

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230008398

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command, Awards and Decorations Branch, denial of his request to be awarded the Combat Action Badge

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Memorandum
- Enclosure A - Letter to U.S. Army Human Resources Command (AHRC)
- Enclosure B - Letter from AHRC
- Enclosure C - Officer Record Brief (ORB)
- Enclosure D - Page 1 of DA Form 67-9 (Officer Evaluation Report (OER))
- Enclosure E - Excerpt from Department of Defense (DoD) 7000.14-R (Financial Management Regulation)
- Enclosure F - Excerpt from Global War on Terrorism Expeditionary Medal (GWOTEM) Approved Areas of Eligibility
- Enclosure G - DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Enclosure H - Self-Authored Sworn Statement
- Enclosure I - Statement for Record
- Enclosure J - Hostile Fire Incident
- Enclosure K - Picture Marked Locations of Shooter and Applicant
- Enclosure L - Self-Authored Supplemental Sworn Statement
- Enclosure M - Statement for Record
- Enclosure N - Article *5 G.I's in Bosnia Awarded Purple Hearts*
- Enclosure O - Article *New Jersey Cavalry defeats al-Shabaab attack*

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 in his application and self-authored letter:

a. In April 2023, AHRC did not take favorable action on his request for retroactive award of the CAB for a hostile fire (direct fire) incident the applicant was involved in, while supporting Operation Enduring Freedom (OEF) in West Africa on 3 March 2011.

b. AHRC's decision was unjust as it is not supported by the evidence presented and is a misapplication of printed regulatory guidance from the Army, the Joint Staff, and the DoD.

c. Pursuant Army Regulation (AR) 600-8-22 (Military Awards), there is no limit on the request for retroactive award of a badge. The start date for the three year statute of limitations began on 16 May 2023, when the applicant received AHRC's letter informing him of their inability to take favorable action on his request.

d. The applicant is requesting the Board to reverse AHRC's unfavorable action concerning his request for retroactive award of the CAB, while serving in support of OEF-Trans Sahara in N'Djamena, Chad, West Africa. AHRC's decision is a misapplication of guidance contained in Army Regulations, Chairman of the Joint Chief of Staff Instructions (CJCSI), and DoD Instructions (DoDI)/Regulations and is therefore unjust.

e. AR 600-8-22 is the controlling regulation concerning requests for retroactive awards. The current (5 March 2019) version of AR 600-8-22 superseded all other editions of this regulation and authorizes retroactive award of the CAB back to September 2001. In accordance with paragraph 1-14b, there is no time limit on a request for retroactive issuance of a badge. The three-year time limit on appeals to the Board of AHRC's decision began on 15 May 2023, when the applicant received AHRC's 21 April 2023 response to his retroactive award request, making this request timely and within regulatory guidance.

f. On 4 February 2023, the applicant submitted a request for retroactive award of the CAB to AHRC in accordance with the provisions of paragraph 8-8 of AR 600-8-22, dated 5 March 2019, for a direct hostile fire incident, which occurred on 3 March 2011. On 15 May 2023, the applicant received a response from AHRC stating they could not take favorable action on his request stating the retroactive request considered by AHRC did not demonstrate the applicant fulfilled all basic criteria: a) personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement (ROE); and b) performing assigned duties associated with the unit's combat mission.

g. Additionally, AHRC added, as a member of the Presidential Guard in the direct fire incident on 3 March 2011 was not considered a member of a hostile foreign force, this incident did not meet the strict criteria of the CAB.

h. The specific eligibility criteria for award of the CAB applicable to the applicant's appeal is contained in paragraph 8-8d of AR 600-8-22. Specifically:

(1) May be awarded to any Soldier.

(2) A Soldier must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed ROE, in an area where hostile fire pay or imminent danger pay is authorized. For all named conflicts beginning after the effective date of this publication, a Soldier must also be performing in an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy. A Soldier must be performing their assigned duties associated with the unit's combat mission in an area where hostile fire pay or imminent danger pay is authorized. The requirement for hostile fire pay or imminent danger pay does not apply to cases determined to be eligible under the conditions described in paragraph 3-8c.

