

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230011494

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, Certificate of Release or Discharge from Active Duty, 17 February 2017
- Temporary Change of Station orders, 24 October 2011
- Service Medical Records
- Personal Statement – One page narrative of events
- Three sworn statements
- Department of Veterans Affairs rating decision, 16 November 2020
- Denial Letter from the U.S. Army Human Resources Command,

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 is requesting a correction to his record for the award of Purple Heart due to an RPG (Rocket Propelled Grenade) that hit a vehicle he was in. He received a concussion, a TBI diagnosis, a loss of consciousness, and restrictions from full duty for longer than 48 hours due to the explosion, and he believes he is entitled to be awarded the Purple Heart.

a. The incident occurred on 15 July 2012 in Afghanistan. His vehicle was hit by an RPG as part of a complex ambush. The rocket penetrated the armor and exploded inside the vehicle. One member of the vehicle received shrapnel wounds from the explosion. After the firefight ended and his platoon returned to the FOB (Forward Operating Base) to be medically evaluated, they were told that every Soldier in the vehicle was diagnosed with TBI (traumatic brain injury), and they were restricted to

quarters for 72 hours due to their symptoms. There were 7 soldiers inside the Stryker vehicle at the time of the incident. Six of those Soldiers received Purple Hearts. Every Soldier in the vehicle received a Purple Heart except him. He had the same symptoms as everyone else and was closer to the blast than 3 others who received the award.

b. He qualifies for this award, and it is the right thing to do. The rest of the soldiers in the vehicle were surprised to hear he was never awarded the Purple Heart for this incident when they were. The misplacement, loss or whatever reason that caused his Purple Heart packet to not be complete should not be a reason that he is denied the award that he qualifies for. Due to this incident, he has a VA service rating of 50% for PTSD (post-traumatic stress disorder) as well as tinnitus and headaches that continue to this day and that he receives private treatment for. He is not sure if there is some form of discrimination that caused the error, but correcting it is in the best interest of all parties involved. Despite the fact that he qualifies for the award, the Board should correct this mistake because it is in keeping with the Army value of integrity. Doing the right thing at the right time was always strongly ingrained in him during his service and something he continues to carry with him. In keeping with that value, this correction should be made as it is the right thing to do.

c. After returning from OEF (Operation Enduring Freedom), he inquired with his platoon leadership and platoon medic about his award paperwork multiple times. He was constantly told that it was being worked on. Around November 2015, he was told that his packet was lost but they were working to correct the mistake. By fall of 2016, he realized that there was no real effort being made and despite his repeated questioning, no one knew anything. All of the leadership from his deployment had since moved to new duty locations or left service. He was also preparing to ETS/separate. He learned of the review process in late 2019 and has been collecting statements/documents and preparing a packet since, with has now been submitted twice.

3. The applicant provides a detailed narrative of the events that occurred on 12 July 2012. The key points according to his own summary of the events are:

- he lost consciousness for approximately 30-45 seconds, possibly longer; he remembers coming to and still seeing smoke inside the vehicle and the sound of yelling and sporadic gunfire coming from outside
- all those in the vehicle were taken to the medical center and evaluated; they were then instructed to go back to our tent and could not conduct any missions or activities, they were confined to quarters for 72 hours due to TBI and concussions; he was not told anything by a medical officer or given any information about a diagnosis
- his platoon medic, SPC [REDACTED] said we all had concussions and TBI and that was why they were confined to quarters. After confinement, they returned to regular missions and no more information came

4. He provides sworn statements from Soldiers who were present at the time. The authors speak of the incident on 15 July 2012, in Zari province Afghanistan. A summary of the statements is that the applicant and his recon sniper team were in a Stryker vehicle procession that was struck by an armor piercing RPG7 round; the warhead penetrated the vehicle's armor and exploded in the interior of the vehicle where applicant was located. Of the seven people in the vehicle, applicant was one of four, and one of the closest to the blast location, located inside the vehicle where the round detonated

a. Specialist (SPC) [REDACTED] statements states:

