

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20230013486

APPLICANT REQUESTS: award of the Purple Heart (PH).

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters, 82d Airborne Division Orders 011-01
- North Atlantic Treaty Organization (NATO) travel order 011-02
- Headquarters (HQ), Combined Joint Task Force (CJTF) – 82 permanent orders
- Headquarters, 2nd Battalion, 508th Parachute Infantry Regiment memorandum
- DA Form 638 (Recommendation for Award) and Army Commendation Medal (ARCOM) certificate
- NATO certificate
- CJTF-82 Certificate of Achievement
- Soldier Deployment History Outprocessing Report
- Enlisted Record Brief (ERB)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (DVA) Rating Decision
- Letter addressed to U.S. Army Human Resources Command, Awards and Decorations Branch
- Two (2) U.S. Army Human Resources Command letters

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. While deployed to Afghanistan in 2007, he suffered a head injury from enemy fire, rocket propelled grenade (RPG), which resulted in a mild traumatic brain injury (mTBI). Upon the unit's return stateside, he had his first (and last) chance to get it officially documented during the Post-Deployment Health Assessment (PHA). But

before he could, they were all instructed by their team and squad leaders not to mention any head injuries, traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), stress, depression, anxiety or any other mental trauma which could result in becoming Medically Non-Deployable (MND) and if they did mention anything resulting in becoming MND, it would lead to negative counseling. As result, his service treatment record for the post deployment health assessment (PHA) reflects that he denied any head injury during while deployed."

b. He believes this correction, supported by various documents and statements, to his PHA in his Chronological Record of Medical Care sets the record straight and will allow him to be considered for the Purple Heart Award with the current Army Regulation. This award will allow him to share his story with his daughters. This correction and a PH award would also allow him to transfer his unused education benefits to his daughters.

3. The applicant provides:

a. Headquarters, 82d Airborne Division orders 011-01, dated 11 January 2007, reflects the unit the applicant was assigned to was deployed in a Temporary Change of Station (TCS) to Central Command (CENTCOM) Area Of Responsibility (AOR), with an effective date on or about 5 February 2007.

b. NATO Travel order 011-02, dated 11 January 2007, served as travel orders for the unit the applicant was assigned to, with date of departure of 5 February 2007 and an expected date of return of 4 February 2008

c. HQ, CJTF – 82 permanent orders 174-065, dated 23 June 2007, reflects the applicant was awarded the Combat Infantryman Badge for being engaged in active ground combat on 28 April 2007.

d. Headquarters, 2nd Battalion, 508th Parachute Infantry Regiment memorandum, dated 28 December 2007, Subject: Eligibility and Wear of Expeditionary and Service Awards from Operation Enduring Freedom (OEF), specifies which awards are authorized to the Paratroopers of 2-508<sup>th</sup> PIR for their deployment to OEF VIII.

e. DA Form 638 and ARCOM certificate, which reflects the applicant was recommended and awarded an ARCOM for his exceptional dedication and unmatched service as a designated marksman while deployed in Afghanistan from 13 February 2007 to 2 May 2008.

f. NATO certificate reflects the applicant was awarded the Non Article 5 NATO Medal for service with NATO in relation to the ISAF Operation during the period of 15 February 2007 to 9 April 2008.

g. CJTF-82 Certificate of Achievement was awarded to the applicant for exceptionally meritorious achievement while deployed to Afghanistan in support of Operation Enduring Freedom VIII.

h. Soldier Deployment History Outprocessing Report, dated 26 August 2008, reflects the following:

- From 16 October 2006 thru 21 November 2006, the applicant was reported as unit training, for the purpose of designated training area, in the U.S. for 36 credit days
- From 9 February 2007 thru 18 April 2008, the applicant was reported as named operation, for the purpose of war, in non-U.S. worldwide. for 434 credit days

i. ERB, dated 17 September 2008, which reflects the applicant served a 14-month combat tour (CT) in Afghanistan from 13 February 2007 thru 17 April 2008.

j. DD Form 214, which reflects the applicant was honorably released from active duty on 8 November 2008 and transferred to the Army National Guard in Dublin, CA, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 4, completion of required active service, separation code MBK, and reentry code 1. He served 3 years, 4 months, and 10 days of net active service this period. It also reflects the following:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Commendation Medal, Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Afghanistan Campaign Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon, NATO Medal, Combat Infantryman Badge, Parachutist Badge
- Item 18 (Remarks): Served in a Designated Imminent Danger Pay Area, Afghanistan, 9 February 2007 thru 18 April 2008

k. DVA Rating Decision, dated 28 January 2019, reflects the applicant was awarded service connection for Traumatic Brain Injury (TBI), 70 percent.