(3) Soldier must not be assigned or attached to a unit that would qualify the Soldier for the Combat Infantryman Badge (CIB) and/or Combat Medical Badge (CMB). For example, an infantryman (military occupational specialty 11B) assigned to Corps staff is eligible for award of the CAB. However, an infantryman assigned to an infantry battalion is not eligible for award of the CAB.

i. Background facts. From December 2009 through April 2011, the applicant served as the Senior Defense Official/Defense Attaché (SDO/DATT) at U.S. Embassy N'Djamena, Chad. SDO/DATT's fall under multiple chains of command, serving under Chief of Mission authority of the U.S. Ambassador/Chief of Mission (or the Chargé d' Affaires in their absence), the Regional Combatant Commander (Senior Rater), and the Director of the Defense Intelligence Agency (Rater). As such they are simultaneously a member of three "units": the local U.S. Embassy, The Regional Combatant Command (in the applicant's case U.S. Africa Command (USAFRICOM)), and the Defense Intelligence Agency.

j. Per the applicant's attached OER for the period covering the date of the incident (signed by the USAFRICOM Commander) his service was in support of OEF-Trans Sahara. During his time period as the SDO/DATT, he was authorized hostile fire/imminent danger pay and service in Chad in support of OEF was authorized receipt of the Global War on Terror - Expeditionary Medal, both of which he received.

k. The Secretary of Defense and Chairman of the Joint Chiefs of Staff (CJCS) authorized the commencement of OEF - Trans Sahara via CJCS Executive Order

(Exord) OEF - Trans Sahara Phase II dated 102151ZMar06. This authorization was transferred to USAFRICOM per CJCS orders USAFRICOM Transition Exord dated 082142ZSSep08, and USAFRICOM assumed responsibility under USAFRICOM Exord OEF - Trans Sahara dated 302156ZSep08. Per those orders, the standing ROE for the operation were CJCSI 3121.01B Standing ROE/Standing Rules for the Use of Force for U.S. Forces, dated 13 June 2005.

l. Hostile Fire Incident (Direct Fire). During the first week of March 2011, the applicant was completing an intelligence collection mission in support of OEF, when he was engaged by hostile direct fire from a distance of less than 45 meters by members of the Chadian Armed Forces in the vicinity of the presidential palace, as outlined in his enclosed sworn statement, supporting documentation, and map of the incident.

m. During the hostile fire incident, the applicant did not stop to obtain an exact measure of how close the round(s) were to him; however, having experienced inbound direct fire on several occasions previously, he estimates the round(s) came within a few (well less than 7) meters. For reference, the map [picture] delineates 5.5 meters on either side of where he was standing, when the incident commenced. As he was standing in a street with wall/fence on both sides of the street, there was limited space for rounds to pass either side of him.

n. Supporting Evidence. As the applicant was conducting his intelligence collection mission solo that day, there were no independent U.S. witnesses to the event. However, the Chargé d'Affaires, Ms. ■ in the Embassy's official communications to the government asked for an explanation of the incident. The Chadian Foreign Minister (equal to our Secretary of State) acknowledged to her that the incident happened as the applicant described, and that corrective action would be taken. Additionally, now Lieutenant Colonel (LTC) ■ in his statement relates that the head of Chadian Special Forces (now Major General ■) also confirmed that the incident occurred as the applicant described.

o. Ms. ■ (as the Chargé d'Affaires and the acting representative of the President of the United States(POTUS)) had the sole authority, at the time, to make the factual determination that a hostile fire incident involving direct fire against the applicant occurred. Her statement alone (acting then as the representative of POTUS) is authoritative and dispositive. This is in accordance with the law that initially established Hostile Fire Pay in 1963, which is in the current 37 U.S. Code section 310c, DoDI 1340.09 paragraph 3.2c, and DoD Financial Management Regulation Volume 7A, Chapter 10, paragraph 3.3. A determination of fact that a hostile fire incident took place is conclusive and may not be reviewed by any other officer or agency of the United States unless there has been fraud or gross negligence.

