol in Iraq on 2 March 2006.

d. A self-authored narrative of the incident, dated 6 May 2020, which states on 2 March 2006 while conducting a mounted patrol on ASR Uranium South, his patrol came under attack by the enemy. The purpose of the patrol was route clearance of IEDs to allow safe passage of friendly convoys.

(1) He was the gunner on the lead vehicle when the IED detonated on the left side of the truck, and he was partially exposed. The blast rendered him unconscious and threw him into the truck face down on the radio mount. The last thing he remembered was a bright flash, but he did not hear a sound. As he came out of unconsciousness from the concussive blast, he was unable to determine where he was or what he was doing for a period of time, approximately 5 minutes or more. He regained his vision, his hearing, and started to hear a loud, high pitch ringing. He was helped back into the turret by the crew and learned that the infrared spotlight he had been holding was destroyed in the explosion and another truck had also been struck.

(2) Once they confirmed there were no critical injuries, they returned to Al Asad Airbase for treatment at the aid station. He recalled on the drive back the pain he felt from the neck down on his entire right side, his vision was blurred, he had a headache, and could not hear properly. He struck his head again on the machine gun after

reentering the base because they lost steering on the vehicle due to the damage to the front of the truck and the driver struck a concrete pillar. All injuries were checked when they returned and he was told not to return to duty for two days, due to the blast. He found it difficult to sleep, focus, conduct normal tasks, and still suffered from headaches, insomnia, and body pain. He remains in treatment for the injuries sustained during the patrol and was diagnosed with having sustained a traumatic brain injury (TBI), among other disabilities. To date, he suffers from the effects of the blast, to include post-traumatic stress disorder (PTSD), residual TBI symptoms, body pain on the right side, stenosis of the neck, numbness of feet and hands, headaches, degenerative discs in neck and back, hearing loss, tinnitus, tremors, and inability to sleep.

e. Three DA Forms 2823:

- applicant's statement, dated 6 December 2019, which states, in pertinent part: he was unconscious for 3-5 minutes and ordered to "light duty" for 48 hours in addition to the remainder of that duty day
- Sergeant First Class [REDACTED], dated 1 September 2019, which states, in pertinent part, he was the assigned medic and also lost consciousness and was directed to the treatment facility for care with the applicant
- Staff Sergeant [REDACTED], dated 16 September 2019, which states, in pertinent part, he remembers as they dropped off the applicant for medical treatment he was dazed and not cracking jokes as usual

f. The applicant's medical records (35 pages) include a Theater Medical Registry Record which shows the applicant was given light duty for 2 days and prescribed Motrin, 400 mg, 2 tablets for 10 days. Additional medical records outline his follow up treatment.

g. PO 060-0003, dated 1 March 2022, awarded the applicant the Combat Action Badge for actively engaging or being engaged by the enemy on 2 March 2006.

h. A CRSC Pay Statement, dated 23 January 2023, offered by the applicant as evidence of receipt of combat related pay.

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

a. He enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) on 14 January 2004.

b. He entered active duty on 5 November 2004. He was honorably released from active duty training on 17 March 2005. His DD Form 214 shows he completed 4 months and 13 days of active service. He was awarded primary specialty 19D (Cavalry Scout).

c. Orders 124-036, dated 4 May 2005, ordered the applicant to active duty in support of Operation Iraqi Freedom for a period not to exceed 438 days with a report date of on or about 6 May 2005. The applicant entered active duty on 6 June 2005.

d. His DA Form 2-1 and Enlisted Record Brief list his deployments as follows:

- Kuwait/Iraq – 28 June 2005 to 11 June 2006
- Afghanistan – 1 March 2008 to 16 November 2008

e. Order 167-0370, dated 16 June 2006, released the applicant from active duty, not by reason of physical disability, with an effective date of 26 June 2006.

f. He was honorably released from active duty on 26 June 2006. His DD Form 214 shows he completed 1 year and 24 days of active service. It also shows his foreign service dates in Kuwait/Iraq and among his awards lists the Iraq Campaign Medal. The Purple Heart is not listed.

g. The applicant's service record includes two additional honorable periods of active service with DD Forms 214 for the following dates:

- 3 December 2007 to 5 January 2009
- 1 April 2011 to 15 May 2012

h. A DD Form 215 (Correction to DD Form 214) was issued on 3 March 2022 adding the applicant's Combat Action Badge to his service record.

