

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2024

DOCKET NUMBER: AR20230010201

APPLICANT REQUESTS: reversal of the decision of the Awards and Decorations Branch, U.S. Army Human Resources Command that denied him award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Operation Summary with Map Image, March 2006
- Standard Form (SF) 600 (Chronological Record of Medical Care), 30 March 2006
- Outpatient Note, 1 April 2006
- Outpatient Note, 2 April 2006
- SF 600, 6 June 2007
- SF 600, 7 June 2008
- 2 pages, Intraoperative Record, Georgetown University Hospital, 16 July 2009
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Physician Note, Virginia Spine Institute, 6 September 2013
- 4 pages, Progress Notes, Virginia Spine Institute, 9 September 2013
- 1 page, Progress Notes, Virginia Spine Institute, obscured date
- Addendum, Virginia Spine Institute, 9 October 2013
- New Patient Visit, Commonwealth Orthopedics, 23 October 2013
- Discharge Summary, CJW Medical Center-Johnston-Willis Hospital, 18 October 2016
- Department of Veterans Affairs (VA) Disability Compensation Information, 5 June 2017
- Letter, U.S. Army Human Resources Command (AHRC), 9 June 2022
- Letter, AHRC, 31 October 2022
- Letter, AHRC, 3 February 2023
- 4-Star Note, 7 March 2023

FACTS:

1. Block 18 (Remarks) of the applicant's DD Form 214 shows he served in Iraq from 28 November 2006 to 12 December 2007; however, block 12f (Foreign Service)

contains no information. He requests entitlement to the Purple Heart for an incident which occurred while deployed to Iraq on 30 March 2006. The Defense Finance and Accounting Service states the applicant was deployed from December 2005 to November 2006. The error will be rectified by administrative correction without action by the Board.

2. The applicant states, in effect, he believes he meets the strict criteria for entitlement to the Purple Heart from injuries sustained from a 30 March 2006, vehicle borne improvised explosive device (VBIED) in Baghdad, Iraq. Resulting surgeries were severe enough to require further medical treatment by a medical officer. He provides medical records and a letter of support from a retired general officer who states the applicant should have received the Purple Heart immediately after the incident.

3. The applicant enlisted in the Regular Army on 24 November 2003. He served in military occupational specialty 31B (Military Police). His DD Form 214 shows he served in Iraq from 28 November 2006 to 12 December 2007. On 21 January 2011, he was honorably released from active duty upon the completion of his required active service. The DD Form 214 he was issued does not list the Purple Heart.

4. The applicant provides a/an:

a. Operation summary with two map images from March 2006. Of note is an entry of a sustained lower back injury while driving. The document does not identify the applicant.

b. SF 600, 30 March 2006, notes applicant had a full CT scan of waist up, and full neuro exam for generalized pain. Cleared for 48-hour quarters and follow-up prior to return to duty.

c. Outpatient note, 1-2 April 2006, follow-up for contusion, generalized pain, lower back pain after being near an exploded VBIED 3 days ago. Applicant stated signs of improvement. Physician observed the applicant appeared to be in no acute distress, 0/10 on pain scale. Applicant stated he went forward into the dashboard and has had lower back and c-spine tenderness since. No numbness or tingling, able to perform sensory, motor, and range of motion functions with all extremities. No fractures evident. Pain controlled with 5mg Morphine and 5mg Valium.

d. SF 600, 6 June 2007, deviated nasal septum (acquired). History of trauma to nose while in Iraq. Deviated septum with worsened nasal air flow obstruction on inspiration since incident. Currently treating with Flonase and Claritin.

e. Intraoperative Case Record, Georgetown University Hospital, 16 July 2009, noting nasal septal reconstruction/reduction of inferior turbinates; adenoidectomy; endoscopic right nasal polypectomy.

f. Virginia Spine Institute summary and progress notes, 6 September 2013, notes severe back pain, worse with bending, which radiates in the left leg with spasms. Significantly restricted on exam and is splinting due to spasm. Suspected annular tear with disk herniation. Pain dates to explosion in Iraq in 2007. Recommend lumbar MRI, physical therapy and an adjustment of medications. Return in 7-10 days to monitor progress. Family history of spine disorders. Assessed with lumbar annular tear; lumbar disk herniation, lumbar foraminal stenosis, lumbar radiculitis, lumbar spondylosis, and lumbar facet syndrome.

g. Virginia Spine Institute Addendum, 9 October 2013, notes chronic back pain dating to explosion in Iraq in 2007. Ongoing symptoms of low back pain, exacerbation with progression to the point he is now unable to work or perform physical activity, exercise, etc. Reports pain 8/10 with radiating symptoms, paresthesias down into lower extremities and lateral calf and feet. Most limiting symptom is related to lumbar spine. Had a lumbar discography which revealed normal dye pattern without pain at the L3/4 and L5/S1 levels, as well as diffuse disc degeneration and highly concordant pain at all injections at the L4/5 level, which is his area of known disc herniation, collapse and segmental instability on x-rays.