p. The supporting evidence, provided by the applicant, shows by a clear preponderance of evidence that he was personally present and under hostile fire, during the 3 March 2011 incident.

q. Performing satisfactorily in accordance with the prescribed ROE. The applicable ROE for OEF-Trans Sahara were in CJCSI 3121.01B, dated March 2005. In accordance with paragraph 13 of Enclosure A of CJCSI 3121.01B, the applicant was required to conform to his assigned Embassy and any other Department of State use of force rules in effect at his location, due to his service under Chief of Mission authority. The applicant's decision to deescalate the hostile fire incident by rapidly departing the area was in accordance with Department of State and Embassy directives.

r. Notwithstanding the requirement to comport with Embassy guidance, paragraphs 2a and 4a of CJCSI 3121.01B Enclosure A and paragraph 5a of Enclosure L permitted the applicant, as a servicemember, to take actions that he saw prudent to deescalate the situation. The applicant's actions that day met these latter specifications of the ROE as well.

s. The published ROE in CJCSI 3121.01B establishes that he was performing satisfactorily in accordance with the prescribed ROE when the incident of 3 March 2011 took place.

t. Performing assigned duties associated with the unit's combat mission. The requirement of the second and third sentences of AR 600-8-22 paragraph 8-8c(2) that a Soldier be performing assigned duties associated with the unit's mission are only applicable for acts, which occurred after the 5 March 2019 publication date of the current regulation. This requirement is not applicable to the applicant's hostile fire incident on 3 March 2011.

u. The requirements and text of these second and third sentences were not included in the CAB requirements published in the 2005, 2013, nor 2015 regulations, reinforcing the fact that they are inapplicable to acts occurring before the publication of the 2019 version of AR 600-8-22.

v. While the applicant's act on 3 March 2011 was not required to meet the standard of performing duties associated with the unit's combat mission, a review of the missions and specified tasks stated in the CJCS and USAFRICOM Exords that he was operating under shows he met this standard regardless.

w. Hostile Fire/Hostile Foreign Force. In AHRC's unfavorable letter, dated 21 April 2023, they stated as a member of the Presidential Guard in the direct fire incident on 3 March 2011 is not considered a member of a hostile foreign force, this incident does not meet the strict critierial for award of the CAB.

x. This requirement or standard is not listed anywhere in AR 600-8-22 and appears to have been created by the AHRC Awards Directorate out of thin air. The term hostile foreign force is used once in the regulation, and only due to its inclusion as a direct quote for President Kennedy's Exord 11016 of April 1962 unifying DoD rules for award of the Purple Heart. Hostile Foreign Force is further not defined in the glossary of AR 600-8-22. It is not defined in any DoDIs, directive or manual nor is it defined within any CJCSI, manual, or joint publication.

y. On 16 May 2023, the applicant emailed the AHRC Chief of Awards and Decorations, Major (MAJ) [REDACTED] and her office asking for the definition of hostile foreign force and the legally approved reference. As of the date of the applicant's application, neither MAJ [REDACTED] nor her office have offered any documentation from AHRC, the Army, or DoD defining what a hostile foreign force is or is not.

z. AR 600-8-22 Glossary Section II (Terms) defines hostile acts:

(1) An attack or other use of force by any civilian, paramilitary, or military force or terrorist(s) (with or without national designation) against the United States, U.S. Forces, and, in certain circumstances, U.S. nationals, their property, U.S. commercial assets, or other designated non-U.S. Forces, foreign nationals, and their property.

