

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 2 April 2024

DOCKET NUMBER: AR20230009599

APPLICANT REQUESTS: to be awarded the Purple Heart for a TBI (traumatic brain injury) while deployed in support of Operation Desert Shield/Desert Storm.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, May 2018

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 he suffered a TBI (traumatic brain injury) while deployed in support of Operation Desert Shield/Desert Storm.
3. Review of the applicant's service records shows:
  - a. He enlisted in the Regular Army on 4 October 1984 and held military occupational specialty 55B, Ammunition Specialist. He served through multiple reenlistments, in a variety of stateside or overseas assignments, including Southwest Asia, and he attained the rank of specialist/E-4.
  - b. On 5 February 1992, he requested to be separated under the 1992 Early Release/Voluntary Incentive Program with entitlement to a special separation bonus. He was then assigned to 24th Ordnance Company, 24th Infantry Division, Hunter Army Airfield, GA.
  - c. He was honorably released from active duty on 4 May 1992. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was awarded or authorized:

- Army Service Ribbon
- National Defense Service Medal
- Army Lapel Button
- Southwest Asia Service Medal with 2 bronze service stars
- Army Achievement Medal
- Marksman Badge with Rifle Bar
- Overseas Service Ribbon
- Kuwait Liberation Medal

4. The applicant provides a copy of his May 2018 VA Rating Decision. The VA awarded him service-connection for the following conditions:

- Tinnitus associated with residuals, traumatic brain injury, claimed as concussion and head injury
- Surgical scars of the abdomen and lumbosacral spine
- Residuals of traumatic brain injury, claimed as concussion and head injury
- Residuals of right ankle fracture
- Appendectomy scar
- Surgical scar lumbosacral; area
- Residuals, palmar dislocation, finger
- Hearing loss left ear, associated with residuals, traumatic brain injury, claimed as concussion and head injury

5. By regulation (AR 600-8-22), to be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; (1) there must be proof a wound was incurred as a result of enemy action, (2) that the wound required treatment by medical personnel, and (3) that the medical personnel made such treatment a matter of official record. Additionally, when based on a TBI, the regulation stipulates the TBI, or concussion must have been severe enough to cause a loss of consciousness; or restriction from full duty due to persistent signs, symptoms, or clinical findings; or impaired brain functions for a period greater than 48 hours from the time of the concussive incident.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. By regulation (AR 600-8-22), to be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; (1) there must be proof a wound was incurred as a result of enemy action, (2) that the wound required treatment by medical personnel, and (3) that the medical personnel made such treatment a matter of official record. Additionally, when considering award of the Purple Heart for an mild

traumatic brain injury (mTBI) or concussion that did not result in the loss of consciousness, the chain of command will ensure the diagnosed mTBI resulted in a disposition of "not fit for full duty" by a medical officer for a period of greater than 48 hours based on persistent signs, symptoms, or findings of functional impairment resulting from the concussive even. The applicant does not provide evidence he meets the criteria for the Purple Heart.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

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

2. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It provides that the Purple Heart is awarded for a wound sustained in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify the wound was the result of hostile action, the wound must have required treatment by a medical officer, and the medical treatment must have been made a matter of official record.

a. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.
- Injury caused by enemy-placed trap or mine.
- Injury caused by enemy-released chemical, biological, or nuclear agent.
- Injury caused by vehicle or aircraft accident resulting from enemy fire.
- Concussion injuries caused, as a result of enemy-generated explosions.
- Mild traumatic brain injury or concussion severe enough to cause either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident.

b. Examples of injuries or wounds which clearly do not justify award of the Purple Heart are as follows:

- Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951).
- Trench foot or immersion foot.
- Heat stroke.
- Food poisoning not caused by enemy agents.
- Chemical, biological, or nuclear agents not released by the enemy.
- Battle fatigue.
- Disease not directly caused by enemy agents.
- Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

- Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.
- Post traumatic stress disorders.
- Airborne (for example, parachute/jump) injuries not caused by enemy action.
- Hearing loss and tinnitus (for example: ringing in the ears).
- Mild traumatic brain injury or concussions that do not either result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function.
- Abrasions and lacerations (unless of a severity to be incapacitating).
- Bruises (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer)
- Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).
- First degree burns.

//NOTHING FOLLOWS//