- after the explosion, all the occupants were knocked unconscious from the concussion of the blast wave; after waking from the blast, applicant assisted in aiding the most critically wounded, a Soldier who had taken shrapnel wounds to his legs and side from the blast and aided in pulling security while an air medivac was called in to evacuate others
- after the Air medivac was completed the remaining 6 injured members of the vehicle were then loaded into the remaining Stryker and brought back to FOB for medical evaluation
- after completing the army's traumatic brain injury protocol, the entire squad, including applicant was placed on mandatory stand down and recovery time for a minimum of 72 hours, as any further trauma to the brain before recovery could lead to irreparable damage
- all the servicemen on the vehicle were awarded the Purple Heart except applicant despite the fact that he was closer to the blast's epicenter than at least 3 of the other occupants in the Stryker who did receive the award

b. Staff Sergeant JV statements states:

- few medics from the 82nd unit, along with himself, treated applicant's wounds and had him medically evacuated to a higher level of care on FOB [REDACTED] after he was treated, the sniper section was assessed and instructed to return to FOB [REDACTED] for further evaluation by the medical personnel located there
- FOB [REDACTED] was assigned a TBI clinic within its perimeter. The medical personnel at the TBI clinic assessed the personnel in the vehicle, which was struck with the RPG, and determined they all had concussions and placed them on 3-5 days of quarters. Confinement to their sleep tents essentially.
- Applicant and others were not allowed to conduct any missions during the three to five days, which was a standard operating procedure at the time. The personnel diagnosed with concussions all returned to duty and completed the remainder of the deployment. Since the Soldiers were seen at the TBI clinic, normally the documentation/paperwork was handled within that clinic

c. Major [REDACTED] statements states:

- after the attack, recovery operations began, and Recon Platoon was evacuated to FOB [REDACTED]. The Battalion Aid Station provided concussive care to all soldiers from the struck vehicle and all soldiers were confined to quarters for 72 hours.
- for reasons unknown, every soldier inside the vehicle except for applicant was diagnosed with mTBI and received the Purple Heart.
- upon redeployment to the United States, applicant sought out the on-base TBI clinic after experiencing headaches and issues with sleep. He along with the others in the struck vehicle suffered a momentary lapse of consciousness due to the explosion

5. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 9 August 2010 and reenlisted on 18 February 2014. He held military occupational specialty 11B, Infantryman.

b. He served in Afghanistan from 11 December 2011 to 21 November 2012, assigned to Headquarters and Headquarters Company, 5th Battalion, 20th Infantry Regiment, 3rd Brigade, 2nd Infantry Division.

c. He was honorably released from active duty on 17 February 2017 after completing 6 years, 6 months, and 9 days of active service. His DD Form 214 does not reflect he Purple Heart as an authorized award.

6. The applicant submitted the above statements together with his service medical records (mostly from his 2016 visitations, and none related to the incident and/or reflect treatment by a medical officer) and a VA rating decision, dated 16 November 2020 to the U.S. Army Human Resources Command requesting award of the Purple Heart.

7. On 15 July 2021, the Awards and Decorations Branch at HRC informed the applicant that they are unable to render favorable action concerning his request. The statutory and regulatory criteria governing the Purple Heart require it to be awarded for wounds received as a direct result of enemy action. The wound must have required treatment a medical officer and been made a matter of official record. We specifically request military medical documentation from immediately after or close to the incident reflecting a diagnosis of and treatment for a qualifying wound. HRC is unable to verify he meets the regulatory criteria for award of the Purple Heart based upon review of the military medical records available. Furthermore, HRC cannot utilize more recent medical diagnoses and the Department of Veterans Affairs decisions as the primary basis to justify issuance of the Purple Heart.

8. Army Regulation 600-8-22 (Military Awards) 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. The

9. The following injuries do not qualify for the Purple Heart:

- Post traumatic stress disorders.
- 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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation failing to have appropriate medical documentation reflecting the injury and treatment provided at the time of any incident and the regulatory guidance requiring such documentation, the Board concluded there was insufficient evidence of an error or injustice warranting a 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.

1/6/2025

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 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//