

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 June 2024

DOCKET NUMBER: AR20230012126

APPLICANT REQUESTS: entitlement to the Purple Heart and a personal appearance hearing before the Board via video or telephone.

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

- 2 DD Forms 149 (Application for Correction of Military Record)
- Permanent Orders 126-12, 5 May 2008
- Standard Form (SF) 600 (Chronological Record of Medical Care), 20 July 2008
- 6 Photographs, 25 July 2008
- DA Form 2823 (Sworn Statement), CTL, 28 March 2017
- DA Form 2823, DBM, 22 April 2017
- SF 600, 15 May 2017
- DA Form 4187 (Personnel Action), 12 June 2017
- Incident Narrative, undated
- Memorandum, U.S. Army Human Resources Command (AHRC), 17 August 2017
- 7-pages of Bayer NeuroBehavioral Center, PLLC, Neuropsychological Evaluation, 3 June 2019
- 4-page Health Record, 5 September 2019
- 2-page Health Record, 6 September 2019
- 3-page Health Record, 2 December 2019
- Officer Record Brief (ORB), 13 June 2022
- DA Form 2823, JTJ, 20 December 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 September 2023

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, in effect:

a. On 20 July 2008, in the Sangin District, Helmand Province, Afghanistan, he was assigned as the Detachment Commander of Operational Detachment Alpha (ODA) 7124, as part of Special Operations Task Force-South. The ODA was forward stationed at Firebase Robinson approximately 5 kilometers south of Sangin along Highway 611. The ODA deployed in support of Operation Enduring Freedom from May 2008 through February 2009.

b. On 20 July 2008, ODA 7124 was returning from an operation via a Mine-Resistant Ambush Protected vehicle (MRAP) to Firebase Robinson utilizing the desert east of Highway 611. The formation of 4 MRAPs were traveling generally north from vicinity Hyderabad with the applicant in the lead vehicle (Truck Commander (TC)). While returning to the Firebase, his MRAP struck an improvised explosive device (IED) on the front passenger side wheel (TC side), destroying the front of the MRAP and launching it forward approximately 20-30 feet. Following the explosion, the detachment 18D (Special Forces Medic), Staff Sergeant (SSG) [REDACTED], treated the 3 U.S. Special Forces and a Combat Controller for injuries, which included headaches, foot, knee, and back pain. He remembers everything going black and the feeling of "see stars." Although no passengers had penetration wounds, all were treated over the course of several weeks/months for their post blast symptoms. Since, he has had chronic ankle, knee, and back pain. Additionally, he has been treated as an inpatient for 2 weeks at the [REDACTED] Department of Veterans Affairs (VA) hospital polytrauma center in [REDACTED] and been diagnosed with cognitive impairment.

c. During his retirement physical, the unit surgeon reviewing his records indicated that he believed a Purple Heart should have been awarded for the 2008 IED injuries he sustained. After further review, it was determined that he was missing a medic's sworn statement. He now provides this statement as well as additional medical treatment and exams. Based on this additional information, he believes he is entitled to the Purple Heart for injuries which continue to this day.

3. The applicant retired honorably from the Regular Army in the rank/grade of colonel (COL)/O-6 on 30 September 2023. Evidence shows he served in Kuwait from 18 January to 17 March 2003; Iraq from 18 March to 27 July 2003 and 23 January to 22 June 2005; and Afghanistan from 27 August to 27 October 2007, 15 May 2008 to 26 January 2009, 9 September 2012 to 6 May 2013 and 25 January to 3 August 2020.

4. The applicant provides:

a. SF 600 from SSG [REDACTED] (18D), 20 July 2008, who states, in effect, the applicant was the TC for RG21 when it struck an IED that exploded underneath him. The IED was approximately 20 pounds. The applicant stated no loss of consciousness (LOC) and

some disorientation. Felt shock go up his feet through his legs and into his body. Lower back pain, feet, ankle, knee, hip, and neck pain for approximately 2 weeks following the event. Tinnitus for 2-3 days following event. Applicant received no fragmentation or debris from blast, and he was wearing full kit with hearing protection. Military Acute Concussion Evaluation (MACE) conducted after event. Pre-score 28, post-score 26, normal the following day. No deformities or ecchymosis noted. Pupils were equal, round, reactive to light, and accommodation, ambulates normally/unassisted. Received Ibuprofen for 2 days and observation for 2 days.

