

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230014048

APPLICANT REQUESTS: reconsideration of his previous request for award of the Combat Action Badge for actions performed during his service in Operation Iraqi Freedom.

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

- self-authored statement requesting reconsideration, 5 October 2023
- statement, Colonel MAP, U.S. Army, Retired, undated
- statement, Master Sergeant, BJ, 4 October 2023
- ABCMR Record of Proceedings, AR20190009858, 14 November 2019
- Department of the Army, Department of Defense, 578.71
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- memorandum for record, Colonel MAP, 22 August 2018 (Original statement)
- memorandum, U.S. Army Human Resources Command (AHRC), 17 June 2019
- AHRC, Awards and Decorations Branch, "Basic Information Required for Retroactive Award of the Combat Action Badge
- Senatorial Correspondence, 29 September 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20190009858 on 14 November 2019.

2. The applicant's statements are provided to the Board to review in full, and below in summary:

a. The applicant states the record of proceedings from the ABCMR states "Evidence of an injustice must be included when submitting a retroactive award request including why the badge was not awarded in theater by the appropriate approval authority." The Combat Action Badge was not created until after he returned to the United States from deployment. The award was approved on 2 May 2005. He returned to the United States from Iraq on 7 February 2005 and his mobilization orders ended 13 March 2005. It would be impossible to submit for an award in theater when the award was not yet

created. This is erroneous to require evidence of injustice for this reason if the award did not exist while he was in theater. Based on the eligibility criteria in place in 2005, he was entitled to the award of the Combat Action Badge. The only reason it was not awarded in 2005 is due solely to a failure to timely process the award by the unit.

b. Newly submitted evidence from Colonel (Retired) MP, the commander of the 498th Transportation Company during the deployment, and from Master Sergeant BJ, the Operations Noncommissioned Officer in Charge during the deployment provides evidence of the injustice that had occurred. The evidence explains and shows that the request for the Combat Action Badge was originally submitted for several Soldiers in early 2005, however, the requests were not submitted properly and were returned for correction. Due to administrative personnel changes within the unit during this time, the corrections were not made, and therefore the awards were not resubmitted. Colonel (Retired) MP stated in his original retroactive statement, "[The applicant] should have been awarded the Combat Action Badge relating to the fact there was an original intent to award the Combat Action Badge. This was at no fault of the Soldier and reflects an injustice to which he is entitled to the relief. He further accepts responsibility for the injustice and requested the approval of the award, and in doing so, relief.

c. He asks that the ABCMR reconsider the previous determination and find the evidence substantial to approve the relief in his case. He has met all the requirements for the Combat Action Badge when it was first created in 2005, as apparent by the evidence submitted in the retroactive request. Even though it would not be possible to submit for an award that was not created while in theater (resulting in an error by denying the retroactive award based on this prerequisite), he has submitted evidence showing that an injustice had occurred by the unit's failure to correct, resubmit, and follow-up with the awards needing correction.

3. The applicant enlisted in the U.S. Army Reserve (USAR) on 6 December 2000. He was trained in and qualified as a motor transport specialist. He was assigned to a troop program unit.

4. On 15 December 2003 he was mobilized with his USAR unit to support Operation Iraqi Freedom. He served in Kuwait and Iraq from 6 February 2004 through 7 February 2005 serving in an imminent danger pay area, in military occupational 88M, Motor Transport Operator.

5. On 13 March 2005 the applicant was honorably released from active duty and returned to his USAR troop program unit status. He was issued a DD Form 214 which states he served 1 year, 2 months and 29 days of active service in support of Operation Iraqi Freedom.

6. The applicant previously provided a/an:

a. Previously provided and considered undated statement from Sergeant OD (Retired) who stated, in summary, on 7 August 2004 he and Staff Sergeant Potxxx were preparing for convoy operations with the applicant. The applicant was in the second or third truck in the convoy. It was a quiet morning, and they were driving to Mosul, Iraq. As he was in the lead vehicle he was scanning and observing the movement of the convoy. He noticed a significant gap between the vehicles. He instructed his driver to adjust his speed when he saw a glare off to his left. He believed the glare was from a set of binoculars. There was a concrete median that abruptly exploded sending debris (shrapnel, ball bearings, concrete, etc.) into the immediate area of the convoy. The applicant, without concern for his own safety, ran from his vehicle to Sergeant OD's vehicle to assist in recovery operations. The applicant with fellow Soldiers secured the area by laying down suppressive fire with their machine guns on both sides of the main supply route. The applicant also administered first aid to Sergeant OD. He concludes by saying the applicant is a hero and deserves the badge.

b. Previously provided and considered Memorandum for Record from the applicant's former commanding officer dated 22 August 2018, who stated, in summary, the applicant should have been awarded the Combat Action Badge for his actions on 7 August 2004. The applicant served as the unit combat lifesaver. He was part of a convoy heading north to Mosul on a supply route. The terrain was flat with vegetation and fields on both sides of the road. The weather was dry with temperatures above 100 degrees Fahrenheit. The convoy consisted of military vehicles from his unit and an attached unit.