h. Subjective Evaluation from Commonwealth Orthopedics, 23 October 2013, stating, applicant has had some back pain on and off since 2007. This has been very mild and very tolerable. He says that about two months ago, he developed increasing back pain and sometimes with numbness that radiates into his left leg. He says that he is having some cramping in his low back and that is progressively getting worse. He was seen at the Virginia Spine Institute and was sent for a DEXA scan and was sent for an MRI of the lumbar spine and the MRI showed that there was L4/5 disc degeneration. He had a discogram, which showed that it was positive discogram at L4/5 and negative control levels at L5/S1 and L3/4 and was set up to have spine surgery. He said that he is taking Percocet daily and because of that he cannot work. He says that he does not know if Percocet is helping. He said that he was just told to take it so he is taking it. He says that this pain has been going on for about two months. He says that he did have some facet injections, but that did not help. Exam of lumbar spine showed no skin markings or lesions/no obvious deformity. No evidence of muscle spasms, atrophy, or palpable masses. Full range of motion in flexion/extension/lateral bending and rotation.

i. Discharge Summary, CJW Medical Center-Johnston-Willis Hospital, for narcotic medication for back pain and injury. Flexeril 10mg 1 tablet every 8 hours as needed for muscle spasms, Percocet 5-325mg 1-2 tablets every 4 to 6 hours as needed for pain.

j. VA disability compensation information, 5 June 2017, shows a combined rating of 100 percent.

k. 4-Star Note, from a Retired General, 7 March 2023, recommending the applicant be awarded the Purple Heart for the invisible and visible wounds he suffered on 30 March 2006, because of a suicide VBIED in Baghdad, Iraq. The applicant was a member of his personal security detachment when he was the Commanding General of the 4th Infantry Division and Multi Division Baghdad from November 2005 to November 2006. [The applicant] and his team were traveling along Route Irish enroute to the International Zone when their truck convoy encountered a white suburban which was loaded with approximately 200 pounds of explosives and was detonated next to the applicant's HWMVV in the vicinity of Checkpoint 12 manned by Iraqi forces. [The applicant] was the driver of the vehicle and was knocked unconscious and suffered from contusions, facial lacerations, traumatic brain injury, and lower back injuries. This was a very traumatic event for [the applicant] who was given 100 percent permanent disability from the VA because of his service-connected disabilities. Clearly, [the applicant] suffers from post-traumatic stress because of this traumatic event. He remembers going to visit and check on the applicant on 30 March 2006, at the Baghdad Combat Support Hospital. After a closer review of the facts, he believes [the applicant] should have been awarded the Purple Heart at the time of the incident.

5. On 9 June 2022, the Awards and Decorations Branch, AHRC, requested medical documentation describing both diagnosis and treatment of injuries caused by the enemy immediately after, or close to the incident date and signed or endorsed by a medical professional in accordance with Army Regulation 600-8-22, paragraph 2-8. AHRC noted they could not utilize post-deployment medical documentation, such as the provided VA Benefits Rating Decision, to satisfy the requirement.

6. On 31 October 2022, the Chief, Awards and Decorations Branch, AHRC, stated while they would like to take favorable action, they remained unable to facilitate his request. In order to determine eligibility for the Purple Heart, the office required medical documentation describing both diagnosis and treatment of injuries caused by the enemy immediately after, or close to the incident date and signed or endorsed by a medical professional in accordance with Army Regulation 600-8-22, paragraph 2-8. Without the documentation, they would not be able to process his request. They acknowledged receipt of his SF 600 dated 30 March 2006, which reflected his medical examination following his involvement in a VBIED blast on the same date; he underwent a full CT scan and neurological examination at the time, were diagnosed with generalized pain, and assigned to quarters for a period of 48 hours. While the information was helpful, it did not appear he was diagnosed with or treated for a qualifying injury as outlined in the regulation. As such, without significant evidence to the contrary, it appeared the event did not meet the strict criteria for award of the Purple Heart.

