IN THE CASE OF: [redacted]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012013

APPLICANT REQUESTS: award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record), Request for PH
- DD Form 149 Request for CRSC
- Orders 103-560 Deployment Orders
- Enlisted Record Brief (ERB)
- Awards Board Proposal
- Letter of Support
- Memorandum for Record (MFR) Award Board Proposal
- Supporting Visual Aid
- Pictures of Vehicle
- DD Form 214 with DD Form 215 (Correction to DD Form 214)
- DA Form 2823 (Sworn Statement
- Permanent Orders 289-006 Award of Combat Action Badge (CAB)
- Letters from U.S. Army Human Resources Command (AHRC)
- Awards Board Proposal PH Request
- Department of Veterans Affairs (VA) Statement in Support of Claim
- Letter from Rehab Hospital and medical records
- Email PH Resubmission
- Emails to AHRC
- AHRC PH Information
- PH Global War on Terrorism (GWOT) Information

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:

a. This claim packet for the PH is directly related to the events of 20 November 2009. His convoy was hit by an improvised explosive device (IED) at approximately 1730, while travelling along the Topeka Trash route in Iraq. It took several years after the incident took place to finally be evaluated for his combat-related injuries. This was finally accomplished from October 2016 until present.

b. He was medically retired from the service as of 5 June 2017. Additionally, he spoke with the Disabled American Veterans Manager at the Honolulu VA who directed him on the process of filling out and attaching the needed documents for his packet submission. He then proceeded to submit his packet to AHRC. After several months of phone calls and email correspondence, he was finally directed by AHRC to submit his packet to the Board. The emails he provided would indicate he has exhausted all efforts before reaching out to the Board. He was also told, due to the extreme lapse of time involved, his case could be expedited.

c. He was involved in an IED attack in Iraq. His deployment was from 23 July 2009 until 23 July 2010. During this period, he brought up the fact that he was exposed to an IED on 20 November 2009. However, the medical personnel were limited in Iraq and no efforts were made by his command or medical personnel once he returned and completed his reverse Soldier readiness processing (SRP) post-deployment screenings from Iraq.

d. It has been a total of just under 14 years since the event first took place, and he had to be medically discharged as a result of several of his combat related injuries. He still continues to be treated regularly for all of them at the VA. For this and all supporting reasons, he is resubmitting his packet.

e. He is requesting that his traumatic brain injury (TBI) medical records provided be allowed as admissible evidence in order to justify his claims for a CRSC reconsideration.

f. He has three denial letters, spanning back from 2019 to the present, with the most recent one being received in January 2023. They have suggested that due to the fact he was not seen by a provider in theater, or in close proximity following his return home to Washington, that he could not be awarded the PH citation. He has provided all medical documentation received.

g. He has been actively seeking records since 2015. During his medical evaluation in Fort Drum, New York, he discovered the SRP doctor had not included any follow up per his mention of the IED attack.

h. He is entering into evidence the complete packet of records he has available. He was never sent to see a medical physician in theater or once he returned to garrison despite mentioning the IED attack to the reserve SRP doctor in 2010.

i. He has corresponded with the current SRP doctor, the Judge Advocate General's Office, and the Freedom of Information Act (FOIA) manager and they told him there was nothing done after he mentioned to the reverse SRP doctor about his TBI exposure due to the IED incident that took place on 20 November 2009 in Iraq.

j. Additionally, they concluded the DA 6 investigation of the incident conducted by the Explosive Ordnance Disposal (EOD) and route clearance personnel had been archived and destroyed in 2016, making it impossible for him to recover.

k. Moreover, he was never treated for this condition sooner because the unit he was attached to attempted to suppress the incident and both the commander and first sergeant (1SG) of the Alpha Battery he was attached to in theater were later relieved.

l. It was not until his medical evaluation in October 2016 through May 2017 that the true extent of his injuries came to light. He is still struggling with and is actively being seen for severe neck and spinal degeneration, as well as migraines, tinnitus, memory loss, and sensitivity to bright lights. It is his hope that in view of what he provided the Board can finally appropriately award him the PH.