b. Deployment orders, ORB, DD Form 214, 6 photographs of a heavily damaged MRAP, and a DA Form 4187 dated 12 June 2017, in which General RAT III recommended approval of his request for the Purple Heart for wounds received on 20 July 2008, from a mounted IED strike in Helmand Province, Afghanistan.

c. Sworn statement from SFC [REDACTED] dated 28 March 2017, in which he claims, in effect, in the summer of 2008 in Sangin, Afghanistan, he was part of a group of Soldiers who were returning from a combat mission in the lead vehicle. The vehicle struck and IED on the front passenger side. All their heads violently hit the roof of the vehicle. Immediately after and continuing for the next few days, the applicant showed signs of a head injury/TBI. He was examined by the 18D.

d. Sworn statement from SFC DBM (Retired) dated 22 April 2017, in which he claims, in effect, he was traveling approximately 50 meters behind the applicant's vehicle when it hit an IED. The Special Forces medics immediately began an assessment of the applicant and other occupants of the vehicle. All stated they were disoriented and had headaches. All continued treatment with the medics back at the fire base.

e. SF 600 dated 15 May 2017, in which the applicant reported numerous hits to his head in 2006. In 2008, the Afghanistan IED incident in which he notes he experienced tinnitus and headaches for 2-3 days before feeling back to normal. He was briefly evaluated by the 18D. A month later he was exposed to a second IED, unsure if he experienced LOC. Experienced residual headaches and back pain. Further reported he was exposed to lots of blasts and breaches. Stated his short-term memory sucks and is worsening over time. Review of records indicate the applicant experienced several brain injuries of mild severity and numerous sub-concussive exposures throughout his military career. Examination resulted in diagnosis of a personal history of TBI, concussion without LOC, and insomnia. He was released without limitations.

f. Neuropsychological evaluation dated 3 June 2019, which concluded the applicant fulfilled Diagnostic and Statistical Manual of Mental Disorders-5 criteria for a diagnosis of mild cognitive impairment, reaction to severe stress and a personal history of TBI.

g. Health record dated 5 September 2019, for chronic ankle pain. Findings generally unremarkable; however, showed bilateral patellar enthesopathy, bilateral plantar and posterior calcaneal enthesopathy, and right tibiotalar osteoarthritis.

h. Health record dated 2 December 2019, in which the applicant highlights dizziness and giddiness, post-traumatic osteoarthritis of the right and left ankle and foot, chronic PTSD, tinnitus, mild cognitive impairment, and a personal history of TBI.

i. Sworn statement from Master Sergeant (Retired) [REDACTED] dated 20 December 2022, in which he claims, in effect, he was the senior 18D during their deployment in 2008. The first assessment and treatment of all three patients (to include the applicant) was conducted by the junior medic SGT [REDACTED]. Subsequent assessments and treatments were conducted by MSG [REDACTED] and SGT [REDACTED] upon returning to base. All three exhibited signs and symptoms of TBI and significant musculoskeletal pain. He prescribed medication for all three patients, supervised physical therapy, placed all three on rest and no combat operations for three days, and continued to monitor. Signs of TBI persisted for the following two weeks. MACE exams were conducted multiple times over two weeks. The applicant exhibited signs of short term memory loss consistent with TBI/concussion.

5. On 17 August 2017, the Chief, Soldier Programs and Services Division, AHRC, disapproved his request for the Purple Heart for injuries received while deployed in support of Operation Enduring Freedom. After a thorough review of the information provided the award of the Purple Heart for the event did not meet the statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8e, stating, "the lack of supporting medical documentation reflecting a diagnosis or indication of a qualifying injury makes it impossible to connect an injury to the incident."

6. 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.

7. 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. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board found the medical evidence and witness statements provided by the applicant confirm that he incurred an injury as a result of hostile action on 20 July 2008 that met the criteria for the Purple Heart. The Board determined he should be awarded this medal and it should be added to his DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by awarding him the Purple Heart for an injury incurred as a result of hostile action on 20 July 2008 and by adding the Purple Heart to his DD Form 214.

11/1/2024

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 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 mild traumatic brain injury (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.

3. 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.
- (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.

4. 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.

5. 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//