

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230010205

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of the Army Commendation Medal with "V" Device to the Medal of Honor (MOH)
- add 65 pages of orders, accolades, certificates, and memorandums to his service record
- removal of documents from his service record:
 - DA Form 1059 (Service School Academic Evaluation Report), 15 July 2010
 - Two Letters Not Belonging to the Applicant
 - DA Form 2166-8 (Noncommissioned Officer Evaluation Report) thru September 2003
- a video/telephonic appearance before the Board

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Email Thread
- Request to Remove DA Form 1059 (Service School Academic Evaluation Report) with DA Form 1059, 8 January 2009 and Request for Speaking Engagement, 2 March 2010
- Request to Remove Documents Not Pertaining to the Applicant (Two Defense Finance and Accounting Services (DFAS) Letters)
- Request to Remove Noncommissioned Officer Evaluation Report (NCOER) with allied documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Personal Biography
- DA Form 1059 with Diploma – Basic NCO Course (BNCOC) thru 31 August 2001
- Inspector General (IG) Memorandum for Record (MFR), 26 September 2023
- Five Character Letters
- Program for Speaking Event, 8 May 2014

- Joint Clearance and Access Verification System (JCAVS) Person Summary
- Accolades and Certificates
- Orders (to add to Service Record)
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- Grade Determination Waiver Memorandum, 28 January 2004
- Memorandum for Servicemember's Group Life Insurance (SGLI)
- Physical Disability Information Report, 16 September 2010

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 AR20220000901 on 9 June 2023.

2. The applicant states:

a. He is requesting reconsideration of his previous request for an upgrade of his ARCOM to a MOH based on new evidence that was not considered previously. Lieutenant Colonel (LTC) SRJ reviewed the updated 2021 version of the DA Form 638 (Recommendation for Award) and stated in his emails, along with conversations with Congressman DL's office, the packet was fully executed, the applicant met all the criteria, and it was ready for the "Awards Board," at U.S. Army Human Resources Command (HRC). The packet was scheduled to go before the HRC board for awards and after a review at the HRC board, it would then be boarded at Senior Army Decorations Board (SADB) or the Army Review Boards Agency (ARBA). The packet was not supposed to be sent to ARBA. The Board noted the denial was based on the applicant's failure to provide evidence he complied with policy or regulation by submitting a properly completed award recommendation. LTC SRJ further provided guidance to HRC Awards, as seen in the email thread provided as evidence. Additionally, the applicant does not agree his request is for an upgrade, as he was not awarded an ARCOM with V Device in the interim and that block should have been blank, as outlined by LTC SRJ.

b. As a new request, the applicant states he recently discovered clerical errors in some of his military records at HRC. He has a genuine concern that someone may have tampered with his military records for a very long time. He was notified that his military records jacket was "found" at his old unit, 10th Special Forces (SF) Group. There are a number of missing documents (65 pages) that need to be uploaded to his official HRC online service record. He is grateful for his experiences and his combat experiences in the U.S. Army. His legacy is important, and the clerical errors discovered are not in line with the facts of his character.

c. He is also requesting removal of the below documents, as outlined below. He was an excellent Soldier while serving in the U.S. Army. He repeatedly volunteered and willingly risked his life for other Soldiers in combat, under direct enemy fire. The character letters provide eyewitness testimonies to his commitment to the U.S. Army, those he served with, and to his character. He was requested by the Army on several occasions to return, after he left active duty to help other military members and speak to Soldiers. He was hand selected to speak at an engagement paid for by the Army. He has always been faithful, loyal, and committed to the Army, his unit, and his peers.

(1) Removal of the DA Form 1059 is warranted due to clerical errors. He was never an 18C, Engineer Sergeant, his military occupational specialty (MOS) was 18BWV7, SF Weapons Sergeant, E7, Ranger, Combat Scuba Diver, as outlined on his DD Form 214, Enlisted Record Brief (ERB), and 18B certificate. He was undergoing a medical retirement board and was not available to attend courses since his failure to show up for his medical appointment was considered punishable under the Uniform Code of Military Justice (UCMJ). An exception to policy was made by Major General (MG) B__ to attend a speaking engagement.