3. The applicant provides the following documents:

a. Orders 103-560, published by Headquarters, United States Army Garrison, Military Personnel Division, 13 April 2009, order him to deploy in support of Operation Iraqi Freedom (OIF) on 1 July 2009 for a period of 365 days.

b. Awards Board Proposal, 16 December 2016, states the information was concerning the events as they occurred on or about 20 November 2009. While passing the trash field point an IED was detonated. There were seven vehicles in the convoy. The IED detonated between the rear passenger side of the second vehicle and the front right passenger side of the third vehicle. The author was the passenger in the third vehicle and assigned to the rear door guard. The blast raised the Mine Resistant Ambush Protected door onto the drive side wheels but resettled without rolling over. He and the applicant were ordered to follow the alleged trigger man, which they did until they lost him in a storm drain.

c. Letter of support from [redacted] who was the platoon leader for the deployment to Iraq. He was writing the letter in regards to an incident that occurred on a convoy, which the applicant was a member of in November 2009. Their platoon was struck with an IED

which detonated on the right side of the convoy and directly impacted the back of one of their vehicles.

d. MFR Awards Board Proposal, 7 April 2017, from the team leader while in Iraq. While on a convoy, where the applicant was present, their vehicles were hit by an IED. The applicant and a captain (CPT) cleared the sight and maintained positive control of the vehicles entering.

e. DA Form 2823 (Sworn Statement), Sergeant [redacted] 31 July 2017, explains the incident with the IED and the actions each Soldier took in response to the attack. The entire statement is available for the Board's review.

f. Order 289-006, published by AHRC, 16 October 2018, awarded him the CAB for actively engaging or being engaged by the enemy on 20 November 2009.

g. Letter from AHRC, 19 October 2018, states AHRC had verified his entitlement to the CAB. They completed a DD Form 215 to amend his DD Form 214.

h. Letter from AHRC, 22 October 2019, concerning his desire to receive the PH, states:

(1) AHRC would like to take favorable action; however, due to the lack of information provided in his request, they were unable to authorize the requested award for issuance.

(2) In order to determine his eligibility for the PH, AHRC requires 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. Without such documentation, AHRC would not be able to process his request.

(3) AHRC acknowledged receipt of the Progress Notes, 27 March 2018, they could not utilize this document to justify award of the PH. While it referenced multiple consultations for TBI, there was no diagnosis or treatment for a qualifying injury. Likewise, AHRC could not utilize the forwarded VA Rating Decision, 7 July 2017, to authorize issuance of the PH as they could not link its TBI diagnosis to the IED blast on 20 November 2009.

i. Letter from AHRC, 2 March 2020, states AHRC remained unable to authorize the PH for issuance. They acknowledged receipt of the forwarded Standard Forms 600 (Chronological Record of Medical Care), the earliest of which was 10 September 2010. AHRC still required military medical documentation describing both diagnosis and treatment of a concussion, mild TBI, or other qualifying injury caused by the enemy dated immediately after or close to the IED blast on 20 November 2009.

j. Self-authored MFR Awards Board Proposal PH Request, 20 October 2022, states, in pertinent part:

(1) He was serving as an Advanced Culinary Noncommissioned Officer, while deployed in support of OIF from 23 July 2009 until 23 July 2010.

(2) He found out that while he was deployed, General [redacted] was the officer in charge of performing the DA 6 internal investigation on 20 November 2009 due to their convoy coming into contact with an IED bast.

(3) The events were consistent with the findings performed by EOD and Force Protection Agency on ground. The IED blast was located along the trash route. The findings discovered that his attached Alpha Battery leadership 1SG and CPT were guilty of trying to cover up the fact that they did not turn on the Duke System prior to leaving the Forward Operating Base. This was determined by checking the Blue Force Tracker digital display, which indicated it was never turned on or booted up to detect IEDs.

(4) He retired from the U.S. Army in June 2017, and has since been in the process of trying to recover the DA 6 formal investigation to provide proof to AHRC Awards and Decorations Branch for issuance of the PH. He was told the original records were taken off line. He has also reached out to Dr. [redacted] and she only found the medical records for his post-separation, which indicated he informed them of being in contact with an IED blast on 20 November 2009, however, the on-site doctor who performed his screening, at the time, did not file a corresponding report.

k. VA Statement in Support of Claim, 20 October 2022 states:

(1) He has been researching his case since the date of his separation/retirement from service on 5 June 2017. Subsequently, upon the awarding of his CAB on 18 October 2018, he pursued the follow on awarding of the PH, through the CRSC.

