

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230009242

APPLICANT REQUESTS: through Counsel:

- reconsideration of his prior request for physical disability retirement in lieu of physical disability separation with severance pay, with associated back pay
- award of the Purple Heart
- award of the Combat Action Badge

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's two letters, dated 16 June 2023 and 25 August 2023
- Counsel's brief
- exhibits index
- Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell Permanent Orders 168-158, dated 1 July 2002
- Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell Permanent Orders 224-158, dated 12 August 2002
- partial Certificate of Appreciation, for service in 2002, undated
- partial DA Form 638 (Recommendation for Award) for Captain (CPT) S____, dated 10 June 2003
- multiple service medical records, dated between March 2004 – March 2005
- multiple Aeromedical Evacuation (MEDEVAC) records, dated from 16 March 2005 - 18 March 2005
- DD Form 2796 (Post-Deployment Health Assessment), dated 4 December 2005
- Standard Form 513 (Consultation Sheet, dated 14 July 2006
- 332nd Air Expeditionary Wing memorandum, dated 20 December 2006
- DA Form 2186-8 (Noncommissioned Officer Evaluation Report (NCOER), covering the period ending 29 February 2008
- multiple Standard Forms 600 (Chronological Record of Medical Care), dated between April 2008 - May 2008
- DA Form 3349 (Physical Profile), dated 20 June 2008
- DD Form 2808 (Report of Medical Examination), dated 18 August 2008
- partial DA Form 199 (Physical Evaluation Board (PEB) Proceedings), dated

19 September 2008

- Progress Notes, dated 16 January 2009 and 2 March 2009
- Propublica article, titled, "Lost to History: Missing War Records Complicate Benefit Claims by Iraq, Afghanistan Veterans," dated 9 November 2012
- Department of Veterans Affairs (VA) medical record, dated 7 November 2013
- Secretary of Defense memorandum, dated 3 September 2014
- applicant's self-authored statement, dated 28 April 2015
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings, dated 17 May 2016
- Office of the Under Secretary of Defense memorandum, dated 25 August 2017
- photographs of shoulder scar
- statements from the applicant's current wife and former wife, undated
- statement from CPT (RET) K____ S____, dated 23 June 2022
- My HealtheVet, Personal Information Report, dated 8 November 2022
- DA Form 2823 (Sworn Statement) from Lieutenant Colonel (LTC) (RET) D____ - B____, dated 1 May 2023
- U.S. Army Center of Military History PowerPoint presentation, titled, "Army Records Preservation and Collecting the Records of Overseas Contingency Operations," undated
- 400 pages of additional Department of Veterans Affairs (VA) medical records

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150008045 on 17 May 2016.

2. Counsel states:

a. The applicant enlisted in the U.S. Army with a strong desire to serve his country. He served multiple tours in Iraq during Operation Iraqi Freedom (OIF). His eight years of service in the Army were filled with awards and honors, but those eight years were also filled with traumatic incidents and experiences that severely altered his physical and mental state, causing him anxiety, depression, and post-traumatic stress disorder (PTSD). The applicant was stabbed in the shoulder by an Iraqi assailant during his first tour in Iraq and was also exposed to hazardous materials in the Balad bum pits in Iraq, the effects of which are only beginning to be known.

b. The applicant respectfully requests his discharge be changed to reflect a higher percentage of disability, that he be awarded a medical retirement, and he be given back pay and allowances. Additionally, he respectfully requests that he be retroactively awarded a Combat Action Badge and the Purple Heart for injuries sustained in combat while deployed to Iraq. Granting his request will serve as a correction of a gross

injustice perpetuated against an exemplary service member who sustained significant emotional and physical injury, including being stabbed by an Iraqi, while in theatres of combat during the Global War on Terror.

c. On 17 May 2016, the ABCMR reviewed his application in case number: AR20150008045 and determined the evidence presented did not demonstrate the existence of a probable error or injustice new and relevant evidence is presented herein.

d. The applicant has made the emotionally difficult decision to approach the ABCMR again for several reasons. First, his medical discharge in 2008 was not based on a complete medical profile. Second, the severe trauma endured during his time in the Army has severely impacted the quality of his civilian life. Third, there is now new information including diagnoses and medical research pertaining to his case that warrant the award of a medical retirement. With the advance of medical and psychological research, there now exists a broader and more comprehensive understanding of the physiological and psychological affects that multiple combat tours have on service members, and their physical and emotional health.

e. Fourth, the applicant presents evidence of not only sustained combat interactions that resulted in severe PTSD, but also evidence of the long-lasting physical ramifications of known chemical and hazardous material exposures. Fifth, he submits evidence of injury while in combat, sustained after being stabbed in the shoulder by an Iraqi assailant, which continued to affect his physical health years after deployment. Moreover, the medical care he received after his injury increased his risk of contracting hepatitis C, which manifests in the same symptoms for which he was discharged from the Army and with which he was later diagnosed.

f. Sixth, the applicant has received new information from his medical providers pertaining to pre-cancerous cells in his esophagus. New information about the detrimental effects, including the propensity to develop certain types of cancer, exists with regard to burn pit exposure. Lastly, the applicant presents before the Board evidence in the form of his medical records that indicate the experiences sustained in combat that merit a Combat Action Badge and the Purple Heart.

g. As evidenced by numerous evaluations and commendations, the applicant had an impressive eight-year career in the Army. His exemplary military career began on 7 July 2000, when at 20 years of age, he enlisted in the Army due to his love and pride for the United States and his desire to defend the freedoms that our nation stands for. He understood that, upon becoming a Soldier, he might have to go to war and defend the United States and was a highly motivated individual who was looking to serve with honor and distinction.

h. The applicant was first stationed in Ft. Campbell, Kentucky, where he served with the 541st Transportation Company in the 561st Combat Support Battalion. While at Ft. Campbell, he was recognized for his great physical fitness and for being among the top performers in his Military Occupational Specialty (MOS) duties. He also earned the title of "honor grad" at the driver's academy and during field exercises he performed above the standards set for enlisted personnel at the grade of E-4 and below. The applicant excelled because of his knowledge of convoy standards, and as a result he received a certificate of appreciation from the group commander.

i. As a result of his initial success at Ft. Campbell, the applicant was recommended for Soldier of the Year by the board at Ft. Campbell and was granted the opportunity to attend Sbalauski Air Assault School. Unfortunately, an injury prevented his attendance at Air Assault School. After the 11 September 2001 terrorist attacks, he was tasked with detailing and readying vehicles and equipment that would be sent to support Operation Enduring Freedom (OEF). As a private first class (PFC), he was tasked with inspecting secured loads and configuring loads for compliance with Air Force air transportation standards. Evidence of his promising career was apparent in his quick receipt of awards.

j. On 11 September 2002, the applicant was stationed in Germany and assigned to the 515th Transportation Company, 181st Transportation Battalion. In Germany, he continued to demonstrate his extraordinary leadership skills. After being in Germany for just over 1 year, in December 2003, he was told that he would be deployed to Kuwait in support of OEF. Shortly thereafter, the applicant arrived in Kuwait, where he trained for OEF in Iraq. On 20 March 2003, the applicant and his fellow Soldiers crossed the berm into Iraq where they drove across the desert to their first Convoy Supply Point (CSP). The first CSP that he was a part of was called Peterbuilt. When they arrived at the CSP, the applicant and his fellow Soldiers were told to leave the area as intelligence reports had discovered that the Iraqi Army was moving towards that area.