(2) Two letters from Defense Finance and Accounting Service (DFAS), dated 4 April 2011, were sent to his home with names and social security numbers that were not his. He attempted to contact DFAS to notify them of the error by telephone and correspondence and has not received a response. Neither one of the Soldiers identified have ever lived at his address nor is he familiar with them.

- Sergeant (SGT) JRL, Retired, XXX-XX-5760
- SGT A__, XXX-XX-1783

(3) A DA Form 2166-8 from October 2002 thru September 2003, completed on 7 June 2004. The applicant contends he has experienced on several occasions the National Guard mixing up Soldier's information and making clerical errors in the records of service members, to include his own. The individuals listed on the NCOER were not in his rating chain, he was not in a position to be rated, and moved to a unit in Auburn, Alabama. Upon returning from Afghanistan in 2003, he was accepted to Delta Force Selection, September and October 2003, and March 2004. He was released to join the Regular Army in 2003 and 2004. The only NCOER for Delta Force he had was written years after the fact, following his enlistment in the Regular Army, and no one has ever seen it. His accession board information is available for review by the Board, in addition to his supporting documentation. The NCOER he disputes was not written at the time of his accession and he was fully cleared to serve in SF.

3. The applicant provides:

a. The below listed documents to be referenced in the service record:

- DA Form 1059, 8 January 2009
- DA Form 2166-8 (NCO Evaluation Report), thru September 2003
- DD Form 214 effective 30 November 2010

b. An email thread from 20 April 2021 through 10 June 2021, between Mr. GMB, a military liaison for Congressman DL and LTC SRJ regarding the applicant's award submission. The full email thread is available for review by the Board; however, LTC SJR confirmed receipt and provided the following recommendations:

- remove the comments regarding alleged wrongdoing/and unlawful orders; this is for another office to research/answer and will distract from the award recommendation
- the back of the DA Form 638 must have all of the original chain of command endorsements up to LTG. (if they won't sign, list the reason the person didn't sign-deceased and when, or refused, etc.)
- a new narrative that includes new, substantive information that was not available to the original approval authority
- a new citation
- several sworn statements, some not signed - we need at least two good sworn statement/eyewitness statements that clearly detail the heroic actions, and provide details not previously mentioned ... bottom line, trying to stress the new and substantive information not previously known by the approval authority
- include photos, maps, and other details, including the original award with narrative and citation
- changes were recommended for Block 1 and Block 9 of the DA Form 638
- Block 12b should be blank since the ARCOM V was not an interim award
- No comments in the "Comments" block except if they refused to sign
- once it is approved at the "local board" and it is approved, it will either move forward to Department of the Army or will be returned disapproved
- if disapproved, it can be submitted to the ABCMR for appellate review

c. In support of his new request to remove the DA Form 1059 the applicant submits the Memorandum of Request for Speaking Engagement, dated 2 March 2010 from MG JMB wherein he noted the applicant came highly recommended as a speaker for a Spiritual Fitness event, as a leader of spiritual and moral conviction.

d. In support of his new request to remove documents that were not his, he provides the two DFAS letters identified in his statement. The letters are not contained in his service record.

e. In support of his request to remove the NCOER for the period of October 2002 thru September 2003 the applicant provides:

- Prior Service Accession Results Memorandum, 6 April 2005 – listed the applicant among two 18B, accepted into active duty SF
- Clearance for Special Operations Course Memorandum, 15 March 2005 – noted the applicant completed the required psychological testing
- Selection and Training Letter, 1 July 2003 – the applicant was approved to attend the 1st SF Operational Detachment-DELTA (Airborne) with a 30 September 2003 report date for approximately 30 days
- DA Form 2166-8, 7 January 2008 thru 31 July 2008 – lists the applicant's MOS as 18B4VW7GM

f. A personal biography lists the applicant's duty assignments, awards and decorations, and profession at the time.

g. A DA Form 1059 with diploma shows the applicant achieved course standards and completed BNCOC for SF Weapons Sergeant Course (18B) from 22 February 2001 thru 31 August 2001.

h. An MFR from the Deputy IG, dated 26 September 2023, shows the applicant requested removal of an NCOER from his record and was advised to request assistance from the ABCMR as the IG office would not remove NCOERs from records.

i. Five letters wherein the applicant referenced as witnesses to his character. The letters provide details of the applicant's service in combat and personal accounts of his contributions.