(2) He was initially awarded 50 percent for tinnitus, mild TBI, post traumatic stress disorder (PTSD), migraines, and cervical/thoracic neck and spinal injuries consistent with direct contact inside the kill zone of an IED, on 29 November 2009.

(3) He began experiencing these conditions following the IED incident, while being deployed in Iraq. Since that time, he has been consistently researching the conditions listed on the Medical Evaluation Board, while being evaluated during his exit from service provider teams, while still on active duty at Fort Drum, New York. More specifically, the conditions consistent with the results of exposure during his deployment to Iraq from 23 July 2009 through 23 July 2010. The list of concerns were curiously left absent from the VA during his exit evaluation process.

(4) He had reached out to the current SRP doctor in Washington who attempted to locate his reverse SRP records. She advised the doctor, at the time, did not follow through with documenting or referring him to any specialists, despite his claim of exposure to the IED while in theater operations. She provided him with a copy of the document as well as referred him to the FOIA manager who advised, after a lengthy eight week process, that the DA 6 investigation was either never filed by the command team in theater or was destroyed after reaching its ten year suspense date from when the incident took place.

(5) He was then advised to seek out a specialist who could further access his conditions and write him a nexus evaluation letter to capture what directly contributed to his condition and how they have progressed since then. He has been following up with his VA primary care manager (PCM) and his neurologist. He was then referred for several radiology and MRIs for his brain, neck, and spinal issues to access their current condition. It was determined, as of 5 December 2021 that he needed further specialty care and was referred to an outpatient chiropractor in the community who assessed, after several visits, that he needed to be referred to a neurosurgical specialist for pain management.

(6) He was referred by his PCM to the Rehab Hospital of [redacted]. He has since been under the care and observation of Dr. [redacted] since 23 March 2022 for migraines, tinnitus, mild TBI, unspecified anxiety disorder, and PTSD.

l. Letter Dr. [redacted] Physical Rehabilitation/Pain Management, Rehab Hospital, 2 November 2022, states:

(1) The Dr. is board certified in Physical Medicine and Rehabilitation. He had reviewed the applicant's narrative summary, service treatment records, and subsequent medical records regarding conditions for cervical radiculopathy, cervicogenic headaches, cervical myofascial pain, cervical stenosis, and mild TBI. These documents include active-duty service treatment records, narrative summaries, and outpatient surgical notes dating from his deployment to Iraq on 23 July 2009 through his service review prior to his retirement/separation from service on 5 June 2017.

(2) The applicant has been the Dr.'s patient since 23 March 2022, as a neurosurgical direct referral from his VA PCM. The Dr. continues to treat him for the listed conditions. The Dr. conducted epidural neck injections on him on 23 March 2022 and subsequent follow up visits leading to a secondary epidural injection on 8 June 2022, which supports the Dr.'s diagnosis. His chronic neck and arm pain showed moderate improvement and temporary relief following the first injection, which lasted 7 days post-procedure, and due back for a 90 day review of the second injection on

19 October 2022. The Dr.'s findings of the visit are consistent with the diagnosis discussed.

(3) The Dr. reviewed his medical history and it was his opinion the conditions were likely to be related to the incident that occurred during military service including proximity to the detonation of the IED explosion on 9 November 2009, while performing route clearance operations in Iraq. In the Dr.'s professional, experience, the applicant's ongoing and progressive head and neck symptoms are consistent with injuries sustained from blast proximity.

(4) The applicant's medical records concerning the letter from his doctor are available for the Board's review.

m. Letter from AHRC, 10 January 2023, states:

(1) While they would like to take favorable action, they remain unable to authorize the PH for issuance. In order to determine eligibility for the PH, AHRC requires 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 (AR) 600-8-22 (Military Awards) paragraph 2-8.