k. The very next day, 21 March 2003, the applicant and his team returned to the area and were requested to inspect vehicles for equipment that had been left a day prior. As he and his team were searching vehicles, an incoming mortar exploded. The force of the explosion blew him back a few feet, but he was still alert as to what was happening. After the mortar strike, the applicant was taken to a medic station for medical evaluation but was subsequently cleared and released back to his unit.

l. During his deployment to Iraq in the early spring 2003, the applicant also sustained an injury after being stabbed in the shoulder by an Iraqi assailant. He was injured so severely his unit thought he would not recover, and he was medically evacuated from theatre. The applicant's injury required the treatment of medical officers to save his life, qualifying him for the Purple Heart. He was brought in for care at Landstuhl Regional Medical Center (LRMC), Landstuhl, Germany, from an air-vac

hospital in Kuwait. His shoulder injury left a permanent scar. Under Captain S ____'s care, the applicant was able to return to theater within a few weeks, where he was attached to a unit under the leadership of then First Lieutenant (later LTC) D ____ - B ____.

m. Four months later in June 2003, on Highway One, the applicant was stationed at a fuel station for convoys headed towards Bagdad. The station was hit by a rocket propelled grenade (RPG) and small arms fire. During the attack, the applicant again was blown back by the explosion, but this time he lost consciousness. A few weeks later, he and his platoon were present at an ammunition dump where a fire occurred causing the ammunition to explode. The applicant was thrown 40 feet back and, again, lost consciousness, he also severely injured his right knee in this incident. He ultimately had surgery on this knee in February 2004, still walks with a limp, and he can no longer run. He was assigned a permanent profile for his knee injury, which continues to afflict him today.

n. In the height of combat, the applicant was not able to document each and every incident of traumatic brain injury (TBI). But evidence of blast-related TBI was apparent in his Magnetic Resonance Imaging (MRI) testing in the years following his deployments to Iraq. As a result, his medical situation and the complexities of that situation were well documented in his complete medical record during his time in the Army.

o. Additionally, sworn statements by LTC (RET D ____ -B ____ places the applicant at the scene of the RPG attack on their unit in Iraq in June 2003. Her statement also describes her efforts to obtain a Combat Action Badge for her Soldiers as it was only created in 2005, 2 years after their qualifying incident.

p. On his second deployment to Iraq, an improvised explosive device (IED) was dropped into the applicant's HUMVEE. He was thrown from the vehicle and sustained multiple injuries and a concussion. Shortly after this incident, while on a foot patrol, a suicide bomber blew himself up while the applicant was on patrol. He administered first aid to both civilians and service members who were injured in the attack, but the attack still affects him to this day and is a major source of PTSD. While deployed in Iraq, the applicant was exposed to toxins and fumes from several bum pits. This ranged from the burning of human waste to the disposal of ammunitions and other items.

q. It is crucial to note that during his second deployment to Iraq, the applicant began to experience unexplained nausea and vomiting, prompting the concern of his superiors. No physiological cause was identified by Army physicians, yet at the same time no psychological cause was investigated. He was cleared to leave Iraq and return to Germany as a result of his physiological conditions.

r. Over the next 3 years, the applicant's condition continued to be life altering, but this did not prevent him from being a top Soldier to the best of his ability. He continued to excel in his duties despite his illness, though it was undoubtedly challenging. He underwent numerous tests to identify possible gastro-intestinal issues that may have caused these symptoms. During this time period, the Army only identified one instance of gastroesophageal reflux disease (GERD); however, as is evidenced in his exams, he was not tested for possible viruses and infectious diseases that may have also caused similar symptoms. During this time, the applicant also struggled with an asthmatic condition, for which he was diagnosed and prescribed an inhaler.

s. It is also crucial to note that the applicant's MRI testing conducted in April 2008 showed increased T2 Signal and FLAIR Signal near the left lateral ventricle, supporting his statements that he had previously had TBIs and was suffering from PTSD. Peer-reviewed medical research shows the extensive links between increased white matter hyperintensities (shown through T2 signal and FLAIR signal increases) and post-traumatic stress.

t. Evidence of the applicant's achievements are well documented. For example, in his NCOER covering the period from 1 March 2007 through 29 February 2008, he was described as "a faithful and loyal leader who cares about the mission and his soldiers" and "performs exceptionally well under pressure." His war-fighting spirit and the exceptional commitment to mission is well documented in his Official Military Personnel File (OMPF). For example, he received the Army Achievement Medal for his commitment to the mission and support of Soldiers.

u. Out of concern for the applicant's health and career, his supervisors recommended he be retained and moved to a different MOS. But, in 2008, after serving for 8 years, he was discharged from the Army after a Medical Evaluation Board (MEB). He received a disability rating of 10 percent for nausea and vomiting of an unknown etymology. His permanent profile for his right knee was listed at 312111, but not included on his disability ratings. His combat-incurred shoulder injury and subsequent surgery were not documented. In fact, the overseeing physician listed neither his knee nor shoulder surgery. His asthma, which was diagnosed in 2006 and had worsened as a result of his exposure to hazardous materials while deployed in Iraq, was not enlisted on his disability rating recommendation either.

v. The applicant was medically discharged, despite his medical history being insufficiently detailed. Did he understand the full ramifications of this matter at the time? No. The applicant's focus was on fulfillment of the mission, and a desire to protect his family. He was not focused on understanding the intricate bureaucracy that is the U.S. Army.

w. During his eight years of service, the applicant was highly respected by his peers and superiors and was highly dedicated to the Army. The physiological manifestation of multiple PTSD inducing events that he encountered caused his career with the Army to be cut short. To further evaluate and test the severity of his deteriorated mental stated, he went to a VA hospital in San Diego on 12 February 2009. After filling out a PTSD and depression checklist, VA employees advised the applicant that he had scored a total of 53 on the PTSD score and a 12 on the depression score. Both of his scores were above the average range for veterans who had been diagnosed with PTSD or depression, which is a clear indication that he did in fact suffer from these mental disorders. These high scores are also indicative of the fact that the applicant had suffered from these disorders for an extended period of time.

x. Shortly thereafter, the applicant was diagnosed with chronic hepatitis C, with the VA identifying transfusion after injury and exposure in Iraq as possible risk factors. It is well known that veterans from the Gulf Wars are diagnosed with hepatitis C at higher rates than their civilian peers.

y. After undergoing countless medical tests and physicals, the applicant was diagnosed as having both PTSD and depression. As a result of his PTSD diagnosis, the VA rated him at 70 percent disabled. In 2014, the applicant appeared before a court seeking a determination that rendered him disabled as is defined under sections 216(i) and 223 of the Social Security Act. On 25 March 2016, the court rendered the applicant disabled pursuant to sections 216(i) and 223 of the Social Security Act and affirmed his 70 percent disability rating.

z. Today, there are a number of issues at stake. The applicant seeks restitution for his physiological symptoms, and the mental and emotional trauma that resulted from his experiences overseas. Sworn statements by fellow Soldiers affirm those experiences. He is continuously anxious, cannot hold a steady job, nor even attempt to be around any sort of crowded groups or areas. As a result of his PTSD and depression, he has experienced severe hardship. Of course, monetary recompense for trauma and emotional distress is not legally permissible. But a correct disability rating, retirement from the Army, and awarding of the Purple Heart and Combat Action Badge are. This Board has complete justification because the service he performed for this nation compels such a result.