l. Letter addressed to Human Resources Command, Awards and Decorations Branch, dated 14 February 2021, which states the following:

(1) During my deployment to Afghanistan in 2007, I was at a firebase, FB DoaChina, in eastern Paktika Province (42S VA 953 493) as part of the ISAF mission with CJTF-82 with 3rd Platoon C-co2/5O8PIR. In the summer of 2007, Mid-July, we

were called out to provide humanitarian aid (HA) to a village northeast that was reported to be harassed by the Taliban. In addition to the HA we were to establish our presence with a patrol and recon of the area. When our unit arrived at the village, there was no one there but the livestock and everything else was locked up, which raised the Patrol's suspicions. We set up a perimeter and established security. I was kneeling next to a HMMWV using it as cover while providing security. Moments later I was knocked back on my behind against the HMMWV seeing nothing but white, with my ears ringing. One of many RPGs had detonated right in front of my truck at that moment. and when I came to a bit later, I heard my teammates yelling contact with distance and direction. We were taking various small arms, automatic gun, and RPG fire from the enemy on a ridge. Still a little dazed, I immediately dusted my face, grabbed my rifle, and started to return fire at the enemy. I got back in the truck soon after to move so our truck can support other troops in the open, and to establish a base of fire. The TIC lasted for a while longer and eventually our unit received CAS/CCA causing the remaining enemy to eventually break contact.

(2) Once we returned to base, I linked up with the platoon medic and explained that I was experiencing headaches/nausea. He gave me Ibuprofen and put me on light duty (radio watch and tower guard) for several days for a concussion. Back then the unit leadership, platoon medic and I included didn't know or understand the signs nor long term effects of TBI, so it went largely undiagnosed and untreated. Upon our return to CONUS I was told not to mention it during our PHAs by the unit leadership so I "don't get marked as Medically Non Deployable (MND) (aka brokedick)", once again missed my opportunity to get it documented and treated. It wasn't until 2018 when my Primary Care Provider at the VA referred me to the Polytrauma Specialty Clinic where I was finally diagnosed and treated for TBI through various on-going therapies. Please consider my situation for the Purple Heart Award as it would validate my experience, my contributions and my existence.

m. Two (2) U.S. Army Human Resources Command letters, dated 6 April 2021 and 18 October 2022, both of which acknowledge receipt of the applicant request for the award of the Purple Heart; however, were unable to authorize issuance of the requested award. The first denial was based on lack of medical documentation describing both diagnosis and treatment of injuries caused by the enemy, dated immediately after, or close to the incident and signed or endorsed by a medical professional in accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-8. The second denial was based on the Standard Form 600 (Chronological Record of Medical Care), dated 25 April 2008, which reflects his medical examination following the Rocket Propelled Grenade (RPG) attack in July 2007. The document states the applicant was not suffering symptoms of Traumatic Brain Injury (TBI), nor did he suffer loss of consciousness after this event.

4. Review of the applicant's service record shows:

a. He enlisted in the Regular Army on 29 June 2005 for a period of 3 years and 19 weeks.

b. The applicant deployed in support of Operation Enduring Freedom, Afghanistan, from 13 February 2007 thru 17 April 2008.

c. On 6 October 2008, the applicant enlisted in the Army National Guard of the United States for a period of 3 years, 2 months, and 3 days.

d. DD Form 214, which reflects the applicant was honorably released from active duty on 8 November 2008 and transferred to the Army National Guard in Dublin, CA, under the provisions of AR 635-200, chapter 4, completion of required active service, separation code MBK, and reentry code 1. It also reflects the following:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Commendation Medal, Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Afghanistan Campaign Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon, NATO Medal, Combat Infantryman Badge, Parachutist Badge
- Item 18 (Remarks): Served in a Designated Imminent Danger Pay Area, Afghanistan, 9 February 2007 thru 18 April 2008

e. California Army National Guard orders 282-1036, dated 9 October 2013, reflects the applicant was honorably discharged from the Army National Guard and as a Reserve of the Army, effective 8 October 2013.

5. The applicant's Interact Personnel Electronic Records Management System (iPERMS) is void of the two requests to HRC for award of the Purple Heart. Although the applicant provided the decision letters, he did not provide copies of the requests in its entirety to the Board for consideration. The absence of these pertinent documents makes it impossible for the Board to make a fair, impartial and equitable determination of the applicant's application.

6. To be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; (1) there must be proof a wound was incurred as a result of enemy action, (2) that the wound required treatment by medical personnel, and (3) 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.

7. 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 (EMR – AHLTA and/or MHS Genesis), 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 a Purple Heart for a mild traumatic brain injury (mTBI) he asserts he sustained in Afghanistan in 2007. He states:

"While deployed to Afghanistan in 2007, I suffered a head injury from enemy fire (RPG) [rocket propelled grenade] which resulted in a mTBI as described in the personal and two (2) witness statements.