(2) To receive the PH for concussion or mild TBI, servicemembers must have been restricted from 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 event. AHRC had not received military medical documentation from or close to the events of 20 November 2009, detailing whether or not he met this criteria. Further, the PH cannot be awarded for conditions such as hearing loss or tinnitus, battle fatigue, neuro-psychosis, and PTSD. As such, AHRC must conclude he did not meet the strict criteria for award of the PH.

n. Emails from the applicant to AHRC, wherein he was inquiring about his submission for reconsideration of the denial for the award of the PH.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army on 24 July 1997. He remained in the Regular Army through immediate reenlistments.

b. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings,

3 February 2017, shows the board found him physically unfit for duty, recommended a rating of 50 percent (%), and that he be permanently retired due to disability. His disqualifying disabilities were:

- Right shoulder rotator cuff tendonitis
- Degenerative arthritis and degenerative disc disease
- Right lower extremity radiculopathy
- Left lower extremity radiculopathy

He concurred with the findings and recommendations of the board and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably transferred to the U.S. Army Reserve Control Group (Retired) on 4 June 2017. He had completed 10 years, 4 months, and 12 days of active duty service. He had service in Iraq from 20 July 2009 through 19 July 2010. He was discharged for disability permanent (enhanced). He was awarded or authorized the:

- Army Commendation Medal (4th Award)
- Army Achievement Medal (7th Award)
- Meritorious Unit Commendation
- Army Good Conduct Medal (4th Award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq campaign Medal with Campaign Star
- Noncommissioned Officer Professional Development Ribbon (3rd Award)
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Army Sea Duty Ribbon
- Expert Marksmanship Badge with Rifle Bar
- CAB (DD Form 215)

d. CRSC letter, 3 March 2019, shows his claim for CRSC had been reviewed and approved in accordance with program guidance. The following disabilities were verified as combat related:

- Tension headaches
- Cervical trapezius strain
- Tinnitus
- TBI
- Unspecified anxiety disorder
- Total combat related disability 50 percent

e. CRSC letter, 15 February 2022, they had reviewed his reconsideration request for CRSC and did not change their decision regarding the disabilities that were determined to be combat related and did not change his disability percentage.

f. CRSC letter, 14 January 2023, states his claim for CRSC reconsideration had been reviewed and approved. They added asthma as verified as combat related and his disability percentage was increased to 60%.

g. The applicant's service record is void of information regarding the incident with the IED blast, medical documentation showing he was injured in the IED blast, recommendation for award of the PH, or approval of award of the PH.

5. The ARBA Medical Section provided a medical review for the Board's consideration.

6. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting reversal of the United States Army Human Resources Command's three denials of his request for a Purple Heart for a traumatic brain injury (TBI). He states:

> "This claim packet for the Purple Heart is directly related to the events on November 20, 2009. My convoy was hit by an IED [improvised explosive device] at approximately 17:30hrs, while traveling along the Topeka Trash route in Iraq. It took several years after the incident took place to finally be evaluated for my combat-related injuries. This was finally accomplished from October 2016 until present. I was medically retired from service as of June 5, 2017."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 23 January 2007 and was permanently retired for physical disability on 24 June 2017 under provisions provided in Chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (17January 2017). His reentry code is 4, separated from last period of service with a nonwaiverable disqualification.

d. On 3 February 2017, an Army Physical Evaluation Board (PEB) found the applicant to have four unfitting musculoskeletal conditions for continued service: (1) "Right Shoulder Rotator Cuff Tendonitis, Labral Tear, S/P SLAP (Superior Labral Anterior-Posterior Lesion) and Degenerative Arthritis Acromioclavicular Joint;" (2) "Degenerative Arthritis and Degenerative Disc Disease, (Sciatic Nerve);" (3) "Right Lower Extremity Radiculopathy;" and (4) "Left Lower Extremity Radiculopathy, (Sciatic Nerve)." The Board made the administrative determination that none of the four conditions was combat related, stating for each condition "Onset occurred \n 20Hi while Soldier was in CONUS (Continental United States)."

e. They applied the VA derived ratings of 20%, 20%, 10%, and 10% respectively for a combined military disability rating of 50% and recommended he be permanently retired for physical disability. On 28 February 2017, after being counseled on the Board's findings and recommendation by his PEB liaison officer (PEBLO), he concurred with the PEB, waived his right to a formal hearing, and declined the opportunity to request a VA reconsideration of his disability rating(s).