aa. The Secretary Hagel memorandum necessitates the liberal review of cases related to PTSD. The applicant's physiological symptoms related to PTSD and TBI were not considered or adequately investigated. As this Board is well aware, it can be exceedingly difficult for service members who suffer from severe PTSD to maintain a high quality of life, employment, or reintegration into society that is commensurate with the sacrifices they made for their country, and the values of freedom and democracy. The Hagel memorandum reminds the Board that careful consideration should be given

in cases pertaining to PTSD. Additionally, the memorandum recognizes the difficulty in ascertaining a PTSD diagnosis during services, and specifically states that special consideration be given to the determinations of the VA pertaining to PTSD diagnoses and other PTSD related medical conditions.

bb. The applicant is no exception. Even a brief glance at his military career demonstrates his dedication and outstanding work ethic. His record demonstrates that his upward trajectory would have continued in either the Army or in a civilian career if it were not for the traumatic, life altering experiences he faced while deployed in Iraq. Because he willingly put his own life on the line for the values of the United States and the mission of the Army, he must now live with the reality of severe PTSD, physical ailments, and a lower quality of life. At the time of his discharge, his medical records indicated, and reviewing physicians should have realized that he was exhibiting PTSD and TBI symptoms that were disqualifying. The links between PTSD and physiological symptoms are clear, and there is a high likelihood that the nausea and vomiting resulted from his head injuries and his PTSD.

dd. On 17 March 2004, the applicant was seen for "battle stress" by a physician in Mannheim, Germany related to his experiences in Iraq. At the time, he could not sleep due to ongoing nightmares. He was also diagnosed with depressive disorder after returning from Iraq in 2005. The applicant's ex-wife, Y____ H____, states that the applicant suffered from nightmares and depression when he returned from his deployment and throughout his time in the Army.

dd. Other medical diagnoses from the VA evidence that the applicant suffered from combat related PTSD and sought assistance. Whereas the ABCMR previously claimed a VA disability rating did not constitute sufficient evidence, the Hagel Memorandum reminds the Board that there are cases wherein VA documentation and diagnoses are not only sufficient but many times *crucial* to obtaining an adequate understanding of the veteran's health.

ee. Numerous studies demonstrate the link between PTSD and physical ailments, including nausea and vomiting that affect and afflict service members who experienced violence in a theater of combat. Studies by Schry et. al (2015), Tsai et. al (2012), Hoge et. al (2008), and Asnaani et. al (2014) are each evidence and exploration of the links between the physiological and psychological. Specifically, like the other studies, Schry et. al found that the PTSD had a negative impact on the physical health of veterans of Iraq and Afghanistan. The applicant sought medical assistance repeatedly for physical symptoms like vomiting and nausea during his Army career. Unfortunately, the Army failed him by electing to only pursue a physical cause for his ailments during his time in the military. This is an opportunity for the Army to rectify a gross injustice.

ff. The Hagel memorandum reminds the board, "in cases where service records or any document from the period of service substantiate the existence of one or more symptoms of what is now recognized as PTSD or a PTSD-related condition during the time of service, liberal consideration will be given to finding that PTSD existed at the time of service." The applicant presents such evidence, and his physiological symptoms can be linked back to PTSD. Moreover, clarifying guidance from the Kurta Memorandum reminds the Boards that liberal consideration should be given "to veterans petitioning for discharge relief when the application is based in whole or in part on matters related to mental health conditions including PTSD; TBI; sexual assault; or sexual harassment." Indeed, because of a lack of proper consideration in cases like the applicant's, the Army Discharge Review Board (ADRB) has had civil action taken against it which now requires it to reexamine years of cases.

gg. Army Physicians failed to adequately consider the applicant's complete medical history when evaluating him for retention. He was evaluated by Dr. T____ N____ on 19 August 2008 and referred to the Physical Evaluation Board (PEB) for further review. In Dr. N____'s assessment, he did not include any surgical history. His assessment did not fully address the physical limitations of the applicant's knee injury, his diagnosed arthritis, nor his subsequent surgery. His knee injury in theater was one for which he was assigned a permanent profile. He also did not include information about the applicant's asthma. Each of these issues was documented in the applicant's medical files and should have been considered.

hh. Upon referral to the PEB, the PEB found that the applicant's recurrent nausea and vomiting were obstacles to his performance. They recommended a disability rating of 10 percent on the basis that these symptoms did not significantly impair health. This rating neglected the severity of the applicant's symptoms, and neglected the fact that his symptoms were so severe his senior leadership recommended him to change his MOS. The severity of his symptoms was well known. On 27 May 2008, J____ T____ Y____ (an Ear, Nose, and Throat (ENT) doctor) evaluated the applicant in San Diego and noted that his recurrent nausea and vomiting happened at least three times a week. In that same report, his referring physician cited chronic nausea and vomiting as beginning in 2004 after his first deployment to Iraq. The PEB and MEB failed to adequately document and consider the applicant's knee arthritis, his left shoulder injury, and his asthma. They also did not include any information related to his post-traumatic stress, though his MRI findings reflect evidence consistent with traumatic brain injury and post-traumatic stress.

ii. A lack of appropriate testing for non-gastrointestinal causes, like hepatitis C, constitutes a grave error in the applicant's case. His case represents an opportunity to correct an injustice and a grave error. In his case, while the Army offered extensive testing to identify the logical causes of unexplained nausea and vomiting, they were unable to identify a specific cause. The Army conceded that these symptoms were

combat related but could not identify an underlying cause. Hepatitis C can cause nausea and vomiting, as well as extreme fatigue. While it was an understandable error, it was in fact an error. It was only after his discharge, that he was diagnosed with chronic hepatitis C, a form that develops from cases of acute hepatitis C.

jj. There are several ways in which a person can contract hepatitis C, including contact with an infected person's bodily fluids. The applicant entered the Army in 2000 without hepatitis C, and deployed to Iraq, a country with high rates of hepatitis C. In the applicant's case, his greatest exposure to hepatitis C would have occurred while assisting injured civilians and soldiers in Iraq, or while undergoing medical treatment while in theater after being stabbed by an Iraqi assailant. Had he been tested for hepatitis C at the onset of symptoms, there is a possibility he could have been immediately treated and been able to continue in his Army career. Unfortunately for him and for the Army, this was not the case. He continued to suffer from repeated episodes of nausea and vomiting. The error in his case is that medical staff pursued the same diagnosis, for years, by examining his stomach and intestines, before finally listing it as "unknown."

kk. Even if the source of SGT Hallinan's symptoms was unknown, a 10 percent rating is unjust according to military standards for the same symptoms given their frequency and their severity compared to similar issues in the rating system. Even in the case of an unknown or undiagnosed cause for chronic nausea and vomiting, the applicant's symptoms warranted a higher rating for disability. It is well known, and well documented, that these symptoms were debilitating and prevented him from continuing his daily activities. Army physicians permanently disqualified him from his MOS because his symptoms prevented him from being able to carry it out. Thus, they should have awarded another MOS, or appropriately rated the severity of his nausea and vomiting.

ll. According to Title 38 U.S. Code section 1155, the applicant's condition warranted higher than 10 percent for his symptoms when compared against disabilities with similar symptomology. For example, under section 4.114 Schedule of Ratings - Digestive System even diagnosis 7319 "Irritable Colon System" with abdominal distress rates at 30 percent; under 7345 Chronic Liver disease, the military rates "incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least 6 weeks during the past 12-month period, at 100 percent. According to these regulations, only intermittent episodes warrant a 10 percent rating. In the applicant's case, his symptoms were so severe and so constant, he was not able to function adequately in his Army life. Numerous medical evaluations illustrate the chronic nature of his symptoms, which he has endured for years. According to Title 38 U.S. Code section 4.130 - Schedule of Ratings - Mental disorders, symptoms of posttraumatic stress that interfere with daily activities warrant a minimum of 30 percent rating. According to Title 38 U.S. Code section 4.124a - Schedule of Ratings - neurological conditions and convulsive disorders,

residuals from traumatic brain injury should be considered, and in the applicant's case would have warranted a disability rating of at least 30 percent.