Upon our return stateside, I had my first (and last) chance to get it officially documented during the Post-Deployment Health Assessment (PHA). But before I could, we were all instructed by our team and squad leaders not to mention any head injuries, TBI, PTSD, stress, depression, anxiety, or any other mental trauma which could result in becoming Medically Non-Deployable (MND) and if we did mention anything resulting in becoming MND, it would lead to negative counseling. As result, my Service Treatment Record (attached) for the PHA reflects that I "denied any head injury during while deployed."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 29 June 2005 and was honorably discharged on 8 November 2008 under paragraph 4 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005), having completed his required active service.

d. The DD 214 shows he Served in Afghanistan from 9 February 2007 thru 18 April 2008. His separation code of MBK denotes "Completion Of Required Active Service" and his reentry code of "1" signifies he was fully qualified for reenlistment.

e. No medical documentation was submitted with the application. The EMR show he was seen in theater just once, on 14 September 2007 for "Follow-up PRK [Photorefractive keratectomy] 1 year ago." He was released without restrictions.

f. Paragraph 2-8 of AR 600-8-22, Military Awards (11 December 2006), 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 record."

g. There is no probative medical evidence of any qualify wound(s) or such medical treatment in the official record.

h. JLV and submitted documentation shows he has been awarded multiple VA service-connected disabilities, including one for traumatic brain injury. However, while this demonstrates the applicant sustained a TBI at some time during his service, it does demonstrate the injury met the full requirements for the awarding of the Purple Heart IAW AR 600-8-22.

i. That the applicant sustained an mTBI while in service to his country is without question. Nevertheless, it is the opinion of the ARBA Medical Advisor the awarding of a Purple Heart is not warranted IAW AR 600-8-22.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation of the medical review, the Board concluded there was insufficient evidence which would warrant granting the awarding and adding of the Purple Heart to the applicant's official military record.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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.
  - a. The Purple Heart is awarded to any member of an Armed Force of the United States under the jurisdiction of the Secretary of the Army, who, after 5 April 1917, has



been wounded, killed, or who has died or may hereafter die of wounds received, under any of the following circumstances:

- In any action against an enemy of the United States.
- In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged.
- While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.
- As the result of an act of any such enemy or opposing Armed Forces.
- As the result of an act of any hostile foreign force.
- After 7 December 1941, certain rules apply to friendly fire
- On or after 7 December 1941, certain rules apply to Prisoners of War

b. To qualify for award of the Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer. A wound is defined as an injury to any part of the body from an outside force or agent. A physical lesion is not required.

(1) Treatment of the wound will be documented in the member's medical and/or health record.

(2) Award may be made for a wound treated by a medical professional other than a medical officer provided a medical officer includes a statement in the member's medical record that the severity of the wound was such that it would have required treatment by a medical officer if one had been available to provide treatment.

(3) 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 (to include Special Forces medics). Medics (such as combat medics – military occupational specialty 68W) are not physician extenders.

(4) A medical officer is defined as a physician with officer rank. The following are medical officers: (a) An officer of the medical corps of the Army; (b) An officer of the medical corps of the U.S. Navy; (c) An officer in the U.S. Air Force designated as a medical officer in accordance with Title 10, United States Code, section 101.

c. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action

- Injury caused by enemy emplaced trap, mine, or other improvised explosive device
- Injury caused by chemical, biological, or nuclear agent released by the enemy
- Injury caused by vehicle or aircraft accident resulting from enemy fire.
- Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract
- Concussions (and/or mild traumatic brain injury (mTBI)) caused as a result of enemy-generated explosions that result in 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

d. Examples of injuries or wounds which clearly do not justify award of the Purple Heart are as follows:

- Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951)
- Trench foot or immersion foot
- Heat stroke
- Food poisoning not caused by enemy agents
- Exposure to chemical, biological, or nuclear agents not directly released by the enemy
- Battle fatigue, neuro-psychosis, and post-traumatic stress disorders
- Disease not directly caused by enemy agents
- Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action
- Self-inflicted wounds, except when in the heat of battle and not involving gross negligence
- First degree burns
- Airborne (for example, parachute/jump) injuries not caused by enemy action.
- Hearing loss and tinnitus (for example: ringing in the ears, ruptured tympanic membrane)
- Mild traumatic brain injury (mTBI) that does not result in loss of consciousness or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function
- Abrasions or lacerations (unless of a severity requiring treatment by a medical officer)
- Bruises or contusions (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer).
- Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth)

//NOTHING FOLLOWS//