f. Paragraph 2-8 of AR 600-8-22, Military Awards (15 September 2011), lists the criteria for the awarding of the Purple Heart. Paragraph 2b lists the circumstances under which the injury is eligible for a Purple Heart (enemy action, friendly fire, peace keeping, etc.). Paragraph 2e states the wound and medical care requirements for the award:

> "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 by medical personnel and records of medical treatment for wounds or injuries received in action must have been made a matter of official Army records.

g. Paragraph 2-8k(3) of 600-8-22 succinctly lists the requirements for this award:

> Each approved award of the Purple Heart must exhibit all of the following factors: wound, injury or death must have been the result of enemy or hostile act; international terrorist attack; or friendly fire (as defined in paragraph b(8) above) the wound or injury must have required treatment by medical officials; and the records of medical treatment must have been made a matter of official Army records.

h. Clarification of the standards for awarding a Purple Heart for a combat related TBI were provided in Army Directive 2011-07 (Awarding the Purple Heart) issued 29 April 2011. While it makes clear a concussion / mTBI may be eligible for the awarding of a Purple heart, paragraph 3 continues to maintain the eligibility criteria of AR 600-8-22:

WHEN RECOMMENDING AND CONSIDERING AWARD OF THE PURPLE HEART, THE CHAIN OF COMMAND WILL ENSURE THE CRITERIA IN PARAGRAPH 2-8 OF REFERENCE 8 IS MET, AND THAT BOTH DIAGNOSTIC AND TREATMENT FACTORS ARE PRESENT AND DOCUMENTED IN THE SOLDIER'S MEDICAL RECORD BY A MEDICAL OFFICER. PARAGRAPH 4C BELOW DEFINES MEDICAL OFFICER.

i. Paragraph 4C: “A MEDICAL OFFICER IS DEFINED AS A PHYSICIAN WITH OFFICER RANK.”

Review of his records in AHLTA show he was seen in theater around the time of the IED attack. He was seen for viral illness on 10 August 2009 and his next AHLTA encounter was for an ophthalmology examination on 10 August 2010.The examination was normal and the applicant was returned to full duty. There are no TBI related encounters until the applicant was evaluated and treated for TBI sequalae in the fall of 2016.

j. While it is likely the applicant sustained a TBI at the time and while in Service to his country, there is insufficient evidence this or any other injury met the medical treatment and documentation requirements for the awarding of the Purple Heart.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board found insufficient medical evidence to assess the severity of a concussive injury incurred by the applicant on 20 November 2009. The Board found no evidence of loss of consciousness or cognitive impairment and found no evidence a medical provider directed his restriction from duty or other therapeutic measures. Based on a preponderance of the evidence, the Board determined the available records do not support awarding the Purple Heart to the applicant.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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.

12/19/2024

X [redacted]

CHAIRPERSON

[redacted]

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 (AR) 15-185 (Army Board for Correction of Military Records (ABCMR)) paragraph 2-9 states 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.

3. AR 600-8-22 (Military Awards) 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 Purple Heart include concussion injuries caused as a result of enemy-generated explosions resulting in a mild TBI 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 Purple Heart include post-traumatic stress disorders, hearing loss and tinnitus, mild TBI 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 Purple Heart for a mild TBI 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.

4. Army Directive 2011-07 (Awarding the Purple Heart), 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 Purple Heart for concussions (including mTBI and concussive injuries that do not result in a loss of consciousness). The directive also revised AR 600-8-22 to reflect the clarifying guidance.

a. Approval of the Purple Heart 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 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 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, U.S 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 Purple Heart 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 the Purple Heart:

(1) Diagnosis of concussion or mild TBI;

(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 CT or magnetic resonance imagining (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 Purple Heart:

(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.

5. Title 26, USC, section 104, authorizes special rules for combat-related injuries for compensation for injuries or sickness. For purposes of this subsection, the term "combat-related injury" means personal injury or sickness (A) which is incurred (1) as a direct result of armed conflict, (2) while engaged in extra-hazardous service, or (3) under conditions simulating war; or (B) which is caused by an instrumentality of war.

6. Title 10, USC, section 1552 states, the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

7. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that

directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//