mm. The U.S. Army did not keep adequate records during the first years of Operation Iraqi Freedom (OIF) and the applicant's combat-related injuries were not adequately considered by previous Boards. The ABCMR considers errors or injustices when considering a Soldier's record and questions of relief. As this Board is well aware, the Army failed to keep adequate records during the first years of OIF. As a result, documentation of the applicant's injury was not kept. The applicant has repeatedly submitted Freedom of Information Act requests (FOIA) in an effort to locate the after-action reports of his unit while deployed in Iraq. Correspondence indicates that no such records have been maintained. The U.S. Army acknowledges that it failed to adequately maintain records, and in some cases, Soldiers were ordered to destroy entire hard-drives if there was the possibility that enemy combatants could obtain the information.

nn. In December 2004, the LTC T____ C____, of the 181st Transportation Battalion was interviewed about his Soldiers' service in Iraq. In the article, published by Stars and Stripes, LTC C____ stated that more the units came under fire more than 70 times during the first deployment to Iraq. In the Unit History, the unit notes the following information for the mission, SUSTAINER PUSH, which operated continuously 29 May - 8 December 2003: "The 18 Pt Trans Bn has driven over 10,500,000 miles and delivered over 18,000,000 gallons of fuel. Our Soldiers endured the brutal heat of the Iraqi summer, and always got the job done despite 160-degree temperatures inside their cabs, constant enemy attacks, and minimal repair part support. All told, they repelled 69 enemy attacks, of which 18 were IEDs and 31 were small arms engagements resulting in the award of 17 Purple Hearts for combat injuries, with an 18th pending approval. These soldiers have earned their battle-hardened reputation as the best damn transporters in theater, and they continue to make us proud every day. Our Soldiers know the routes through the dangerous "Sunni Triangle" better than anyone and have earned a reputation as soldiers who face danger with courage and lots of firepower. Many times, other units come under attack and junior leaders in the 181st Trans provide lifesaving medical evacuations and roadside assistance. " from 181st Transportation Battalion Unit History.

oo. These statements, when read together with the statements of eye-witness medical personnel, help reconstruct the experiences the applicant went through in Iraq. Statements by medical personnel who treated the applicant at the time of his shoulder injury at the hands of an enemy combatant affirm the fact that he sustained a debilitating injury in combat (statement by retired CPT K____ S____). There is also photographic evidence of the scar, a permanent reminder of his experience.

pp. In the applicant's initial application to the Board, he did not include evidence of injury sustained to his shoulder in Iraq when he was stabbed by an Iraqi while along

Highway 1. His injury was so severe that he was evacuated to Kuwait and then to Germany (see the statement from Retired CPT K____ S____). His unit, recognizing the severity of the situation, recommended his medical team, specifically CPT S____, for an award after saving the applicant's (see the exhibit - recommendation for award). The physical repercussions of this incident remained to be seen. The applicant continues to suffer from nerve damage to the shoulder. Moreover, his VA medical records demonstrate that he endured an injury to his shoulder along with continued pain. In their previous decision, the Board stated that it does not consider paperwork from the VA. Under normal circumstances, which might be permissible. In this case, the Board is on notice that the Army failed to keep adequate records during the initial years of OIF. Statements from fellow Soldiers and records from the VA are the only options available to correct a gross injustice.

qq. As demonstrated by his post-deployment assessment, the applicant was exposed to hazardous materials while deployed in Iraq at Balad Air Base. During his time in Iraq, he was tasked with working at numerous burn pits. In his previous application to the Board, the applicant included information about his exposure to the burn pits, but it was not fully considered by the Board. As the Board is well aware, new legislation regarding the burn pits continues to recognize the danger the burn pits posed to veteran's health.

rr. A memorandum dated 20 December 2006, details the tremendous risk to service members posed by the burn pit at Balad Air Base Iraq. This memorandum demonstrates that the military knowingly exposed service members to unknown harm, given their inability to quantify contaminants and make health risk assessments based on chemicals of concern. LTCs D____ C____ and J____ E____, U.S. Army, argued that this burn pit constituted "an acute health hazard for individuals" and "the possibility for chronic health hazards associated with the smoke." For this reason, information regarding the burn pit at Balad Air Base Iraq was made a permanent part of service member's medical records. Moreover, as this Board is well aware, we now know that hundreds of burn pit sites across Iraq and Afghanistan, where the applicant served, have caused severe physical harm to veterans, and returning service members.

ss. The long term physiological and psychological effects of exposure to chemical and hazardous materials have still not been sufficiently explored in medical research. But the study by the Institute of Medicine, as well as the testimony provided to Congress by Dr. A____ S____. in 2009, demonstrates the link between exposure to pollutants at the burn pits and asthma, as well as nausea and vomiting. Specifically, in the study conducted by the Institute of Medicine on the long-term health effects of the burn pits in Iraq and Afghanistan, investigators found "a range of medical problems [attributed] to smoke from burn pits, including asthma, joint pain, cancer, vomiting and nausea, burning lungs and Parkinson's disease."

tt. In addition to the applicant's nausea and vomiting, which are at this point extremely well documented, he has had other lasting symptoms. In 2006, he was diagnosed with asthma after his deployment to Iraq, and was prescribed an inhaler. In 2019 he had a biopsy performed on his esophagus. His biopsy returned results of pre-cancerous cells. Today, with the benefit of more information, U.S. legislation regarding the burn pits presumes asthma and other conditions are the direct result of exposure to the burn pits. With the benefit of more information, the ABCMR now has an opportunity to rectify an injustice. The Army may not have known how detrimental toxic exposure was when the incident occurred in the first years of OIF; however, past foregone acknowledgment is not an excuse for continued injustice.

uu. Factors in the applicant's cases are similar to another ABCMR case, remanded back to the ABCMR by the United States Court of Federal Claims, *Hassay v. United States*, 150 Fed. Cl. 467 (Fed. Cl. 2020.). The court's decision is instructive in this case. The Court noted, "the Board's fitness determination was not supported by substantial evidence because it was not based on the record as a whole." These are the facts in this case. The applicant was not only suffering from "unknown nausea and vomiting," but also asthma, an ongoing knee injury coupled with arthritis, shoulder pain resulting from an injury while deployed, hepatitis C, and the physiological and psychological ramifications of PTSD. This application helps present his record as a whole so the ABCMR can provide justice in this case.

vv The applicant should be retroactively awarded the Combat Action Badge and the Purple Heart. A branch of the military that prides itself on its historical origins in the continental Army should recognize the necessity and importance of caring for its returned service members who value American democracy and freedom and were willing to make the ultimate sacrifice to ensure it. In the absence of adequate record keeping, the history of early deployments and combat injuries sustained in theatre in Iraq and Afghanistan should rest on the statements of military personnel and other contemporaneous documents.

