

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230010368

APPLICANT REQUESTS: award of the Purple Heart. Additionally, the applicant states he lives in the [REDACTED] and he would be amenable to appearing before the Board at his own expense, if necessary.

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

- DD Form 149 (Application for Correction of Military Record)
- Permanent Orders 321-16, Headquarters, 3d Infantry Division, Fort Stewart, GA
- Serious Incident Report
- Improvised Explosive Device (IED) Witness Statement (Major H)
- Memorandum for Record, subject IED Incident-17 October 2005
- Sworn Statement from Major [REDACTED]
- Narrative to Accompany Award of the Combat Action Badge (CAB)
- Two DA Forms 4187 (Personnel Action)
- Permanent Orders 334-01, Joint Contracting Command-Iraq Afghanistan
- Medical Records (6 pages)
- Department of Veterans Affairs (VA) Claim
- VA Claim Appeal
- VA Review of Appeal
- VA Letter
- VA Memorandum, subject: Service-Connected Compensation for Sleep Apnea and Headaches
- Two VA Rating Decisions
- Original Purple Heart Submission/[Request] to the U.S. Army Human Resource Command (USAHRC)
- Letter, USAHRC (Denial Purple Heart)
- Applicant's USAHRC Request for Reconsideration for the Purple Heart
- Officer Record Brief (ORB)
- Two Pictures of an IED Projectile

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 believes his initial application to USAHRC, which was denied on 11 May 2016, was in error. More specifically, he experienced an IED on 17 October 2005 while serving in Iraq. As a result of the incident, he experienced headaches, disorientation, and ringing/swooshing in the ears. In fact, he still has these reoccurrences. Although he did not characterize his injury as a traumatic brain injury (TBI) at the time of submission to the USAHRC, based on the symptoms he experienced, the 15 June 2023 VA decision determined it is TBI. He also annotated his application to indicate he suffers from TBI and posttraumatic stress disorder (PTSD).
3. The applicant provided an/a:
 - a. Serious Incident Report, dated 17 October 2005, stating as passengers on a scheduled Convoy Logistics Patrol (CLP), two Deputy Office Chiefs sustained IED attack when their up-armored "HMMWV (1114)" took a direct hit blast to the driver side. No occupant injured. Convoy was northbound heading on highway from forward base (FOB) Danger to FOB Speicher. The officer occupants were displacing ahead of scheduled "Tikrit-RCC jump." Attack occurred approximately 4 miles out of FOB Speicher. No enemy found or killed. Responding "EOD" confirmed 155mm IED was remotely detonated by long range phone. Secondary device found and detonated.
 - b. IED Witness Statement, dated 19 October 2005, wherein Major [REDACTED] states he was in the third or fourth vehicle behind the convoy commander. The sixth vehicle (the trail vehicle) in the convoy was hit by an [IED]. Major [REDACTED] confirms the doors on the applicant's vehicle were blown off the left side. The driver of the trail vehicle lost his weapon which was not recovered. The situation was handled professionally.
 - c. Sworn statement, dated 19 October 2005, written by Major [REDACTED] above basically states the same thing as the IED witness statement written by Major [REDACTED]
 - d. Memorandum for Record, subject IED Incident-17 October 2005, dated 21 October 2005, indicating this statement was authored by the applicant indicating he was seated in rear left behind the driver, the doors were blown open during the incident, and they were unable to be closed. He had to physically hold his door. Later they were able to manipulate each of their doors, so they were able to be closed (properly). The entire crew "verbally" checked each other for injuries. There were none.

e. Medical Records dated between April and May 2006 showing he was evaluated for headaches/tension headaches, right shoulder pain for 2 weeks, and does not recall trauma. He had chronic right wrist and hand pain "x" years secondary to In-line skating accident. Admits to occasional paresthesia's and weakness. Had not had any "OT" - Left ear with whooshing sensation secondary to IED explosion during deployment in 2005.

(1) Denied hearing loss, tinnitus, pain, "otorrhea." Has not had recent hearing exam. chronic "R" ankle pain secondary to mod-severe sprain during this deployment. Physical therapy was recommended, at times unable to attend.

(2) Denies paresthesia's but cannot run without pain. Left index finger at "PIP" with pain "x" weeks. No trauma associated and denied paresthesia's. Skin has white patches on different body parts for years. Has not visited dermatology. Has had chronic intermittent HA > 1 month. Two to three times weekly lasting > 1 hour. Denies photophobia, nausea or vomiting, dizziness, or lightheadedness. Does have phonophobia with HA. Currently takes "Mldrin" and Naproxen for relief. He has no "PMH, or NKDA." Smokes an occasional cigar and has an occasional beer. Drinks 2 cups of coffee daily. Family history significant for mother with "HTN, DM," and high cholesterol. Father with "HTN, and DM."

f. VA Rating Decision, dated 18 March 2008, granted the applicant service connection for sleep apnea evaluated 50 percent (%) [disabling], effective 1 December 2006. Service connection for migraine headache was granted with an evaluation of 0 % effective 1 December 2006.

g. Original Purple Heart Submission to USAHRC, dated 28 December 2015, stating he was awarded the CAB on 30 November 2005 for the enemy contact event that transpired on 17 October 2005. The CAB packet included his statement of events; an email message from Major (MAJ) [REDACTED] indicating his statement of events, deployment orders, ORB, MAJ [REDACTED] sworn statement, and email message traffic showing the processing of the CAB, which shows all relevant dates, times, and locations of events.

h. Letter from USAHRC, dated 11 May 2016, showing after careful consideration and consultation with the USAHRC Surgeon's office, his request for award of the Purple Heart for injuries received while deployed in support of Operation Iraqi Freedom was disapproved.