(2) Force used directly to prevent or impede the mission and/or duties of U.S. Forces, including recovery of U.S. personnel and vital U.S. Government property. When a hostile act is in progress, the right exists to use proportional force, including armed force, in self-defense by all necessary means available to deter or neutralize the potential attacker, or if necessary, to destroy the threat.

aa. Directed gunfire at an identified U.S. diplomatic vehicle containing a U.S. Soldier is a hostile act and the incoming projectiles are therefore hostile fire.

ab. Present and under hostile fire is the required criteria under the regulation. The individual who engaged the applicant with hostile fire on 3 March 2011 need not meet some undefined subjective standard as a hostile foreign force, only that they meet the objective textual standard included in the regulation of any civilian, paramilitary, or military force and commit a hostile act involving either direct or indirect fire.

ac. Historical discussion of hostile foreign force. Hostile foreign force does not appear to be used in any law, regulation, or other guidance documents outside of the two executive orders covering award of the Purple Heart. A plain text reading of both executive orders shows that the term hostile foreign force is a catch all term for any situation where a U.S. servicemember is killed or wounded by hostile action. This can be determined through process of elimination as a hostile foreign force is not: an enemy

of the United States, an opposing armed force, or an international terrorist organization; all of which are specifically listed in the two executive orders.

ad. An example of the Army's use of hostile foreign force as a catch all is illustrated by AHRC's decision to award the Purple Heart to five Soldiers who were wounded by a stone throwing mob in 1997 in the vicinity of Brcko, Bosnia. The Secretary of the Navy also used this catch all to award Purple Hearts to Sailors on U.S.S. Liberty when it was attacked by a major U.S. ally in 1967, and to Marine Guard Corporal [REDACTED] who was killed by rifle fire from a rioting mob outside the U.S. Embassy Islamabad in 1979.

ae. The closest the DoD appears to have come to formally defining the term hostile foreign force appears to be the October 1994 CJCSI 312.2101 Standing ROE Appendix A, section 5g. The section describes hostile force as: Any force or terrorist unit (civilian, paramilitary, or military) with or without national designation, that has committed a hostile act, demonstrated hostile intent, or has been declared hostile. The definition for hostile force does not include the word foreign, as foreign is included in the definition of hostile acts, and the CJCSI is only applicable to activities outside the territorial limits of the United States.

af. While not specifically defined in regulatory guidance, in historical application across multiple services, hostile foreign force includes anyone (individuals, paramilitary, military, or terrorists) who commit a hostile act against the United States. As such, the individual who fired on the applicant on 3 March 2011 was a hostile foreign force.

ag. The current AR 600-8-22 paragraph 8-8f lists which operations are eligible for retroactive award of the CAB. Paragraph f(1) states: Afghanistan (OEF 18 September 2001 to 31 December 2014; Operation Freedom Sentinel 1 January 2015 to a date to be determined).

ah. Much like the issue presented concerning performing assigned duties associated with the unit's combat mission, this language limited retroactive awards to specific locations was not included in any previously published regulatory guidance.

ai. The applicant's request of 4 February 2023 to AHRC for retroactive award of the CAB provided evidence that AHRC approved CABs under this edition of AR 600-8-22 for OEF in locations outside of Afghanistan. As AHRC did not list this as a reason for their inability to take favorable action on his request, it must be concluded that AHRC did not consider the location of the applicant's hostile fire incident to be a disqualifying element under this paragraph of the regulation.

aj. Evaluation of CAB criteria for the 3 March 2011 incident. Based on the information provided, the applicant asks that his request for retroactive award of the CAB be favorably considered and approved by the Board for meeting the following

criteria required by AR 600-8-22 paragraph 8-8. During the 3 March 2011 incident the applicant was:

- a serving U.S. Soldier
- not attached nor assigned to a unit, nor possessed an MOS that would qualify him for award of the CIB or CMB
- serving in support of OEF, under a CJCS/Secretary of Defense authorized order
- personally present and under hostile fire (within 7 meters)
- authorized receipt of hostile fire/imminent danger pay
- his actions were in accordance with the prescribed ROE
- performing his assigned duties associated with the unit's combat mission