- LTC TLM, Chaplain – two letters, 19 May 2011 and 13 May 2013
- SFC KJ, SF Medical Sergeant – 3 July 2009
- Staff Sergeant (SSG) DRG, SF Weapons Sergeant – 21 April 2009
- LTC WDL II, Battalion Commander – 17 January 2013

j. A program for the National Day of Prayer, dated 8 May 2014, where the applicant's biography was provided, and he was identified as the guest speaker.

k. The below listed documents are believed to be those documents the applicant requested to be added to his service record, as they were not individually listed:

- JCAVS Person Summary
- Accolades and Certificates (39 pages)
- Orders (13 pages)
- DA Form 2173, 20 May 2003
- Grade Determination Waiver Memorandum, 28 January 2004
- Memorandum for Servicemember's Group Life Insurance (SGLI)
- Physical Disability Information Report, 16 September 2010

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

a. Having had prior service in the U.S. Navy, he enlisted in the Alabama Army National Guard (ALARNG) on 4 August 1998.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) lists in Block 6 (Military Occupational Specialties):

- 52D, Power Generator Equipment Repairer – 24 February 1999
- 18B, SF Weapons Sergeant – 1 December 2001

c. The applicant served three honorable periods of active duty:

- 9 September 1998 to 19 March 1999
- 28 July 2000 to 30 April 2002
- 8 May 2002 to 14 July 2003

d. A DA Form 2166-8 for the period of October 2002 through September 2003 was signed by the rater, senior rater, and reviewer on 7 June 2004. Block e. (PMOSC) of Part I (Administrative Data) shows 18B30. The box "Given to NCO" was checked with a date of 8 July 2004. The applicant did not sign the NCOER and it is annotated as "SM unavailable for signature." He was rated 2 in overall performance and a 2 in overall potential.

e. He was honorably discharged from the ALARNG on 24 January 2005. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 6 years, 5 months, and 21 days of active service for the period. Block 23 (Authority and Reason) shows "Enlistment, Reenlistment, Immediate Reenlistment in any other Component of the Armed Forces."

f. He enlisted in the Regular Army on 25 January 2005.

g. His foreign service includes:

- Afghanistan – 11 September 2002 to 1 March 2003
- Iraq – 5 January 2006 to 30 June 2006
- Iraq – 5 March 2007 to 24 October 2007

h. An ARCOM with "V" Device Certificate, dated 4 January 2007, Permanent Order 004-002, was awarded to the applicant for exceptionally valorous achievement during Operation Iraqi Freedom for his heroic actions on 16 March 2006 during Operation Vicuna. The applicant was critical to his element's survival against a well-trained, tactically maneuvering, and determined Al-Qaeda (Iraq) force.

i. A DA Form 2166-8 for the period of June 2005 through May 2006 shows the applicant's MOS in Block e. as 18B3PW7GM. He was rated 1 in overall performance and 1 in overall potential.

j. A DA Form 1059 signed 15 July 2010, for SF Engineer Sergeant Senior Leaders Course (011-18C40) noted in Block 11 (Comments) the [applicant] failed to achieve course standards by not meeting the specified time frame to attend the SF Senior Leaders Course (Phase II Resident) and had been disenrolled from SF SLC. He had a 1-year mandatory waiting period from the date of the DA Form 1059 before he could reenroll.

k. A DA Form 199 shows on 15 August 2010 a PEB convened and found the applicant physically unfit. The PEB recommended a combined rating of 80% and that the applicant's disposition be placement on the temporary disability retired list. Additionally, the PEB made the following findings in Block 10, the disability disposition was based on disability or injury received in the line of duty, as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law. The disability did result from a combat related injury as defined under the provision of 26 USC 104.