(1) Advising the applicant after a thorough review of the information provided award of the Purple Heart for this particular event does not meet the statutory guidance in accordance with Army Regulation 600-8-22 (Military Awards) paragraph 2-8h (13). The medical documentation in his Armed Forces Longitudinal Health Technical Application did not show a diagnosis for TBI. On 22 September 2006, he was given an

audiogram which describes tinnitus in the left ear. In accordance with AR 600-8-22, paragraph 8h (12), tinnitus is not a qualifying injury for award of the Purple Heart.

(2) If he believed this determination to be unjust, he had the right to appeal to the ABCMR.

i. VA Rating Decision, dated 15 June 2023, showing service connection for:

- TBI was granted effective 29 November 2022 was evaluated with PTSD rated at 30%
- Right shoulder degenerative joint disease rated as 20% disabling was continued
- Right shoulder arthroscopic scars, painful, which was currently 20% disabling was continued
- Left shoulder acromioclavicular joint osteoarthritis, which was currently 20% disabling was continued
- Gastroesophageal reflux disease, which was currently 10% disabling was continued
- Right shoulder arthroscopic scars, which was currently 0% disabling was continued
- Service connection for left leg femur fracture was denied

j. Request for Reconsideration submitted to USAHRC, dated 23 June 2023, requesting reconsideration of his request for award of the Purple Heart. More specifically to draw attention to the VA's assessment and determination of service connection for TBI. He believes his documented tinnitus and painful headaches brought about as a direct result of the 17 October 2005 IED incident are both recognized TBI injuries for experiencing such a blast. He is still experiencing tinnitus, headaches, and sleep apnea. This statement also lists several documents he believes support his request for award of the Purple Heart.

4. Orders 178-10A-2487, Headquarters, First Reserve Officers' Training Corps Region, Fort Bragg, NC, dated 18 September 1985, shows the applicant was ordered to active duty to attend the infantry officer basic course with a report date of not later than 17 November 1985, in the rank of second lieutenant.

5. He executed an oath of office on 20 May 1997. He served in a variety of stateside and overseas assignments, and he was promoted to the rank of major.

6. he served in the following imminent danger pay areas:

- Kuwait from 12 September through 11 December 2002
- Afghanistan from 7 September through 6 November 2003

- Iraq from 4 January 2005 through 6 January 2006

7. He retired on 30 November 2006, and he was placed on the Retired List in his retired rank of major on 1 December 2006. He completed 21 years and 15 days of creditable active service.

8. On 28 December 2015, the applicant applied to USAHRC for award of the Purple Heart. On 11 May 2016, he was denied award of the Purple Heart.

9. On 25 June 2023, he requested reconsideration of the USAHRC's denial of the Purple Heart. The USAHRC response is not available.

10. The applicant's submissions were provided to the Board in their entirety.

11. Army Regulation 600-8-22 (Military Awards), dated 19 January 2024, provides that 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, and the medical treatment must have been made a matter of official record.

a. Paragraph 2 – 7 defines the policies regarding awarding the Purple Heart.

b. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer. Some examples of enemy-related actions that justify eligibility for the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy emplaced trap, mine, or other improvised explosive device
- Injury caused by chemical, biological, or nuclear agent released by the enemy
- Injury caused by vehicle or aircraft accident resulting from enemy fire
- Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract
- Perforated eardrum caused by enemy action (two critical factors to consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer)

- Concussions or mild TBI (mTBI) caused as a result of enemy-generated explosions that result in 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

c. An example of injuries that do not justify eligibility for the Purple Heart is mTBI that does not 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.

12. 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 applicable to the Purple Heart. A physical lesion is not required; however, the wound for which the award is made must have required treatment by medical personnel and records of medical treatment for wounds or injuries received in action must have been made a matter of official record.

13. By regulation, an applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR. In this case, the evidence of record and the independent evidence provided by the applicant are sufficient to render a fair and equitable decision.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined the applicant was evaluated in April / May 2006 however, there is no medical record showing the applicant received wounds caused by enemy forces that required treatment by medical personnel.

2. 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. Additionally, per regulatory guidance on awarding the Purple Heart, the applicant must provide or have in his service records substantiating evidence to verify that he was injured, 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. Furthermore, the Board agreed there is insufficient evidence e that showed the applicant’s name on the casualty listing or notification to his family that he had been wounded. As such, the Board denied relief.

3. The Board agreed that the VA provides post-service support and benefits for service-connected medical conditions. The VA operates under different laws and regulations than the Department of Defense (DOD). In essence, the VA will compensate for all service-connected disabilities.

4. 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 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.

5/6/2024

X 

CHAIRPERSON


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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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. Paragraph 2-11 states 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.
3. Army Regulation 600-8-22 (Military Awards), dated 19 January 2024, provides that 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, and the medical treatment must have been made a matter of official record.
 - a. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer. Some examples of enemy-related actions that justify eligibility for the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy emplaced trap, mine, or other improvised explosive device
- Injury caused by chemical, biological, or nuclear agent released by the enemy
- Injury caused by vehicle or aircraft accident resulting from enemy fire
- Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract
- Perforated eardrum caused by enemy action (two critical factors to consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer)
- Concussions or mild TBI (mTBI) caused as a result of enemy-generated explosions that result in 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. An example of injuries that do not justify eligibility for the Purple heart is mTBI that does not 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.

4. 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 applicable to the Purple Heart. A physical lesion is not required; however, the wound for which the award is made must have required treatment by medical personnel and records of medical treatment for wounds or injuries received in action must have been made a matter of official record.

//NOTHING FOLLOWS//