3. The applicant provides the following documents:

a. His letter to AHRC, dated 4 February 2023, wherein the applicant requests retroactive award of the CAB and explains the incident of 3 March 2011. The entire letter is available for the Board's consideration.

b. Letter from MAJ [REDACTED] Chief, Awards and Decorations Branch, AHRC, dated 21 April 2023, to the applicant states:

(1) AHRC was unable to take favorable action upon the applicant's request. Army combat badges are designed to provide special recognition to Soldiers who personally engage the enemy in ground combat or who satisfactorily perform their duties, while being engaged in ground combat by the enemy. In accordance with AR 600-8-22, the CAB is not intended to recognize an individual for unit battle participation or deployment to a combat zone. The CAB is designed to recognize the non-infantry Soldier, whose daily mission, similar to infantry, is to close with and destroy the enemy. The badge is intended to recognize an individual Soldier's satisfactory performance in ground combat with the enemy.

(2) The retroactive request considered by AHRC did not demonstrate the applicant fulfilled all basic criteria: a) personally present and under hostile fire while performing satisfactorily in accordance with the prescribed ROE; and b) performing assigned duties associated with the unit's combat mission. As the member of the Presidential Guard involved in the direct fire incident on 3 March 2011 is not considered a member of a hostile foreign force. This incident did not meet the strict criteria for award of the CAB.

(3) The applicant's next course of action, to appeal AHRC's decision, was to apply to the Board for consideration.

c. The applicant's Officer Record Brief, dated 31 October 2012 shows he had served in the Democratic Republic of the Congo ending on 20 April 2011 for 17 months. The Awards and Decorations section is void of award of the CAB.

d. An excerpt of DoD 7000.14-R which shows Chad was authorized imminent danger pay effective 11 August 2008.

e. Document entitled Global War on Terrorism Expeditionary Medal Approved Areas of Eligibility shows Chad in support of OEF and the date approved was 21 March 2005.

f. A self-authored sworn statement, hostile fire incident occurring 3 March 2011, N'Djamena, Chad, dated 30 January 2023, states:

(1) On the early afternoon of 3 March 2011, the applicant was completing an intelligence mission in support of OEF-Trans Sahara in N'Djamena, Chad. He was driving east, along the palace security wall, in his government vehicle with a visible U.S. diplomatic license plate when a construction vehicle backed through the access gate blocking his lane of traffic.

(2) The applicant immediately stopped and a scooter/motorcycle carrying two people careened off the rear of his vehicle and hit the security wall/Jersey barrier. The applicant immediately took a left turn (perpendicular to the palace wall) and proceeded approximately 30-40 meters down the street. He stopped the vehicle and got out to inspect if there was any damage.

(3) As he came around the back of the vehicle, he saw the passenger of the motorcycle walking toward him and the motorcycle driver trying to extract the motorcycle from the gap in the security wall. He also observed members of the presidential guard yelling at the driver to move the motorcycle. A few seconds later, one of the guards unslung his weapon and discharged a round into the air. The guard then pointed his weapon at the applicant and the motorcycle passenger, and fired at least one round at them. The applicant immediately reentered the vehicle and sped off towards the embassy.

(4) Upon arriving at the embassy, the applicant informed the Regional Security Office and Ms. [REDACTED] the Chargé d'Affaires of the incident. Ms. [REDACTED] then proceeded to send a diplomatic note/demarche to the government of Chad via their Ministry of Foreign Affairs detailing the incident and asking for an investigation. The applicant then spent the remainder of the afternoon informing the Chadian military, USAFRICOM, and the Defense Intelligence Agency.

(5) Over the next several days, they heard back from the Ministry of Foreign Affairs, His Excellency [REDACTED] and the Commander of the Special Anti-Terrorist Group,

Colonel ██████ acknowledging the incident facts and in the inappropriateness of shooting at accredited diplomats for traffic control.

g. Statement for Record (Embassy ROE) from Ms. ██████ dated 20 May 2023, states:

(1) The applicant recently contacted her for verification of a direct fire incident that occurred, while he was a Defense Attaché and Ms. ██████ was Chargé d'Affaires at the U.S. Embassy in N'Djamena, Chad in March 2011. Ms. ██████ is now retired from the State Department and does not have access to contemporaneous records that would demonstrate Embassy action in response to the incident. Nonetheless, she remembers it well, as it put one of her staff at risk to a degree that she chose to raise it with the Chadian Foreign Minister.

