

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230012072

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command, Awards and Decorations Branch, denial of his entitlement to the Purple Heart. He also requests a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Sworn Statement, JZ, 2 April 2019
- Sworn Statement, MKP, 26 May 2019
- Sworn Statement, DJL, Undated
- Sworn Statement, SF, Undated
- Memorandum, U.S. Army Human Resources Command (AHRC), 3 February 2020
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 27 May 2020
- Self-Authored Statement, 12 August 2023
- Assorted Medical Records

FACTS:

1. The applicant states, in effect:

a. He received a traumatic brain injury (TBI)/concussion from an improvised explosive device (IED) on 21 May 2011, while deployed to Iraq in support of Operation Iraqi Freedom. He remembers the blast wave throwing him to the gunner's turret slamming his advanced combat helmet to the turret shield. He fell to his knees, his nose dripping blood all over his body armor. He had excruciating pain and pressure in bilateral ears, eyes, head, and face. It felt like his head was about to explode and his eyes were about to pop out of their sockets. As the crew serve gunner approximately 5 foot 5 inches in height, he had to fully raise the gunners stand to effectively engage and traverse the M240B (machine gun) utilizing the mechanical turret system on the Mine-Resistant Ambush-Protected (MRAP) vehicle. This means that 70 percent of his body was protected by armor less than or equal to a half inch thick.

b. MM placed him on quarters for 24 hours and prescribed acetaminophen for headaches. The following day he was ordered to return to duty and later that day, 22 May 2011, he was taken to the 506th Expeditionary Medical Squadron Main Clinic. The provider, DP, on Forward Operating Base (FOB) Warrior saw him for nose bleeds after being found by members of his platoon asleep and suffering from nose bleeds. He states, "Possible Concussion" and also states "2+ Blasts with 72 hrs." The applicant was released early the morning of 23 May 2011, and reported back to the Heredia Aid Station and again returned to duty. As noted in the sworn statements provided, he continued to have nose bleeds and significant symptoms related to mild TBI (mTBI)/concussion from the IED attack. The following week his unit redeployed back to its home station located at Schofield Barracks, Hawaii.

c. He may not have had a loss of consciousness (LOC), but symptoms of a concussion were clearly present, bleeding from the nose should have raised an alarm or some type of concern from medical personnel. He hit five IED's during the deployment only two which were documented in his medical records, and one was noted by DP. If this had occurred in present day, medical treatment would have been more precise as now protocols are in place to ensure that Soldiers are given proper evaluation and treatment. Each IED exposure would have guaranteed an air or ground medical evacuation for TBI evaluation and treatment to the nearest medical treatment facility for U.S. Forces.

d. According to medical records, on 3 May 2011, provider CC states an IED attack. He reported no symptoms and so did others in the platoon. [The applicant] was the gunner in that attack and believes the only one taken for TBI evaluation due to minimal armor in comparison to the MRAP troop compartments which includes driver, front passenger, and rear troop compartment. He claims the driver of the MRAP, Specialist (SPC) DL was awarded the Purple Heart for a concussion and had the same symptoms as the applicant minus the nose bleeds. The applicant was placed on 24 hours quarters then placed on 24 hours quarters again. When he asked SPC DL if he could write a sworn statement about the IED attack, SPC DL thought the applicant was also awarded the Purple Heart for a concussion.

e. He does not recall the month the unit conducted Reverse Soldier Readiness Program (RSRP) but on a medical record dated 3 October 2011, SB TBI Concussion Clinic, provider ER states the applicant reported irritability, sleep problems and occasional headaches. At this point he was scheduled for evaluation and treatment by the TBI clinic for possible TBI due to IED exposure/s during his deployment to Iraq. The TBI clinic scheduled him for physical therapy. Medical records dated 25, 26 and 27 October 2011, provider SN, noted for muscle weakness, generalized. That was five months after the IED attack, and he was still experiencing signs and symptoms of mTBI. Physical therapy was the start of treatment and the evaluation provided by the TBI clinic due to ongoing symptoms. As noted on the medical record dated 3 October 2011, the

TBI clinic made numerous attempts to contact him to reschedule appointments but due to the demands of training and another combat deployment on schedule he failed to attend treatment.