i. A DA Form 199 shows that on 10 June 2021 an informal PEB convened and found the applicant physically unfit. The PEB recommended a combined rating of 50% and that the applicant's disposition be placement on Permanent Disability Retirement. On 25 June 2021, the applicant indicated he did not concur with the findings, demanded a formal hearing of his case, and did not request Department of Veteran's Affairs (VA) reconsideration of his disability ratings. Additionally, the PEB made the following findings in Section V (Administrative Determinations): the disability disposition was based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as direct result of armed conflict, and the disability did result from a combat related injury as defined under the provision of 26 USC 104 or 10 USC 10216. Section III (Medical Conditions Determined to be Unfitting) shows the below listed conditions were caused while deployed to Iraq by the IED blast in March 2006:

- right upper extremity radiculopathy – 20%
- left upper extremity radiculopathy – 20%
- cervical spondylolisthesis – 10%
- lumbosacral strain – 10%

j. Order D 349-01, dated 15 December 2021, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permitted his retirement for permanent physical disability with an effective date of 14 January 2022.

k. He was retired from the ARNG on 15 January 2022. His NGB Form 22 (National Guard Report of Separation and Record of Service) shows he completed 17 years, 11 months, and 21 days of net service for the period.

4. 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.

5. 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

6. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting they reverse the United States Army Human Resource Command's previous denial of his request for a Purple Heart (PH) for a concussion / injury(s) due to a blast. He states:

"After reviewing the memorandum denying the award of the PH for SSG [Applicant], it is believed that the substantiating documentation shows and meets the criteria for award based upon the definition of "treatment" pertaining to medical treatment, which is contradictory to the denial memo.

The exact reason for denial is listed as; "To qualify for award of the PH the wound must have been of such severity that it required treatment, not merely examination, by a medical officer." SSG [Applicant] was under "treatment" for wounds or injuries created by a concussive blast (IED) [improvised explosive device] generated by the enemy. Treatment included light duty as well as Motrin at prescription strength (800mg or as stated in SOAP [medical note] note; 2 tabs 400mg twice daily for 10 days). Follow on care and prescriptions (Ambien) were provided as "treatment" for injuries stemming from the concussive blast."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case.

d. A Theater Medical Registry Record shows the applicant was injured by an explosion on 2 March 2006 at 1900 and was seen at sick call the following morning:

"20-year-old male to sick call with complaints of pain to upper back and lower back, sides of hips bilaterally, and bilateral ear pain. Patient states 2-3 out of 10 pain. Patient's HMMWV [high mobility multipurpose wheeled vehicle] got hit with an IED last night. Patient states right ear feels tingly with a slight burn and left ear is still ringing. Patient states history of mild low back pain.

e. The medical officer documented a normal examination except for a mild decrease in shoulder range of motion and strength bilaterally, mild decrease in cervical range of motion, and mild hip tightness. The medical officer simply diagnosed the applicant as "Post IED Blast," provided him with a prescription of Motrin, and returned him to full duty.

f. The applicant was seen again on 13 April 2006 for continued ringing in his left ear. The applicant was directed to follow-up with an audiologist upon redeployment.

g. Paragraph 2-8 of AR 600-8-22, Military Awards (25 February 1995), lists the criteria for the awarding of the Purple Heart. Paragraph 2-8b(2) defines a Purple Heart eligible wound:

"A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or of the conditions listed above. A physical lesion not required however, the wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received in action must have been made a matter of official record."

h. The applicant's statement is consistent with a concussion and concussions are eligible for the awarding of a Purple Heart. While the applicant was evaluated by a medical officer and provided Motrin the day following the injury(s) sustained from the IED blast, there is no probative medical evidence the injury "required treatment by a medical officer."

i. It is the opinion of the ARBA medical advisor there is insufficient documentation in the official record to warrant the reversal of the United States Army Human Resource Command's previous denial of his request for a Purple Heart for a concussion / injury(s) due to an IED blast.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.
3. A majority of the Board found the evidence supports a conclusion that the applicant incurred a head injury as a result of an IED explosion on 2 March 2006 that met the criteria for the Purple Heart. Statements from Soldiers present during the incident and the applicant's own statement reference the explosion causing loss of consciousness and medical records indicate the applicant suffered from post-concussive symptoms for an extended period after the incident. Based on a preponderance of the evidence, the majority determined the applicant should be awarded the Purple Heart for a concussion incurred as a result of hostile action on 2 March 2006.
3. The member in the minority concurred with the conclusion of HRC and the ARBA Medical Advisor that the evidence does not indicate the applicant incurred an injury that required treatment, not merely examination, by a medical officer. The member in the minority determined the evidence does not establish the applicant's entitlement to the Purple Heart.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	:	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	█	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by awarding him the Purple Heart for an injury incurred as a result of hostile action on 2 March 2006 and adding the Purple Heart to any DD Forms 214 issued subsequent to the date of the incident.

5/6/2024

X

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CHAIRPERSON

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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 (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//