ww The applicant is deserving of a retroactive awarding of the Purple Heart and the Combat Action Badge. The Purple Heart is given to Soldiers who "are wounded in action against an enemy of the United States, or as a result of an act of such enemy, provided such would necessitate treatment by a medical officer." While deployed to Iraq, the applicant was stabbed by an Iraqi assailant in the left shoulder while he was entering Baghdad along highway one, which qualifies him for this award. He required medical attention and he had to be MEDEVACd from theatre. Documentation of this injury is supported by CPT K____ S____'s statement and the contemporaneous document recommending CPT S____ for the award, which are acceptable forms of documentation under DOD Manual 1348.33, Volume 3. The applicant's unit, and members of that unit, were recognized for their service to the nation and its values through the awarding of combat action badge to fellow Soldiers who were deployed in

the same unit, and who state that the applicant was with them. Therefore, he respectfully requests the board retroactively award him the Combat Action Badge and the Purple Heart.

xx. By all accounts, prior to his discharge, the applicant was an exemplary service member who was characterized as being more than capable for the Army for the entirety of his career in numerous evaluations. He served his unit skillfully and endured physical injuries at the literal hand of combatants when in Theater. He suffered from multiple traumas due to proximity to explosive devices, to combat, and to a rapidly developing situation while deployed in support of OIF. The symbolic recognition of the sacrifices made by his unit must also be backed by tangible care. Awarding the applicant anything other than a full medical retirement not only does him a disservice, but it also perpetuates an injustice for the entire U.S. Army and the values upon which it is built. Even the applicant's Certificate of Release from Active Duty lists that his reason for separation was combat related.

yy. The previous Board concluded that the applicant had not provided sufficient evidence to warrant a full medical retirement. As is demonstrated in this application, the Board now has grounds to grant him relief. At the time of his discharge, his medical records indicated, and reviewing physicians should have realized, that he was exhibiting PTSD and TBI symptoms that were disqualifying. The links between PTSD and physiological symptoms are clear, and there is a high likelihood that the nausea and vomiting resulted from his head injuries and his PTSD. Additionally, the rating awarded by the PEB is too low. Army physicians permanently disqualified him from his MOS because his symptoms prevented him from being able to carry it out. Thus, they should have awarded another MOS, or appropriately rated the severity of his nausea and vomiting.

zz. Lastly, the applicant's medical discharge did not include his permanent knee profile, nor did it include evidence of being stabbed by an enemy combatant. His medical rating did not consider the *severity* of nausea and vomiting, and the debilitating nature of it. The previous Board did not have the opportunity to fully consider the ramifications of the applicant's exposure to burn pits, nor to his exposure to hepatitis c through a blood transfusion or exposure to civilian bodily fluids while in theater. This Board now has an opportunity to remedy a gross injustice by granting the applicant relief. In the interest of justice, the applicant deserves relief. The Board should reconsider its decision and grant the requested relief. The time is now to right this wrong.

3. The applicant states:

a. Below is a brief description of his deployments and injuries. He would like his Army discharge to be considered for an upgrade to medical retirement. He also added a

few quality-of-life issues. He served his country and wonders whether his country will do the same for him.

b. He joined the Army in July 2000. He deployed to Afghanistan in September 2001, and he deployed to Iraq in 2003, where he was injured when he was hit by a mortar blast within 30 feet of him. He was knocked unconscious for 60 to 90 seconds was dragged out of the kill zone; someone used smelling salt to wake him. He had headaches and ringing in the ears for days. The onset of PTSD occurred while on foot patrol and a suicide bomber blew himself up in the middle of the market. His platoon had no casualties, but they were the first to render aid to the local nationals. Later that year a child between 9-12 years old handed him a hand grenade that was already live. He threw the grenade as far as he could yet still felt the blast when the grenade blew up within approximately 25 feet. After that, he was stationed at Camp Taji, where it was later found out that the old munitions were actually chemical weapons. They destroyed the munitions that were found. Before their destruction, they had to handle the munitions and transport them to the detonation site about ½ mile away. They were never given any type of personal protective equipment or even warned the weapons may be contaminated. On a daily basis, they were exposed to smoke from burn pits. He also sustained a knee injury and was diagnosed with an arthritis injury incurred during a complex attack that included him being driven over an IED. He was put on crutches for the remainder of the deployment,

c. In 2005, they were again deployed to Iraq where their mission was to escort convoys and provide protection from ambushes and insurgents. He was in a vehicle where all the occupants were killed by an IED blast. While deployed, they engaged insurgents multiple times and ran over countless IED's. Again, they were exposed to smoke from burn pits and other hazardous items. He was sent to a hospital in Germany for unexplained nausea and vomiting; he still has headaches very regularly, on a daily basis. The headaches are at times are paralyzing and accompanied by dizziness, to the extent that he will faint. He was never given a diagnosis for these ailments, but they have severely impacted his life due the severity of the nausea and vomiting. When the episodes happen, he is in tears from the pain.

d. The Army no longer allowed him to operate any type of vehicle and he was also sent to a new duty station. At his new duty station, he was then to restart the process of being examined all over again from the beginning about his condition, with new doctors and a new command to deal with. His life is now severely limited to the extent that he can no longer control his bowels at times and also suffers from high anxiety. He can no longer go into a crowd area for the fears of what may happen. He has also had flash backs of grenades being thrown from bridges and the site of trash on the side of road reminds me of the IED's and the fears of an explosion. There are nights that he suffers from insomnia because he has flashbacks about his time deployed. He also contracted hepatitis C while deployed. On a number of deployments, he was given orders to set up

and engage the enemy from the city sewers of Bagdad. He can also still see in his dreams and flashbacks every man, woman, and child he killed. Most of his engagements were with a rifle. Even though the targets were hundreds of feet away, it still seems they are only two feet away.

e. At his last duty station at Ft. Irwin, CA, he was never really treated for his symptoms, except to be told that someone would get back to him. He was then blindsided when he was told he was to go in front of a MEB, to assess his usefulness to the U.S. Army. He pleaded to the board to allow him to finish his career in the Army, to no avail. After 8 years and 6 months of service, he was told to start the clearing process and exit the military. He was issued a severance pay of \$30,000.00 and given an honorable discharge. The U.S. Government failed him and his family by not affording him the opportunity to be diagnosed and receive a disability rating that entitled him to retirement. At his discharge, he was only given 10 percent disability rating for asthma. After his discharge, he went to the local VA hospital where he had to fight to get his disability rating to 30 percent. It was not until 2013 that he was given a new disability rating of 80 percent.

4. The applicant enlisted in the Regular Army on 7 July 2000 and was awarded the Military Occupational Specialty (MOS) 88M (Motor Transport Operator).

5. There applicant's available service records are void of evidence of his deployment to Afghanistan in September 2001, as he indicated in his self-authored statement to the Board.

6. The applicant provided the following documents from his service at Fort Campbell, KY, in 2002:

a. A Certificate of Appreciation, awarded to him for his participation in the JRTC Rotation 02-04, as a member of the Environmental Protection Section, ensuring the refuse sent to the landfill was free from hazardous materials.

b. Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell Permanent Orders 224-158, dated 12 August 2002, awarded him the Air Assault Badge, and associated Additional Skill Identifier (ASI) 2B.