l. He was honorably retired on 30 November 2010. His DD Form 214 shows he completed 5 years, 10 months, and 6 days of active service with 3 years, 9 months and 2 days of prior active service, and 2 years, 11 months, and 23 days of prior inactive service. Block 11 (Primary Specialty) shows the applicant held the MOS of 18B4VW7 for 9 years and 4 months. It also shows he was awarded or authorized:

- Honduran Military Airborne Badge
- Iraq Campaign Medal with two campaign stars
- Royal Netherlands Army Parachute Badge
- Bronze Star Medal with "V" Device
- Army Commendation Medal with "V" Device
- Army Commendation Medal (3rd Award)
- Purple Heart (2nd Award)
- Army Achievement Medal
- Joint Meritorious Unit Award
- Valorous Unit Award
- Army Good Conduct Medal (3rd Award)
- National Defense Service Medal (2nd Award)
- Afghanistan Campaign Medal with two campaign stars
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon (2nd Award)

- Army Service Ribbon
- Overseas Service Ribbon (5th Award)
- Armed Forces Reserve medal with “M” Device
- Combat Infantryman Badge
- Special Forces Tab
- Ranger Tab
- Parachutist Badge
- Special Operations Diving Supervisor Badge
- Special Operations Diver Badge

5. The addition of documents to the applicant’s service record within the Army Military Human Resource Record is not an action that falls under the purview of the ABCMR, without first being denied by the HRC, who is the records custodian. There being no evidence the applicant attempted to resolve this issue first with HRC, the Board will not consider the request for adding documents to the service record but will consider all other requests made by the applicant.

6. On 9 January 2023, the ABCMR rendered a decision in Docket Number AR20220000901. The Board reviewed the information provided by the Chief, Awards and Decorations Branch, at HRC noting that the applicant has [sic] complied with regulatory or statutory guidance; therefore, denied relief. The advisory from the Chief, Awards and Decorations Branch, HRC, dated 30 December 2021 specifically stated:

a. In response to recent efforts to award [the applicant] the Medal of Honor in lieu of his previously approved award of the ARCOM with “V” Device. The Awards and Decorations Branch remains unable to forward this request for reconsideration to the Army Decorations Board. They must comply with Department of Defense policy and Army Regulation 600-8-22 (Military Awards) with respect to proper completion and formatting of award recommendations. As they have not yet received a fully executed packet, they can take no further administrative action concerning this matter.

b. The next course of action was to appeal the decision to the highest appellate authority on personnel matters. [The applicant] may contact the ABCMR by completing a DD Form 149.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 600-8-22), the Medal of Honor is awarded by the President in the name of Congress to a person who, while a member of the Army, distinguishes himself or herself conspicuously by gallantry and intrepidity at the risk of his or her life above and beyond the call of duty while engaged in an action against an enemy of the United

States; while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

9. By regulation (AR 600-37), once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority. The recipient has the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

a. All requests that are not processed within time limitations and/or theater are considered retroactive and must be processed through the chain of command which was in effect at the time of the service or achievement to be recognized.

b. All commanders in the former chain of command, to include the awards approval authority for the request, must endorse the recommendation for approval, downgrade, or disapproval as appropriate in the intermediate authority blocks on the award form. Every attempt will be made by the recommender to obtain the original chain of command's endorsement for all award recommendations.

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 carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence to support reconsideration of the applicant's previous request for an upgrade of the Army Commendation Medal with "V" Device to the Medal of Honor (MOH). The Board noted the Chief, Awards and Decorations Branch, AHRC stating the applicant complied with regulatory guidance. The Board found reconsideration of the applicant's previous request for an upgrade of the Army Commendation Medal with "V" Device to the Medal of Honor (MOH) is not warranted based on the preponderance of evidence of no error.

