

IN THE CASE OF: ████████████████████████████████

BOARD DATE: 14 August 2024

DOCKET NUMBER: AR20230012382

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

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

- DD Form 149 (Application for Correction of Military Record)
- Letter and Statement to the Board
- Deployment orders
- Enlisted Record Brief
- Combat Action Badge citation
- Sworn Statement of Staff Sergeant (SSG) Be\_\_\_
- Medical Records and TBI (Traumatic Brain Injury) Questionnaire
- August 2011 Department of veterans Affairs Rating Decision
- DD Form 214, Certificate of Release or Discharge from Active Duty

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 would like to be awarded the Purple Heart for the incident that occurred on 21 January 2006. On that date, while deployed to FOB (Forward Operating Base) Warhorse, Iraq he was within 50 feet of a mortar blast that knocked him down. He does not remember moving to cover but found himself in a CONEX waiting for all clear. He currently suffers from hearing lose, tinnitus, migraine headaches and memory loss from the incident. At the time of the incident TBI did not meet the criteria for a Purple Heart and therefore he was not submitted. The criteria for the Purple Heart changed in 2010 to include head injuries to include TBI. He has gone back and forth between AHRC (U.S. Army Human Resources Command) and ABCMR for the last 8 years, this is his last effort in this matter. He received a denial letter from AHRC in January 2022 because he cannot provide medical records immediately after the incident due to the fact they were never transferred to his permanent medical records after

redeployment. He has no records of the immediate care provided but received the Combat Action Badge for the date in question. He also provided medical records that show follow up treatment along with documentation from the SRP site indicating he was near a direct blast. He was medically separated from the Army in 2012 because of the PTSD (post-traumatic stress disorder) and TBI he suffered from the blast.

3. The applicant enlisted in the Regular Army on 6 November 1988 and held military occupational specialty 92A, Automated Logistical Specialist.

a. He served through multiple extensions or reenlistments, in a variety of stateside or overseas assignments, and he attained the rank of master sergeant/E-8. His records show he served in:

- Iraq from 20051128 to 20061109 and 20080429 to 20090212
- Bosnia, 20030528-20031204
- Kosovo, 19990426-19990719
- Southwest Asia, 19910529-19911108.

b. On 16 September 2011, an informal physical evaluation board (PEB) found him unfit for PTSD and Lisfranc fracture. The PEB assigned a 60% disability rating and his disposition as placement on the temporary disability retired list (TFRL).

c. He retired on 23 March 2012, and he was placed on the TDRL in his retired grade of MSG/E-8 on 24 March 2012, after over 23 years and 4 months of active service. His DD Form 214 does not list the Purple Heart as an authorized award.

d. On 19 May 2014, a TDRL PEB convened and found he remained unfit, but his conditions were ready for final adjudication. The TDRL PEB assigned a 60% disability rating and his disposition as permanent disability retirement.

e. On 7 June 2014, the U.S. Army Physical Disability Agency published orders removing him from the TDRL and permanently retiring him due to disability.

4. The applicant provides:

a. Self-authored statement in which he states he requests correction of his military record to reflect entitlement to the Purple Heart and waive number of witnesses. In support of his claim, he has provided proof of his TBI due to the results of his injury sustained from an engagement during indirect mortar attack. On 21 January 2006, while deployed to FOB Warhorse, Iraq, a mortar round detonated within 25 yards of his location, knocking him to the ground from the concussive blast. He does not remember moving to a CONEX for cover, but shortly after, he remembers checking the area and looking for injured Soldiers in the general area. Fortunately, there was only himself and

SSG ██████ in the immediate area of the blast. He stayed and assisted the crater analyses team to determine critical information pertaining to the blast site. After the crater analyses was complete, he was treated at the Troop Medical Clinic (TMC) and observed for the remainder of the day with return to duty for the following day. He was given a prescription of Rizatriptan (Maxalt) for the migraines that ensued after the blast for the rest of the deployment and even to this day. The TBI was the direct result of him being medically discharged from active duty in 2012 after almost 24 years of service. After returning to Fort Carson, CO, the medical records were not transcribed into his permanent medical records. He has included the Post Deployment Health Assessment where it shows that he was involved in a blast and treated on Fort Carson for TBI and PTSD. There was only him and SSG ██████ in the area, so it is only possible for him to provide one witness statement, which is included in this packet. As further proof he has included the Combat Action Badge citation that he was awarded for the mortar blast that occurred on 21 January 2006.