f. In 2014, his unit conducted SRP for a force protection mission. He was unable to clear the medical portion as he had to report to the TBI clinic at Schofield Barracks for evaluation and treatment which should have occurred in 2011. He reported similar symptoms again as he did in 2011. Documentation in medical records dated 4 August 2014, provider CE, diagnosed amnesia, has pre and post amnesia for 2011 blasts. Department of Veterans Affairs Neurology Headache Center of Excellence dated 22 September 2021, nurse practitioner, LL, states in a subsequent evaluation 6 August 2014, deemed concussion due to past blasts in 2011 referencing the diagnosis given by CE in 2014. He has provided an optometry medical record dated 24 February 2020, in which the provider, MAB, states post-concussional syndrome; convergence insufficiency secondary to multiple concussions. He also provided medical treatment documentation from North Country Neurology as the medical treatment facility located on Fort Drum did not have a neurologist assigned. Dr. SM was treating him for chronic migraines and provided numerous treatments which included Botox. Due to retirement and relocation to his current residence he was unable to continue and complete medical treatment, he asked the neurologist if he could write a medical opinion of his past mTBI due to IED's. He has included that letter of medical opinion.

2. The applicant retired honorably from the Regular Army in the rank/grade of sergeant first class (SFC)/E-7 on 27 May 2020. The narrative reason for his separation is disability, permanent. Evidence shows he served in Iraq from 13 June 2008 to 28 October 2008 and 3 July 2010 to 23 June 2011.

3. The applicant provides a/an:

a. Sworn statement, SFC JZ, 2 April 2019, who claims on 21 May 2011, the applicant's MRAP vehicle was struck by two 155-millimeter surface laid IEDs, both approximately one foot from the driver's side of his vehicle. The applicant was thrown by the blast striking multiple parts of his body against the turret. Private First Class JL noticed the applicant was dazed, provided aid, and assisted him to a seat before assuming control of the turret. The applicant was disoriented and stated that he felt pressure in his head, eyes, ears and was suffering a severe headache. He received 48 hours quarters from the battalion surgeon and around 0800 on 22 May 2011, the applicant was cleared from concussion diagnosis and given medication for migraines. At approximately 1700 hours the applicant was found asleep in his quarters with his sheets covered in blood from severe nose bleeds. Once again, he received treatment for migraines, epistaxis and pressure in his ears and was returned to duty at 0200 hours, 23 May 2011, with concussion symptoms. Prior to this engagement, the applicant was involved in another IED strike on 18 May 2011. Upon his return to duty, he noticed the

applicant did not seem like his normal self as his movements were lethargic and he appeared apathetic and lost.

b. Sworn statement, First Lieutenant MKP, 26 May 2019, who served as the platoon leader. He claims on 21 May 2010, an IED consisting of two 155mm artillery rounds detonated approximately 5 feet from the applicant's vehicle. It was determined air evacuation was not needed but given the condition of the applicant and other Soldiers, continuation of the mission was unlikely. As a result of the blast concussion the applicant was placed on quarters for additional observation as he was still experiencing weakness to the body, migraine, tinnitus, and nose bleeds. Due to the concussion-like effects, he was unable to accompany the platoon on follow-on missions for the next 24 to 48 hours. The applicant was subsequently replaced as a vehicle gunner and would no longer occupy a lead vehicle during patrols.

c. Sworn statement, SPC DJL, undated, who served as a driver. He claims the platoon was attacked by 4 IEDs and 1 Explosively Formed Penetrator (EFP). The applicant was the truck commander in one of the attacks and a gunner in the other four. On 18 May 2011, the applicant's vehicle struck an EFP but failed to function properly. On 21 May 2011, an IED detonated on the driver side door severely affecting himself and the applicant. The blast wave rendered them incoherent. The applicant complained of severe pressure to his head, ears, and nose bleeds related to the explosion. Military Acute Concussion Evaluations (MACE) were performed. The medic determined they were severely affected from the blast due to proximity. He does not recall the applicant losing consciousness.

d. Sworn statement, SFC SF, undated, who served as platoon sergeant. He claims on 21 May 2011, the applicant's vehicle was struck by an IED as referenced in previous statements. He notes the applicant needed several days to recover from the blast. The battalion surgeon ordered him to quarters on 21 May 2011. On 22 May 2011, the battalion surgeon reevaluated the applicant and cleared him from any concussion diagnosis or symptoms. On 22 May 2011, the applicant was found asleep with blood on his sheets from nosebleed. The applicant was escorted to the FOB clinic for medical evaluation. Approximately 72 hours prior to 21 May 2011, the applicant had been involved in another IED strike. The applicant was given time to recover from the blast and left the FOB due to symptoms of concussion regardless of being returned to duty.

e. Over 150 pages of medical records pertaining to the applicant, of note:

- 3 May 2011, Theater Clinic, both tympanic membranes were examined. MACE 29/30, asymptomatic, no evidence of concussion.
- 21 May 2011, Heredia Aid Station, assessed with no concussion, no amnesia, not post-traumatic amnesia. Given acetaminophen and 24-hour quarters.