7. On 3 February 2023, the Chief, Awards and Decorations Branch, AHRC, stated while they would like to take favorable action, they remained unable to facilitate his request. He acknowledged receipt of forwarded medical documentation and noted in a follow-up appointment that he was diagnosed with low back pain and a contusion with intact skin surface. Army Regulation 600-8-22, paragraph 2-8 prohibits award of the Purple Heart for bruises and contusions unless caused by the direct impact of the enemy weapon and severe enough to require further treatment by a medical officer; the Purple Heart also cannot be awarded for soft tissue injuries, such as sprains and strains. In this regard, he did not meet the strict criteria for award of the Purple Heart.
8. Army Regulation 600-8-22 contains the regulatory guidance pertaining to entitlement to the Purple Heart and requires all elements of the award criteria to be met. There must be proof a wound was incurred as a result of enemy action, that the wound required treatment by medical personnel, and that the medical personnel made such treatment a matter of official record.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. In order to be awarded the Purple Heart, there must be proof a wound was incurred as a result of enemy action, that the wound required treatment by medical personnel, and that the medical personnel made such treatment a matter of official record. In order to determine such eligibility for the Purple Heart, medical documentation describing both diagnosis and treatment of injuries caused by the enemy immediately after, or close to the incident date and signed or endorsed by a medical professional in accordance with Army Regulation 600-8-22, paragraph 2-8, are required. The Board reviewed and agreed with the AHRC's determination that the documentation he provides did not appear he was diagnosed with or treated for a qualifying injury as outlined in the regulation. As such, the Board agreed that there is insufficient evidence the applicant met the criteria for award of the Purple Heart.
2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, 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 for correction of the records of the individual concerned.



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

ADMINISTRATIVE NOTE(S): make the following administrative correction to the applicant's DD Form 214 for the period ending on 21 January 2011 without action by the Board:

- add "0001 00 15" to block 12f (Foreign Service)
- delete "//SERVICE IN IRAQ 20061128 – 20071212//" from block 18 (Remarks); and
- add to block 18, "//SERVICE IN IRAQ 20051128 – 20061212//"

REFERENCES:

1. Army Regulation 600-8-22 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. A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required. However, the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound will be documented in the Service member's medical and/or health record. Award of the Purple Heart may be made for wounds treated by a medical professional other than a medical officer, provided a medical officer includes a statement in the Service member's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

c. When contemplating an award of the Purple Heart, the key issue that commanders must take into consideration is the degree to which the enemy caused the injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite but is not the sole justification for award.

d. Examples of enemy-related injuries that clearly justify award of the PH include concussion injuries caused as a result of enemy-generated explosions resulting in a mTBI 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.

e. Examples of injuries or wounds that clearly do not justify award of the PH include bruises or contusions (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), post-traumatic stress disorders, hearing loss and tinnitus, mTBI 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.

f. When recommending and considering award of the PH for a mTBI or concussion, the chain of command will ensure that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

2. Army Directive 2011-07 (Awarding the PH), dated 18 March 2011, provides clarifying guidance to ensure the uniform application of advancements in medical knowledge and treatment protocols when considering recommendations for award of the PH for concussions (including mTBI and concussive injuries that do not result in a loss of consciousness). The directive also revised Army Regulation 600-8-22 to reflect the clarifying guidance.

a. Approval of the PH requires the following factors among others outlined in Department of Defense Manual 1348.33 (Manual of Military Decorations and Awards), Volume 3, paragraph 5c: wound, injury or death must have been the result of an enemy or hostile act, international terrorist attack, or friendly fire; and the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound shall be documented in the Soldier's medical record.

b. Award of the PH may be made for wounds treated by a medical professional other than a medical officer provided a medical officer includes a statement in the Soldier's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

c. A medical officer is defined as a physician with officer rank. The following are medical officers: an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer in accordance with Title 10, United States Code, Section 101.

d. A medical professional is defined as a civilian physician or a physician extender. Physician extenders include nurse practitioners, physician assistants and other medical professionals qualified to provide independent treatment (for example, independent duty corpsmen and Special Forces medics). Basic corpsmen and medics (such as combat medics) are not physician extenders.

e. When recommending and considering award of the PH for concussion injuries, the chain of command will ensure that the criteria are met and that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

f. The following nonexclusive list provides examples of signs, symptoms or medical conditions documented by a medical officer or medical professional that meet the standard for award of the PH:

- (1) Diagnosis of concussion or mTBI;
- (2) Any period of loss or a decreased level of consciousness;
- (3) Any loss of memory of events immediately before or after the injury;
- (4) Neurological deficits (weakness, loss of balance, change in vision, praxis (that is, difficulty with coordinating movements), headaches, nausea, difficulty with understanding or expressing words, sensitivity to light, etc.) that may or may not be transient; and
- (5) Intracranial lesion (positive computerized axial tomography (CT) or MRI scan.

g. The following nonexclusive list provides examples of medical treatment for concussion that meet the standard of treatment necessary for award of the PH:

- (1) Limitation of duty following the incident (limited duty, quarters, etc.);
- (2) Pain medication, such as acetaminophen, aspirin, ibuprofen, etc., to treat the injury;
- (3) Referral to a neurologist or neuropsychologist to treat the injury; and
- (4) Rehabilitation (such as occupational therapy, physical therapy, etc.) to treat the injury.

h. Combat theater and unit command policies mandating rest periods or downtime following incidents do not constitute qualifying treatment for concussion injuries. To qualify as medical treatment, a medical officer or medical professional must have directed the rest period for the individual after diagnosis of an injury.

3. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//