7. The applicant deployed to Iraq from 9 January 2003 through 15 January 2004. The following documents are from that period of service:

a. A partial DA Form 638 shows CPT K____ S____ was recommended for the Army Commendation Medal by his supervisor at LPMC, on 10 June 2003, as a permanent change of station award for his service as an AIRVAC nurse in OIF from 1 April 2003 through 10 June 2003. Achievement 3 specifies that the applicant spoke with the

hospital commander, praising the meticulous care CPT S had given him____ when he was MEDEVACd from Iraq/Kuwait to LRMC as the result of an injury.

b. There are no documents in the applicant's available service records pertaining to the applicant's MEDEVAC from Kuwait/Iraq to LRMC, the specific injury or source of the injury, or his return to Iraq in 2003.

c. A 515th Transportation Company memorandum, dated 4 January 2004, shows the applicant's immediate company commander requested his release from the OIF theater and redeployment to home station to conduct advanced party movement for unit redeployment, leaving the Central Command area of responsibility no later than 15 January 2004. A 9 January 2004 memorandum from his battalion commander shows the applicant's release was authorized with a date of no later than 15 January 2004.

8. An Army Commendation Medal Certificate, dated 19 January 2004, shows the applicant was awarded the Army Commendation Medal for meritorious service as a heavy wheeled vehicle operator during OIF from 1 February 2003 through 18 March 2003. His performance ensured V Corps forces received historical levels of combat service support.

9. The applicant provided multiple service medical records dated between March 2004 – July 2004, which show:

a. The applicant was seen at the Mannheim Family Practice Clinic on 17 March 2004, after returning from deployment 1 1/2 months prior, with complaints of battle stress and inability to sleep more than 2-3 hours, with fitful dreams.

b. A DA Form 4700 (Medical Record – supplemental Medical Data) shows the applicant was seen in the Emergency Room on 28 March 2004, for a head injury that happened 30 minutes prior when a chair was pulled out from under him, causing him to hit the back of his head on the wall, with resulting headache and blurred vision. His diagnoses include battle stress.

c. A Standard Form 600 shows the applicant was seen at the Mannheim Health Clinic on 27 July 2004 for nausea and vomiting he experienced for 1 month.

10. The applicant again deployed to Iraq from 8 December 2004 through 6 December 2005.

11. The applicant provided medical documents from that second period of service in Iraq, which show:

b. A Standard Form 600 shows, on an illegible date, possibly February/March 2005, he was again seen for an upset stomach he had for the past 9 or 10 months with vomiting almost daily and he was referred to Mental Health.

c. A Consultation Sheet, dated 2 March 2005, shows he was referred for surgery for a hiatal hernia with recurrent history of post prandial emesis (disorder characterized by the reflexive act of ejecting the contents of the stomach through the mouth), prior left arm surgery (date and condition not specified) and prior right knee surgery (date and condition not specified).

d. An Aeromedical Evacuation Patient Record shows on 16 March 2005, the applicant was MEDEVACd from Iraq to LRMC with a diagnosis of post-prandial emesis without weight loss. A Patient Movement Request shows the applicant's primary diagnosis as nausea without vomiting. The applicant arrived at LRMC on 18 March 2005.

e. A VA medical document shows the applicant was diagnosed with the following conditions after admission in a Department of Defense (DOD) Military Treatment Facility (MTF) in March 2005:

- 21 March 2005, vomiting without nausea
- 24 March 2005, depressive disorder

12. A partially legible DD Form 2796, shows the applicant provided his post-deployment health assessment on 4 December 2005, which shows he indicated he was exposed to DEET, pesticide, smoke from fire, vehicle exhaust and other fumes, loud noises, he assessed his health as fair, he was currently on profile or light duty; and he had been MEDEVACd to LRMC for nausea and vomiting.

13. A second Army Achievement Medal Certificate shows the applicant was awarded a second Army Achievement Medal on 18 December 2005, for meritorious achievement as a heavy wheeled vehicle operator during OIF III from 5 January 2005 through 18 December 2005.

14. A Standard Form 513 shows on 14 July 2006, the Mannheim Primary Care Clinic requested a Pulmonary Function Test for the applicant based on a provisional diagnosis of asthma. The bottom of the form reflects a Consultation Report dated 9 August 2006, which shows the applicant was administered the test and performed the test well, leaving without limitations.

15. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and

is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

16. A DA Form 3349 shows on 1 November 2007, the applicant was given a permanent physical profile with a PULHES of 212111, for the conditions of right knee pain status post-surgery and motion sickness. His functional limitations included being unable to drive either a military or privately owned vehicle and he required a MOS Medical Review Board (MMRB).

17. The applicant's NCOER covering the period from 1 March 2007 through 29 February 2008, shows his Rater rated him "Success" in all portions of Part IV (Values/NCO Responsibilities) with remarks that include physical limitations prevented the applicant from performing the APFT.

18. Multiple Standard Forms 600 show:

a. On 30 April 2008, the applicant was seen at the Gastroenterology (GI) Clinic at Naval Medical Center San Diego for intermittent nausea and vomiting for the past 3 years, often associated with positional change, and occurring almost every time he drives. His bowel studies were all normal. He was diagnosed with motion sickness and referred to ENT.

b. On 27 May 2008, the applicant was seen in the Otolaryngology Clinic at Naval Medical Center San Diego for follow-up to complaints of continued motion sickness, nausea, and vomiting. He has had multiple workups for this condition, by GI, ENT, and psychological evaluations, without a clear explanation as to the cause.

c. On 16 April 2008, the applicant underwent MRI of the brain without contrast. For his recurrent episodes of nausea and vomiting. The impression shows no acute intracranial hemorrhage or parenchymal mass lesion to explain his symptoms.

19. A second DA Form 3349 shows on 30 June 2008, the applicant was given a permanent physical profile with a PULHES of 312111, for the conditions of motion sickness and right knee pain, status post-surgery. His functional limitations included being unable to drive either a military or privately owned vehicle and he required an MMRB.

20. A Headquarters, National Training Center and Fort Irwin memorandum, dated 8 August 2008, shows the National Training Center and Fort Irwin MMRB evaluated the applicant's abilities to perform the physical requirements of his primary MOS on 29 July

2008, and based on his most recent permanent physical profile dated 30 June 2008 and all other pertinent records, determined the limitations imposed by his permanent profile were so prohibitive they precluded his retraining and reclassification into any MOS in which the Army had a requirement and directed his referral to an MEB.

21. A DD Form 2808, dated 18 August 2008, shows:

a. The applicant underwent medical examination on 18 August 2008, for the purpose of an MEB.

b. The clinical evaluation notes regarding abnormalities show he had a large 5 centimeter vertical scar on his left shoulder, a right patella knee condition.

c. He was given a PULHES of 312111 and the summary of defects and diagnoses shows:

- nausea/vomiting, recurrent, unknown etiology
- history of patella fracture, status post open reduction and internal fixation (ORIF), 1997
- history of mild intermittent asthma

22. An MEB Narrative Summary (NARSUM), dated 19 August 2008, shows:

a. The applicant underwent examination on the date of the NARSUM subsequent to MMRB referral to an MEB for his recurrent nausea and vomiting since 2004.

b. The history of his illness shows gradual onset in November 2004 of daily episodes of nausea and vomiting approximately 3-4 times per day with lightheadedness. Episode usually occur after eating meals and with activities such as sit-ups, running, mounting, and dismounting from tactical vehicles, and jumping. He was evaluated by GI in March 2005, which was essentially normal: CT scan in 2005 was normal; ENT in December 2006, which was normal; Neurology in March 2008, including a brain MRI which was normal; and Cardiology in June 2008.

c. Past surgical history shows none.

d. His only listed diagnosis is recurrent nausea and vomiting of uncertain etiology, which had a functional impact on his duty status, rendering him unable to operate motorized vehicle secondary to lightheadedness from the nausea and vomiting while driving. He had difficulties doing APFT events, ruck marches and mounting and dismounting from tactical vehicles, since they exacerbate his nausea and vomiting.

e. The applicant was referred to the PEB based on the duty limitations of his DA Form 3349.