- 21 May 2011, Theater Clinic, applicant notes provider did not note nose bleeds and weakness. Did not annotate for ears, could have had a perforated eardrum. MACE 26/30.
- 3 October 2011, Tripler Army Medical Center, Concussion Clinic. Noted applicant was involved in 3 blasts within 9 meters and experienced dizziness, nausea, headaches, weakness after the blast. Occurred 16 May 2011. Now with persistent ringing in ears, irritability, and sleep problems. Occasional headaches.
- 27 October 2011, muscle weakness generalized.
- 4 August 2014, Tripler AMC, diagnosed with pre and post amnesia for 2011 blasts.
- 7 August 2014, Schofield Clinic, referred to the brain injury clinic secondary history of blast exposure x3 16 May 2011 with persistent tinnitus, irritability, sleep disturbances and headache. Failed formal performance validity measures.

4. On 3 February 2020, the Chief, Awards and Decorations Branch, AHRC, disapproved his request for the Purple Heart for injuries received while deployed in support of Operation Iraqi Freedom. After a thorough review of the information provided and consultation with the AHRC Office of the Surgeon General, the forwarded recommendation for award of the Purple Heart did not meet the statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8c, stating, "the medical documentation provided does not indicate diagnosis of and treatment for a qualifying injury."

5. Army Regulation 600-8-22 contains the regulatory guidance pertaining to entitlement to the Purple Heart and requires all elements of the award criteria to be met. There must be proof a wound was incurred as a result of enemy action, that the wound required treatment by medical personnel, and that the medical personnel made such treatment a matter of official record. Additionally, when based on a TBI, the regulation stipulates the TBI or concussion must have been severe enough to cause a LOC; or restriction from full duty due to persistent signs, symptoms, or clinical findings; or impaired brain functions for a period greater than 48 hours from the time of the concussive incident.

6. Army Regulation 15-185 (ABCMR) states 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.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant contends he received TBI/concussion from an IED explosion on 21 May 2011, while deployed to Iraq in support of Operation Iraqi Freedom. He provides multiple letters of support, related to the incident. To be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; there must be proof a wound was incurred as a result of enemy action, that the wound required treatment by medical personnel, and that the medical personnel made such treatment a matter of official record. Additionally, when based on a TBI, the regulation stipulates the TBI or concussion must have been severe enough to cause a loss of consciousness; or restriction from full duty due to persistent signs, symptoms, or clinical findings; or impaired brain functions for a period greater than 48 hours from the time of the concussive incident. The Board did not find medical evidence that supports award of the Purple Heart in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

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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 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Purple Heart is awarded for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record.

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

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

d. Examples of enemy-related injuries that clearly justify award of the Purple Heart include concussion injuries caused as a result of enemy-generated explosions resulting in a mTBI or concussion severe enough to cause either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical finding, or impaired brain function for a period greater than 48 hours from the time of the concussive incident.

e. Examples of injuries or wounds that clearly do not justify award of the Purple Heart include post-traumatic stress disorders, hearing loss and tinnitus, mTBI or concussions that do not either result in LOC 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 mTBI or concussion, the chain of command will ensure that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

2. Army Directive 2011-07 (Awarding the 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 LOC). The directive also revised Army Regulation 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, United States Code, Section 101.

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

e. When recommending and considering award of the 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 award of the Purple Heart:

- (1) Diagnosis of concussion or mTBI.
- (2) Any period of loss or a decreased level of consciousness.

(3) Any loss of memory of events immediately before or after the injury.

(4) Neurological deficits (weakness, loss of balance, change in vision, praxis (that is, difficulty with coordinating movements), headaches, nausea, difficulty with understanding or expressing words, sensitivity to light, etc.) that may or may not be transient; and

(5) Intracranial lesion (positive computerized axial tomography (CT) or MRI scan.

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

3. The MACE is a standardized mental status examination that is used to evaluate mTBI, or concussion, in theater. This screening tool was developed to evaluate a person with a suspected concussion and is used to identify symptoms of a mTBI. Future MACE scores can be used to determine if the patient's cognitive function has improved or worsened over time. To be most effective, all service members experiencing concussion, or mTBI, should have the MACE administered within the first 24 hours of the event in order to make certain that proper care is administered in a timely fashion. The MACE, in combination with a medical exam, can be used to help determine if it is safe for a service member to return to duty.

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

//NOTHING FOLLOWS//