(1) The convoy approached a concrete culvert in the median between the North and South bound lanes when the culvert exploded sending concrete and shrapnel towards the convoy. The first vehicle in the convoy was struck and disabled by the explosion. Small arms fires erupted from both sides of the road as the convoy came under attack by enemy forces. The convoy stopped movement and set up a hasty column formation to return fire and to recover the wounded Soldiers from the disabled gun truck.

(2) The second vehicle pulled around the disabled truck to provide security while the applicant in the third truck pulled up to the driver's side of the disabled truck to retrieve the wounded Soldier. The applicant exited his vehicle to render combat lifesaving actions on the wounded Soldier. Without regard to his own safety, the applicant carried a wounded Soldier out of the kill zone to an area between the vehicles.

(3) He returned to the disabled vehicle with two Soldiers to retrieve the remaining wounded Soldier. The wounded Soldier had to be carried to a secure area and the applicant commenced combat lifesaving actions. He continued providing medical treatment to the wounded until a medical evacuation helicopter arrived to

transport the wounded to a safer location. He helped evacuate the wounded Soldiers then returned to his mission as part of convoy operations.

c. Previously provided and considered Memorandum for Record from Sergeant First Class RTH dated 23 August 2018, who states, in effect, he was in the rear truck gunner for the unit during Operation Iraqi Freedom II. The applicant was in the third vehicle of the convoy heading towards Mosul on 7 August 2004 when he heard an explosion coming from the front of the convoy. He turned and saw smoke from the explosion. There were not a lot of vehicles in the convoy so they used what they had to block off the road to prevent other vehicles from entering the convoy by lining up on the sides of the road. At the time the convoy was receiving small arms fire and he was returning fire by shooting small bursts at a building he believed the small arms fire attack was coming from. He saw the applicant bring the driver and the gunner from the damaged vehicle to the center of the convoy. After the attack he helped set up a landing zone for the medical evacuation of the wounded by helicopter. During the medical evacuation he pulled security duty while the applicant helped load the wounded Soldiers onto the helicopter.

8. On 17 June 2019, the AHRC sent the applicant's commanding officer a letter informing him the applicant's request for the Combat Action Badge was denied. The Chief of the Awards and Decorations Branch stated the event does not meet the statutory guidance for the Combat Action Badge. Specifically, retroactive award of the badge is authorized for fully qualified individuals. However, the regulation stipulates awards will not be made unless there is evidence of an injustice. It provided guidance saying for retroactive award it must include justification reviewed by the wartime chain of command explaining why the award was not awarded in the combat theater. The applicant was advised he could seek relief through this Board. (Of note the Combat Action Badge was established after the applicant was demobilized in 2005).

9. The applicant provides a/an:

a. New evidence: Undated statement from Colonel (Retired) MP, who claims, in effect, on 7 August 2004, he and others were engaged by enemy forces while conducting convoy operations in Samarra, Iraq. The applicant engaged the enemy and administered first aid to injured Soldiers. To recognize the acts of engagement by hostile forces that occurred on 7 August 2004, several Soldiers were submitted for the Combat Action Badge around May of 2005, including the applicant. The award was submitted as a group award to the battalion. During this time, there was a substantial change of administrative and command personnel within the 498th Transportation Company. Those who submitted and were tracking the Combat Action Badge request were no longer in the 498th Transportation Company. The request for the Combat Action Badge was eventually returned for correction, citing the awards had to be submitted individually. The incoming administrative personnel did not follow-up to make

corrections or resubmit the award. Several Soldiers, including the applicant, deserved the badge solely based on the events that transpired on 7 August 2004, however, due to no fault of the Soldiers, their requests were not corrected nor resubmitted. The lack of correcting and resubmitting the request for the Combat Action Badge for the Soldiers within a timely manner was a disservice that resulted in an injustice, an error on part of the unit that affects the Soldiers. A group of Soldiers honorable actions were ignored, which resulted in the retroactive request for the Combat Action Badge. He served as the commander during this time and served as battalion commander of this unit and takes full responsibility for this administrative mishap. Please award this deserving Soldier the Combat Action Badge.