23. A DA Form 3947 (MEB Proceedings) shows an MEB convened on 20 August 2008, where the applicant's condition of recurrent nausea and vomiting of uncertain etiology was considered and the board subsequently referred him to a PEB.

24. A partial DA Form 199 shows:

a. A PEB convened on 29 September 2008, where the applicant was found physically unfit with a recommended combined rating of 10 percent and that his disposition be separation with severance pay.

b. The applicant's unfitting condition is chronic nausea and vomiting, unclear etiology, rated analogously to hiatal hernia. Onset was 2004 while deployed to Iraq. He was rated at 10 percent disabled for symptoms of regurgitation and pyrosis without significantly impairing his health.

c. The portion of the form reflecting the applicant's signature and either concurrence or nonconcurrence with the findings and recommendations is not in the available records for review.

25. The applicant's DD Form 214 (Certificate of Release or Discharge) shows he was honorably discharged on 23 December 2008, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay, combat-related, with corresponding a separation code of JFI. He was credited with 8 years, 5 months, and 17 days of net active service. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) does not reflect award of the Purple Heart or the Combat Action Badge.

26. The applicant's available service records do not show he was ever recommended for award of the Purple Heart or the Combat Action Badge.

27. VA Progress Notes, dated 16 January 2009, show the applicant screened positive for PTSD, ethyl alcohol (ETOH) abuse, depression and TBI.

28. Provided VA medical records pertaining to the applicant's colonoscopy, dated 7 November 2013, show he has a combined service-connected disability rating of 80 percent for the following conditions:

- PTSD, 70 percent
- asthma, bronchial, 10 percent
- limited extension of the knee, 0 percent

- migraine headaches, 0 percent
- TBI, 0 percent
- scars, 0 percent

29. The applicant previously applied to the ABCMR requesting physical disability retirement in lieu of physical disability separation with severance pay.

a. In the adjudication of that case, an advisory opinion was obtained from the U.S. Army Physical Disability Agency (USAPDA) legal advisor, which has been provided in full to the Board for review, and in pertinent part shows the PEB findings and recommendations were supported by a preponderance of the evidence, were not arbitrary or capricious, and were not in violation of any regulation, statute or directive; therefore denial of the applicant's request was recommended.

b. The applicant was provided a copy of the advisory opinion and given an opportunity to respond. In his response he reiterated his previous contentions and stated he did not have a full understanding of the ramifications of his medical separation at the time of his discharge and feels he should be considered for a medical retirement.

c. On 17 May 2016, the Board denied the applicant's request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of his case were insufficient as a basis for correction of his records.

30. The applicant provided a photograph which shows a large scar on his left shoulder.

31. The applicant provided four witness statements, which have been provided in full to the Board for review, and in pertinent part show:

a. CPT (RET) K____ S____ states he was a registered nurse caring for the applicant at LRMC in Germany for 3 weeks and was on an AIREVAC mission sometime in early Spring 2003, where he helped bring the applicant back from a hospital in Kuwait to LRMC. He recalls the applicant's left shoulder/arm was injured and that he was in charge of changing his dressings to avoid sepsis. The applicant was in excruciating pain only alleviated with intravenous morphine. A representative from the applicant's unit visited him at LRMC and stated he was lucky to be alive. He assured the command the applicant would get the best care and recover from this horrible war-time stabbing he incurred. The command was so grateful for the care CPT S____ and his colleagues were providing that they put him in for an award. After 3 weeks at LRMC, the applicant was sent back to his command in Iraq.

b. The applicant's wife states she was not married to the applicant while he was in the Army; however, the effects of his undiagnosed gastrointestinal issues from that time

are still very much present in their daily lives, along with his PTSD. In April 2019, he was sent to the NH VA Medical Center for a scoping of his esophagus and a resulting biopsy that confirmed the condition of Barrett's Esophagus, which can become cancerous. He has a current prescription for the acid erosion in his esophagus from the constant vomiting he experienced in the Army.

c. The applicant's former wife states she met him when he returned from his Afghanistan deployment and that is when he started to get stomach pains and headaches. He then got orders to deploy to Iraq and she could see him having flashbacks and depression. After he got his vaccines in preparation for the Iraq deployment, he began to throw up almost daily and remained sick while in Iraq. After he got back home from the Iraq deployment, he became very depressed. He went to many doctors to find out the source of the pain and stomach ailments, but nobody knew the source and treated him like he was acting. Then the PTSD hit, and it was extremely hard for him to understand why all this was happening to him.

d. LTC (RET) D____-B____ states she is providing the facts as she knows them regarding an attack that occurred on 4 June 2003 in Iraq, involving the applicant, who was a Soldier in her unit, the 515th Transportation Company, and attached to her platoon, where she was a first lieutenant (1LT) and platoon leader at the time. On that day, an RPG struck a stationary HMMWV in the vicinity of their troops, leading to the destruction of two vehicles and they, including the applicant were present for the events. Her troops, including the applicant were placed in harms way when the RPG hit the vehicle (ultimately destroying two vehicles), which was under 100 meters from their positions, and they responded by securing the perimeter to prevent further attacks through the night. Two days later, they were eventually allowed to leave the site and continue their mission. The Combat Action Badge was not in existence at that time and was established in May 2005. When she again deployed to Iraq in October 2005 as the S1 of the 181st Transportation Battalion, the senior command of the 515th Transportation Company, she took over the development and submission of packets to retroactively award the Combat Action Badge for several qualifying events from OIF and the above event was one of them. The qualifying Soldiers still assigned to the 515th Transportation Company at that time, who had participated in the June 2003 event, were awarded the Combat Action Badge, but the former Soldiers no longer assigned to the 515th Transportation Company, such as the applicant, could not be included in the submitted award packets as they were no longer part of their command.

32. All additional referenced material, including additional VA medical records in excess of 400 pages, Propublica article, MyHealVet Personal Information Report, U.S. Army Center of Military History Power Point Presentation, and multiple DOD memoranda, have all been provided in full to the Board for review.

33. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

34. 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, and/or 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 he be determined to have had additional unfitting conditions (PTSD, residuals from burn pit exposure, and traumatic brain injury) for service with an increase in his military disability rating and a subsequent change in his disability separation disposition from separated with disability severance pay to permanent retirement for physical disability. He also requests a Purple Heart for having been "stabbed in the shoulder by an Iraqi assailant during his first tour in Iraq."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the Regular Army on 7 July 2000 and was separated with \$41,000.00 of disability severance pay on 23 December 2008 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006).

d. Counsel believes the policies of liberal consideration are applicable to the facts of this case. However, the Liberal Consideration Policies outlined in the Secretary Hagel and Undersecretary Kurta memorandums address a former Service Member's request to modify the discharge characterization of their service based on a pre-discharge service incurred mental health condition and do not apply to disability processing.

e. On 8 August 2008, a Military Occupation Specialty Medical Retention Board referred the applicant to the Physical Disability Evaluation System (PDES) after determining "the limitations imposed by his permanent profile are so prohibitive they preclude retraining and reclassification into any PMOS in which the Army has a requirement."

f. His 19 August 2008 medical evaluation board (MEB) narrative summary shows the former motor transport operator had a 4-year history of daily nausea and vomiting of unknown etiology despite extensive evaluation:

This 28-year-old active-duty male reports gradual onset in November of 2004 of daily episodes of nausea and vomiting. The patient reports vomiting approximately 3-4 times per day. Episodes can be randomly occurring, but usually occur after eating various meals ...