b. Another self-authored statement in which he repeats the same information provided in the above statement. He states the first round landed about 40 to 50 feet away from him knocking him to the ground. He does not remember what happened next, but he was told that he got up and went into a nearby CONEX until the rounds stop falling. He had bad ringing in his ears and a pounding headache. He remained in the area to assist the crater analyses team at assessing the crater site. After that he was taken to the TMC on the FOB and was told that the percussion from being knocked to the ground caused a head injury and that they would have to monitor him for the remainder of the day. He had a severe headache and was prescribed Maxalt (Rizatriptan medicine for the migraines) but the ringing continued throughout the duration of the deployment. He still has the ringing and has been diagnosed with Tinnitus (continued ringing in the ears). He had short term memory loss for the rest of the deployment and continue to have memory loss to this day. They monitored him for the remainder of the day and released him back to duty for the following day. He still has ongoing migraines and must use Maxalt to help relieve them. He went through a medical board in 2011 and the results determined that he was unable to continue military service because of PTSD and TBI. The MEB board lists the TBI and PTSD as one because the TBI caused the PTSD. In March 2012 he was on the TDRL and in May 2014, he was permanently retired. At the time of the attack TBI did not meet the criteria for the award of the Purple Heart and therefor he was not submitted for one. In 2010 the criteria was changed, to include TBI by then he had been reassigned to Alaska and didn't pursue the Purple Heart. After he was medically processed, he was encouraged to submit the paperwork but was denied because more proof was needed, which he has included in this packet.

c. Sworn statement from SSG ██████ who states he and the applicant were deployed to Baquba, Iraq from November 2005 to November 2006. On one occasion, their FOB took indirect fire, and the applicant was in the vicinity where rounds landed. The force of

the blast knocked him to the ground, but he was able to get back up and take cover inside a metal container until the attack was over. After the attack, he started complaining of headaches, severe pain and ringing in both ears. He was taken to the TMC where he appeared to be confused and had signs of memory loss. He remained in the TMC for one day for further evaluation and monitoring. He continued to complain of headaches and ringing in both ears for the remainder of the deployment. He continued medical evaluations throughout the deployment, including behavioral health and combat stress control.

d. VA rating Decision dated 24 August 2011, that reflects service-connection for a variety of medical conditions including PTSD, TBI, and other conditions.

e. Post-Deployment Questionnaire, 6 December 2011, in which he marked headaches, dizziness, and ringing ears.

5. On 20 January 2022, AHRC – Awards and Decorations Branch denied his request. The denial memorandum states:

a. AHRC remains unable to authorize issuance of this award. In order to determine eligibility for the Purple Heart, this office 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 600-8-22 (Military Awards), Paragraph 2-8. Without this documentation, we will not be able to process your request.

b. Please note, AHRC cannot utilize post-deployment medical documentation as the sole basis for award of the Purple Heart; they must review medical documentation as described above. Further, when considering award of the Purple Heart for mild Traumatic Brain Injury (mTBI) or concussion that did not result in loss of consciousness, a Soldier must have been restricted from full duty for a period of greater than 48 hours based on persistent signs, symptoms, or findings of functional impairment resulting from the concussion event. Combat theater and unit command policies mandating rest periods, light duty, or "down time," or the administration of pain medication in the absence of persistent symptoms of impairment, do not constitute qualifying treatment for a concussion injury. Based upon the provided information, it does not appear he was diagnosed with a qualifying injury on or immediately after the mortar attack on January 21, 2006, nor was he treated in accordance with regulatory policy. As such, AHRC remain unable to authorize issuance of the Purple Heart for this event.

c. Although this response is not favorable, in no way does it detract from his faithful and dedicated service to our Nation.

6. By regulation (AR 600-8-22), award of the Purple Heart 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.

BOARD DISCUSSION:

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. 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 found no evidence of a loss of consciousness or restriction from full duty for at least 48 hours after the incident. The Board also found no medical documentation at or close to the time of this incident. Therefore, the Board agreed with AHRC and determined the applicant's incident does not meet the criteria for award of the Purple Heart.

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.

8/14/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Title]

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:

(1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(2) Injury caused by enemy-placed trap or mine.

(3) Injury caused by enemy-released chemical, biological, or nuclear agent.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Concussion injuries caused, as a result of enemy-generated explosions.

(6) 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:

(1) Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951).

(2) Trench foot or immersion foot.

(3) Heat stroke.

(4) Food poisoning not caused by enemy agents.

(5) Chemical, biological, or nuclear agents not released by the enemy.

(6) Battle fatigue.

(7) Disease not directly caused by enemy agents.

(8) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

(9) Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.

(10) Post traumatic stress disorders.

(11) Airborne (for example, parachute/jump) injuries not caused by enemy action.

(12) Hearing loss and tinnitus (for example: ringing in the ears).

(13) 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.

(14) Abrasions and lacerations (unless of a severity to be incapacitating).

(15) Bruises (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer)

(16) Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).

(17) First degree burns.

//NOTHING FOLLOWS//