

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230013601

APPLICANT REQUESTS:

- award of the Purple Heart
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 20 September 2023
- Outpatient Behavioral Health Records (113 Pages)
- Medical Records, 11 August 2021
- Memorandum, U.S. Army Human Resources Command (HRC), subject: Request for Award of the Purple Heart (PH) for (Applicant), 18 May 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 his request for approval of the Purple Heart has proper documentation supporting the award. His original packet omitted a significant quantity of medical history that was added.
3. The applicant provides:
 - a. 113 pages of behavior outpatient records showing he was evaluated between September 2016 and April 2021, diagnosed with and treated for post-traumatic stress disorder (PTSD), anxiety, major depressive disorder, insomnia, and panic disorder.
 - b. A memorandum from HRC to the Commanding General, 32d Army Air and Missile Defense Command, dated 18 May 2023, showing the Chief, Awards and Decorations Branch disapproved his request for award of the Purple Heart. This memorandum reads, in part:

(1) After a thorough review of the information provided, the forwarded recommendation for the Purple Heart does not meet the statutory guidance outlined in Army Regulation 600-8-22 (Military Awards), paragraph 2-8g(16): soft tissue injuries (such as ligament, tendon, or muscle strains, sprains, and so forth) do not justify eligibility for the Purple Heart, nor do conditions such as lumbago and lumbar spondylosis. As such, we cannot authorize issuance of the Purple Heart for this event.

(2) If (Applicant) believes this determination to be unjust, he has the right to appeal to the Army Board for Correction of Military Records (ABCMR), the highest appellate authority on personnel matters. The (Applicant) may apply to the ABCMR by completing a DD Form 149 and following the submission instructions on the form. Reconsiderations must be forwarded to ABCMR through the appellate process. When submitting an appeal to ABCMR, (Applicant) must provide a copy of this memorandum to verify he has exhausted all available administrative remedies. This determination in no way reflects negatively on his honorable service to our Nation.

4. A review of the applicant's service records show:

a. He is currently on active duty.

b. On 11 January 1996, he enlisted in the Regular Army.

c. He deployed to Iraq and was assigned as the noncommissioned officer in charge for the National Ports of Entry Transition Team (POED-TT) during Operation Iraqi Freedom (OIF) between 11 May 2009 and 3 May 2010.

d. On 9 April 2010, he was awarded the Bronze Star Medal (2OLC) for meritorious service during OIF.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board determined 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. The Board did not find documentary evidence that clearly or explicitly shows criteria for award of the Purple Heart. Based on the evidence, the Board determined the applicant does not meet the criteria for award of the Purple Heart.

BOARD VOTE:

1	2	3	GRANT FULL RELIEF
4	5	6	GRANT PARTIAL RELIEF
7	8	9	GRANT FORMAL HEARING
10	11	12	DENY APPLICATION

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.

3

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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

3. 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.

c. Paragraph 2-8c provides that to qualify for award of the PH the wound must have been of such severity that it required treatment, not merely examination, by a medical officer.

d. Paragraph 2-8g(16) provides soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth) is an example of an injury which does not justify eligibility for the PH.

e. Paragraph 2-8f(6) provides for award of the PH in the case that 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. Refer to paragraph 2-8i for additional information.

d. Paragraph 2-1 provides steps for awarding the PH. It reads, in part:

- recommender completes top section of DA Form 4187, places address of the approval authority in the TO box, places address of intermediate commander in the Thru box, and places parent unit address in the From box
- the company commander/officer in charge/supervisor verified all data on the DA Form 4187 and all enclosures
- approval authority makes final decision on command endorsement of award of the PH

//NOTHING FOLLOWS//