(2) The incident involved shots fired in the direction of the applicant as he returned to the embassy via a vehicle he was driving from a meeting with defense ministry contacts. Immediately upon arriving at the embassy, the applicant went into Ms. ██████ office to report that he been involved in a minor traffic accident in front of the Chadian presidential palace. The incident had culminated in a uniformed individual guarding the palace firing shots aimed in the direction of the applicant and others, evidently to warn them away from closer proximity.

(3) The presidential palace is located on the same heavily trafficked road as the then embassy complex. It is surrounded by a wall and perimeter fence that are patrolled by members of the presidential guard, a special military unit with responsibility for protecting the president of Chad. Because there were active rebellions and fears of coup attempts at the time the applicant and Ms. ██████ served in Chad, the palace was heavily guarded. The applicant told Ms. ██████ that the incident began when he had to brake suddenly in the vicinity of the palace for a truck that turned into his path. A motorcycle then ran into the rear of the applicant's vehicle. The applicant pulled off the road to determine whether the motorcyclist or passenger had been injured or whether there was damage to his vehicle. At that point, a member of the presidential guard fired shots into the air and then shot toward the applicant and the motorcyclist.

(4) Ms. ██████ and the applicant discussed the matter with the Embassy's Regional Security Officer. Their collective assessment was that although the shooting did not represent an attack on the United States, nor was it some sort of deliberate provocation, it warranted mention to the Foreign Ministry due to the reckless nature of rifle fire into a busy street, toward a vehicle that was clearly marked with diplomatic license plates. When Ms. ██████ visited the Foreign Minister, ██████ for a pre-scheduled meeting the following week, he advised her that he had been informed of the incident, that the government regretted it, and that the Foreign Ministry shared the USG's view that the shooting was dangerous and unnecessary. He emphasized that the military had dealt

with the matter, implying that he did not wish it to become a source of ongoing bilateral tension. Ms. ■■■ believes that members of the applicant's team also raised the shooting with their counterparts in the Chadian Army, and that they received similar responses.

h. Memorandum for Record (MFR) from LTC ■■■ hostile fire incident N'Djamena, Chad on or about 3 March 2011 involving the applicant, dated 30 January 2023, describes the direct fire incident the applicant was involved in. LTC ■■■ spoke with the commander of the Special Anti-Terrorist Group who conveyed to LTC ■■■ that the incident was investigated and occurred as described by the applicant and that appropriate disciplinary action had been taken against the shooter. LTC ■■■ has no doubt the incident occurred as reported by the applicant. The entire MFR is available for the Board's consideration.

i. A picture of where the shooter was and where the applicant was in proximity to the shooter with the distance between the two. The picture is available for the Board's consideration.

j. Self-authored supplemental sworn statement, dated 24 May 2023, states while the applicant did not measure precisely, he estimates the round(s) passed within six to eight meters of his location, at the time. He bases this estimation on his experience of having been shot at both intentionally and accidentally on five other occasions. The entire statement is available for the Board's consideration.

k. Statement for Record (Embassy ROE) from Ms. ■■■ dated 20 May 2023 states:

(1) The applicant served as the Senior Defense Official/Defense Attaché in N'Djamena, Chad from December 2009 to late April 2011. As a member of the U.S. Diplomatic Mission in N'Djamena, operating under the authority of the Ambassador/Chief of Mission, the applicant was required to follow all embassy and Department of State force protection and security rules, in addition to DoD regulations covering force protection, security, and ROE.