The patient reports the episodes of nausea and vomiting would last 5-10 minutes followed by another 5-10 minutes of lightheadedness. The patient denies any history of migraine headaches with this, no visual changes, no weakness, no numbness, no incoordination with each episode, no hearing loss, no tinnitus, no sensation or feeling of vertigo.

The patient reports episodes more frequent with activities such as sit-ups, running, mounting and dismounting from tactical vehicles, jumping. The patient reports no significant weight changes or loss. The patient reports weight fluctuates between 190-200 in the last 2-3 years.

The patient has been worked up by multiple medical providers to include the following: The patient initially evaluated by GI [gastroenterology] in March 2005. Workup consisted of an EGD [esophagogastroduodenoscopy] which was normal, abdominal ultrasound, which was essentially normal, upper GI series which showed one episode of GERD, otherwise normal.

Also, a head CT in 2005 which was normal. Also evaluated by ENT [Ear, Nose and throat, aka otolaryngology] in December of 2006. Workup consisted of a laryngoscopy which was normal. Evaluated by Neurology starting in March of 2008. Neurology evaluation consisted of an MRI of the brain which was done in March of 2008 which was negative. Also, normal neural exam. Also evaluated by Cardiology in June of 2008. Had normal tilt testing was performed ...

Current functional status impact on duty: Due to the recurrent nausea and vomiting, soldier unable to operate motorized vehicle secondary to lightheadedness from the nausea and vomiting while driving. The patient has difficulties doing sit-ups, running, ruck marches since they exacerbate his nausea and vomiting. Also, difficulties mounting and dismounting from tactical vehicles secondary to exacerbation of nausea and vomiting and lightheadedness. The patient reports the symptoms have plateaued in the last year."

g. The only other condition listed on his permanent physical profile was right knee pain status post-surgery. This was a non-duty limiting condition: The profile simply

allowed the applicant to perform an alternate aerobic event in lieu of the 2-mile run event for his Army Physical Fitness Test (APFT).

h. A medical evaluation board determined the applicant's "Recurrent Nausea and Vomiting of Uncertain Etiology" failed the medical retention standards in chapter 3 of AR 40-501, Standards of Medical Fitness, and his case was forwarded to a physical evaluation board (PEB) for adjudication.

i. On 19 September 2008, the applicant's informal PEB found his condition to be the sole unfitting condition for continued military service. Using the VA Schedule for Rating Disabilities, they derived and applied a 10% to the disability and recommended he be separated with disability severance pay. On 22 September 2008, after being counseled by his PEB liaison Officer on the Board's findings and recommendation, the applicant concurred with the PEB and waived his right to a formal hearing.

j. The VA Schedule for Rating Disabilities (VASRD) is the document used by the military services to rate unfitting military disabilities as required by US statute. Paragraph B-1a and B1b of Appendix B to AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006):

"B-1. Purpose of the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD)

a. Congress established the VASRD as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in 10 USC 61.)

b. Percentage ratings in the VASRD represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations."

k. There is no diagnostic code in the VASRD for his condition, so an analogous rating was applied per § 4.20 of Part 4 of Title 38:

"When an unlisted condition is encountered it will be permissible to rate under a closely related disease or injury in which not only the functions affected, but the anatomical localization and symptomatology are closely analogous."

l. The PEB correctly rated his condition using the analogous diagnostic code 7346 – Hernia Hiatal:

7346 Hernia hiatal:

Symptoms of pain, vomiting, material weight loss and hematemesis or melena with moderate anemia; or other symptom combinations productive of severe impairment of health60

Persistently recurrent epigastric distress with dysphagia, pyrosis, and regurgitation, accompanied by substernal or arm or shoulder pain, productive of considerable impairment of health30

With two or more of the symptoms for the 30 percent evaluation of less severity10

m. No mental health or TBI related encounters were found in the EMR.

n. His final NCOER with a through date of 20 October 2008 shows the applicant was a successful Soldier. He met height and weight standards, had passed his modified APFT substituting the 2.5 mile walk for his aerobic event, his rater marked him a "Success" for all Values/NCO Responsibilities and marked him "Fully Capable." His senior rater opined:

- "o promote with peers
- send to BNCOE [Basic Noncommissioned Officers Course] with peers
- solid performer who always gets the job done
- mature and reliable NCO who has the potential to become a platoon sergeant"

o. JLV shows he has been awarded multiple VA service-connected disability ratings, including PTSD (70%), Bronchial Asthma (10%), and Traumatic Brain Disease (0%). However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

p. No evidence was submitted with the application or found in iPERMS the applicant has applied to the Awards and Decorations Branch at the United States Army Human Resources Command for a Purple Heart. Thus, there is no record to correct.

q. It is the opinion of the ARBA Medical Advisor that neither an increase in his military disability rating nor a referral of his case to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board through counsel 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 through counsel of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that neither an increase in the applicant's military disability rating nor a referral of his case to the DES is warranted. The opine noted the applicant's recurrent nausea and vomiting of uncertain etiology, failed the medical retention standards.

2. The Board determined there is insufficient evidence to support the applicant's counsel's contentions for physical disability retirement in lieu of physical disability separation with severance pay, with associated back pay. The Board noted, as outlined in the Secretary Hagel and Undersecretary Kurta memorandums address a former Service Member's request to modify the discharge characterization of their service based on a pre-discharge service incurred mental health condition and do not apply to disability processing. The Board determined the applicant's counsel did not demonstrate based on regulatory guidance, the applicant met the criteria for award of the combat action badge. Per regulation, the Soldier must be personally present and actively engaging or being engaged by the enemy and performing satisfactorily in accordance with the prescribed rules of engagement.

3. Furthermore, the Board agreed that although the applicant was stabbed by an Iraqi assailant and seen by medical personnel, the criteria for award of the purple heart was not met. The governing regulation provides that for award of the Purple Heart, evidence provided must indicate he suffered, as a result of hostile action, a concussion or TBI so disabling as 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 incident. The applicant has no medical documentation showing a loss of consciousness nor that shows he was restricted from duty for a period equaling 48 hours or more. Additionally, there is no evidence the applicant was listed on the casualty roster. Based on this, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20150008045 on 17 May 2016.

█

█

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

2. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether

or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of their office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Army Regulation 600-8-22 (Military Awards) 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. The Combat Action Badge creation was approved on 2 May 2005, to provide special recognition to Soldiers who personally engaged or are engaged by the enemy. Requirements for award of the Combat Action Badge are branch and Military Occupational Specialty (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 the Combat Action Badge. However, it is not intended to award the Combat Action Badge to all Soldiers who serve in a combat zone or imminent danger area. The Soldier must be performing assigned duties in an area where hostile fire pay, or imminent danger pay is authorized. The Soldier must be personally present and actively engaging or being engaged by the enemy and performing satisfactorily in accordance with the prescribed rules of engagement. The Soldier must [not] be assigned or attached to a unit that would qualify the Soldier for the Combat Infantryman Badge or the Combat Medical Badge. Award of the Combat Action Badge is authorized from 18 September 2001 to a date to be determined. Award for

qualifying service in any previous conflict is not authorized. Retroactive awards of the Combat Action Badge are not authorized prior to 18 September 2001.

7. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

9. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//