2. The Board found insufficient to support removal of the applicant's DA Form 1059 dated 15 July 2010 whereas the applicant failed to achieve course standards by not meeting the specified time frame to attend the SF Senior Leaders Course (Phase II Resident) and thereby disenrolled. The Board agreed the applicant provided no evidence of a request for an exception for attendance based on his medical appointments. The Board determined the notification received from DFAS requires coordination with DFAS or reaching out to his installation finance office to correct the erroneous mail received. The Board found the NCOER represented the considered opinions and objective judgment of the rating officials at the time

of preparation. Furthermore, the Board found this evidence insufficient to overcome the burden of an error in that there is no evidence the applicant used administrative procedures through U.S. Army Human Resources Command Evaluation Appeals Branch.to rebut the comments in his NCOER. Therefore, the Board agreed reversal of the previous Board determination is without merit and denied relief.

3. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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:

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 AR20220000901 on 9 June 2023.

█

X Michael Anglemyer

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████████████████████

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

REFERENCES:

1. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 600-8-22 (Military Awards) prescribes the Army's awards policy. Paragraph 3-1 states, in pertinent part, that the decision to award an individual a decoration and the decision as to which award is appropriate are both subjective decisions made by the commander having award approval authority.

a. Paragraph 3-7 of the awards regulation states, in pertinent part, that the Medal of Honor is awarded by the President in the name of Congress to a person who, while a member of the Army, distinguishes himself or herself conspicuously by gallantry and intrepidity at the risk of his or her life above and beyond the call of duty while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. It further stipulates that the deed performed must have been one of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his comrades and must have involved risk of life. Incontestable proof of the performance of the service will be exacted and each recommendation for the award of this decoration will be considered on the standard of extraordinary merit.

b. The Army Commendation Medal may be awarded to any member of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941, distinguishes himself or herself by heroism, meritorious achievement, or meritorious service. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

c. The bronze "V" device indicates acts of heroism involving conflict with an armed enemy and authorizes the device in conjunction with awards of the Army Commendation Medal, the Air Medal, and the Bronze Star Medal. Although more than one award of the

Army Commendation Medal, the Air Medal, or the Bronze Star Medal may be made for heroism to the same person, only one "V" device may be worn on awards of these medals.

d. Title 10 of the U.S. Code, section 1130 provides the legal authority for consideration of proposals for decorations not previously submitted in a timely fashion. It allows, in effect, that upon the request of a Member of Congress, the Secretary concerned shall review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such award or presentation. Based upon such review, the Secretary shall make a determination as to the merits of approving the award or presentation of the decoration.

3. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files. The intent of this regulation is to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and, to ensure that the best interest of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

a. Chapter 3 states a memorandum, regardless of the issuing authority, may be filed in the Army Military Human Resource Record (AMHRR), and managed by Human Resource Command. The General Officer directing filing must exercise General Court-Martial Convening Authority (GCMCA) over the recipient, be the designee or delegate of the individual exercising GCMCA over the recipient, been a filing authority from the recipient's losing command, or be the chief of any designated special branch acting pursuant to their statutory authority. Memoranda filed in the AMHRR will be filed in the performance folder.

b. Chapter 7 states once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority. The recipient has the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part. Evidence submitted in support of the appeal may include, but is not limited to: an official investigation showing the initial investigation was untrue or unjust; decisions made by an authority above the imposing authority overturning the basis for the adverse documents; notarized witness statements; historical records; official documents; and/or legal opinions. The Deputy Assistant Secretary of the Army (Review Boards) is the final decision authority for removal of unfavorable information from the AMHRR. This authority will not be further delegated.

4. Army Regulation 600-8-104 (Army Military Human Resource Records Management) states that the OMPF is defined as permanent documentation within the AMHRR that documents facts related to a Soldier during the course of his or her entire Army career,

from time of accession into the Army until final separation, discharge, or retirement. The purpose of the OMPF is to preserve permanent documents pertaining to enlistment, appointment, duty stations, assignments, training, qualifications, performance, awards, medals, disciplinary actions, insurance, emergency data, separation, retirement, casualty, and any other personnel actions. Once properly filed in the AMHRR the document will not be removed from the record unless directed by selected authorities such as the ABCMR, Army Discharge Review Board, Department of the Army Suitability Evaluation Board, and Army Special Review Board.

//NOTHING FOLLOWS//