b. New evidence: Statement from Master Sergeant BJ, 4 October 2023, who claims, in effect, in 2005, an award request for the Combat Action Badge was initially sent by the 498th Transportation Company, then commanded by Colonel (Retired) MP via his admin staff. Due to the fact that the award was sent combined with others, the award request was returned to be broken up individually. The admin section was understaffed due to restructure immediately after the deployment and the command team was in the process of a change of command. The rear detachment and the returning Soldiers taking their leave caused a lack of fluidity in the S1 staff. Regrettably, and at no fault to the Soldier, the award request was not prioritized and eventually lost or sent to a Soldier that had left the unit. This reorganization unintentionally caused inadvertent delays in processing many other such requests, including the one they had submitted. The oversight in communication resulted in the request for the award correction not being returned for necessary action or correction. While they acknowledged their responsibility to ensure accuracy and precision in all matters related to awards and recognitions, they regret that their staffing challenges and leadership transition hindered them from returning the award for corrections as they should have. He was on the deployment and was the first sergeant of the 498th from 2014 through 2016. Please help him get the Soldiers the awards that they earned.

c. ABCMR Record of Proceedings Docket Number: AR20190009858, 14 November 2019, CFR-2008-title32-vol3-sec578-72, and a paper titled, "Basic Information Required for Retroactive Award of the Combat Action Badge presumably from AHRC Awards and Decorations Branch.

10. The Combat Action Badge is not intended to recognize Soldiers who simply serve in a combat zone or imminent danger area. Battle participation credit alone is not sufficient; the unit must have engaged or been engaged by the enemy. The applicable regulation states, in pertinent part, that in order to qualify for the Combat Action Badge, a member must be performing assigned duties in an area where hostile fire pay or imminent danger pay is authorized; he/she must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement; and he/she must not be assigned or attached to a unit that would qualify

the Soldier for the Combat Infantryman Badge or Combat Medical Badge. On or after 5 March 2019, a Soldier must also be performing an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board went over the criteria for the Combat Action Badge (CAB). It is not intended to recognize Soldiers who simply serve in a combat zone and battle participation credit alone is not sufficient; the unit must have engaged or been engaged by the enemy. The member must be performing assigned duties and personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement; and later, the Soldier must also be performing an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy. The Board noted that the evidence shows the applicant was part of a convoy that encountered a detonation on 7 August 2004 in Samarra, Iraq. The applicant was in the second or third truck in the convoy. The statements confirm the applicant and other Soldiers secured the area and the applicant administered first aid to injured Soldiers. The multiple statements provided focus on the administrative errors in the submission and/or resubmission of a request for the CAB. However, none of the statements make it clear that the applicant was performing an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy. As such, the Board affirms the previous decision of insufficient evidence the applicant meets the criteria for the CAB.

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 to amend the decision of the ABCMR set forth in Docket Number AR20190009858 on 14 November 2019.

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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. 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. Instructions state the requirements for award of the Combat Action Badge are branch and military occupational specialty immaterial. Assignment to a combat arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations, is not required to qualify for the Combat Action Badge. However, it is not intended to award the Combat Action Badge to all Soldiers who serve in a combat zone or imminent danger area. Award of the Combat Action Badge is not automatic and will not be awarded solely based on award of the Purple Heart. The Combat Action Badge may be awarded to any Soldier. Paragraph 8-8 states specific eligibility requirements which include:

a. Soldier must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement, in an area where hostile fire pay or imminent danger pay is authorized. For all named conflicts beginning after 5 March 2019, a Soldier must also be performing in an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy. A Soldier must be performing their assigned duties associated with the unit's combat mission in an area where hostile fire pay or imminent danger pay is authorized.

b. Soldier must be performing assigned duties in an area where hostile fire pay or imminent danger pay is authorized. The requirement for hostile fire pay or imminent danger pay does not apply to cases determined to be eligible under the conditions described in paragraph 3-8c.

c. Soldier must not be assigned or attached to a unit that would qualify the Soldier for the Combat Infantryman Badge/Combat Medical Badge. For example, an 11B (Infantryman) assigned to Corps staff is eligible for award of the Combat Action Badge. However, an 11B assigned to an infantry battalion is not eligible for award of the Combat Action Badge.

d. In addition to Army Soldiers, the Combat Action Badge may also be awarded to members of other U.S. Armed Forces and foreign military personnel assigned to a U.S. Army unit, provided they meet the above criteria.

e. Award of the Combat Action Badge is authorized from 18 September 2001 to a date to be determined. Award for qualifying service in any previous conflict is not authorized.

f. Second and subsequent awards of the Combat Action Badge are as follows:

(1) Only one Combat Action Badge may be awarded during a qualifying period.

(2) Second and subsequent award of the Combat Action Badge will be indicated by super-imposing one and two stars respectively, centered at the top of the badge between the points of the oak wreath.

g. Retroactive awards of the Combat Action Badge are not authorized prior to 18 September 2001.

3. 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 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//