(2) The applicant's action to deescalate the hostile fire incident of early March 2011, by departing the area for the nearby embassy, and then immediately reporting the incident to Ms. ■■■ in her capacity as Chief of Mission and Regional Security Officer, was in accordance with USEMB N'Djamena and Department of State Emergency Action Plans, as well as with standard embassy security and crisis action policies.

l. *Article 5 G.I.'s in Bosnia Awarded Purple Hearts* is regarding American Soldiers injured by stone-throwing mobs in the Bosnia Serb controlled town of Brcko who were awarded Purple Hearts. The entire article is available for the Board's consideration.

m. Article *New Jersey Cavalry defeats al-Shabaab attack* is regarding [REDACTED] National Guard unit who were preparing to meet the Somali police chief in support of Combined Joint Task Force - Horn of Africa and an attack by al-Shabaab. The entire article is available for the Board's consideration.

4. The applicant's service record contains the following documents:

a. DA Form 71 (Oath of Office - Military Personnel), dated 15 March 1988, shows the applicant took the oath of office in the Regular Army Infantry Corps in the rank of second lieutenant.

b. Permanent Orders 095-328, published by Headquarters, 1st Cavalry Division, dated 5 April 1991 awarded the applicant the CIB for enemy contact in ground combat from 20-28 February 1991.

c. DA Form 67-9, from 16 May 2009 through 15 May 2010 shows the applicant was in N'Djamena Defense Intelligence Agency serving as a Defense and Army Attaché in an imminent danger/hostile fire area in support of OEF-Trans Sahel. He was the primary in-country military liaison between U.S. DoD and the governments of Chad and the Central African Republic.

d. DD Form 214, for the period ending 31 October 2012 shows the applicant was honorably retired from the Regular Army. He had service in Saudi Arabia from 9 October 1990 through 09 June 1991 and in Chad from 10 December 2009 through 20 April 2011. A DD Form 215 (Correction to DD Form 214) added "served in a designated imminent danger pay area" to item 18 (Remarks). The DD Form 214 is void of award of the CAB.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined based on the preponderance of evidence there is sufficient documentation to support awarding the combat action badge for engagement with direct fire during his time serving in the Democratic Republic of the Congo.

2. The Board determined the applicant was engaged in direct fire while returning to the U.S. Embassy in N'Djamena, Chad from a meeting. Evidence supports the applicant was fired upon by a guard from the Chadian presidential palace. The Board agreed

based on witness statements from those with knowledge of the incident and his leadership acknowledgement reversal of AHRC determination is warranted. Therefore, the Board granted relief to award the combat action badge.

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 Army records of the individual concerned be corrected by amending his DD Form 214 for the period ending 31 October 2012, to award him the Combat Action Badge.

5/14/2024

X

CHAIRPERSON

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. AR 600-8-22, in effect at the time, prescribed Army policy, criteria, and administrative instructions concerning individual and unit military awards. Paragraph 8-8 (CAB) states:

a. On 23 May 2005, the Chief of Staff, Army approved the creation of the CAB to provide special recognition to Soldiers who personally engaged, or are engaged by the enemy.

b. The requirements for award of the CAB are Branch and MOS immaterial. Assignment to a Combat Arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations is not required to qualify for CAB. However, it is not intended to award all Soldiers who serve in a combat zone or imminent danger area.

c. Specific eligibility requirements:

(1) May be awarded to any Soldier.

(2) Soldier must be performing assigned duties in an area where hostile fire pay or imminent danger pay is authorized.

(3) Soldier must be personally present and actively engaging or being engaged by the enemy, and performing satisfactorily in accordance with the prescribed ROE.

(4) Soldier must not be assigned to or attached to a unit that would qualify the Soldier the CIB/CMB. For example, an 11B assigned to Corps staff is eligible for award of the CAB. However, and 11B assigned to an infantry battalion is not eligible for award of the CAB.

d. Award of the CAB is authorized from 18 September 2001 to a date to be determined. Award for qualifying service in any previous conflict is not authorized.

//NOTHING FOLLOWS//