

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20230014424

APPLICANT REQUESTS: in effect,

- amendment of his medical records to reflect he was injured due to an explosion which resulted in a traumatic brain injury (TBI)
- award of the Purple Heart

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Photo of rated disabilities
- Excerpt of Army Regulation (AR) 600-8-22 (Military Awards), Paragraph 2-8
- SF 600 (Chronological Record of Medical Care), 23 April 2013
- SF 600, 5 September 2013
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 12 January 2014
- U.S. Army Human Resources Command (HRC) denial letter, 19 August 2016
- HRC denial letter, 8 July 2021
- Incident statement (Applicant)
- Witness statement (J.P.)
- Witness statement (Z.L.G.)
- Enlisted Record Brief

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 his injuries from deployment added to his medical records. It was not documented correctly so he needs it added. He also applied for the Purple Heart and it was declined because his medical records are not correctly annotated.

a. When he was blown up it was not properly noted in his medical records. It was a month later that the TBI problems from the blast were finally added to his record. He feels leadership failed to ensure proper steps were taken. He now has proof that he has a TBI related injury and should be documented accordingly. He had to regain some speech and memory troubles from TBI. On 2 November 2012, he was blown up.

b. In a self-authored statement, he stated during the time he served he was never under any Non-Commissioned Officer (NCO) who made sure he was taken care of. He says that because now that he is older and in supervisory positions, he now sees what it takes to lead a team. He had no clue as a young soldier what he was doing when it came to making sure things were properly documented. During the deployment, when he was injured, he did not have one NCO take the proper steps that he now knows should have been taken when injured like he was.

c. Once he got out of the military, he started talking to a Veteran Agency that help with young men (at the time) like himself. They mentioned he qualified for the Purple Heart and they were in shock that he had not received it, again, leadership never made him aware to that. So, he applied for the Purple Heart thru HRC. He received a letter declining it because they needed proof. He spent the last couple years gathering what proof HRC needed showing he had TBI in his records after the blast. He contacted Veterans Affairs (VA) disability representation.

d. Had he known that he had 3 years to get his medical records corrected, he would have done so right away. If it was not for the representative reviewing his records that showed him why it was not documented properly and the steps that he needed to take to apply. So that is why he is now applying to have them corrected. It was lack of understanding what all it meant as a young soldier to ensure that things were documented properly. Please see all attached letters (proof stating what happened while he was deployed) and medical records showing what he was seen for after being blown up and that he did receive a TBI from it.

e. In an incident statement by the applicant he stated on 2 November 2012, he and his platoon were traveling down highway 1 on a daily route clearance patrol from Forward Operating Base (FOB) Warrior, to about 40 clicks (kilometers) north and back, then 10 clicks south and back. He was the designated Buffalo A2 operator, so his job was to find, interrogate, and properly dispose of any explosives that were discovered. As the platoon were rolling north on highway 1, they came across a previous blast hole in the road that had over half the road caved in 6-8 ft deep.

f. The Copperhead unmanned aerial vehicles they had flying in the sky all night gave them intel that there was an unusual amount of activity there the night prior. He drove the Buffalo to the side of the hole, so he was ground level while interrogating the hole. He used the claw and pressurized air to dig around the previously fallen, large

chunks or asphalt that had fallen in the hole, only to find nothing. He then began lifting on pieces of asphalt with the arm to see if there was anything underneath and deem it safe and clear for the rest of the platoon to drive by. As he lifted several pieces of asphalt, one piece in particular caused an explosion and was so large it pushed the Buffalo A2 backward and tore his interrogation arm to shreds.

g. Dismounts were over 400 yards away pulling security and could hear 10+ pound pieces of armor whizzing over their heads. He fell unconscious along with his gunner, and no one could get them on communication radios for upwards of a reported 2-3 minutes. The medic made his way to their vehicle to inform them of what had happened, and the applicant told him he was still seeing gray spots (stars) and was still too dazed and confused to communicate effectively. He had them rest a few, after they snapped out of it, they drove back to the FOB. After they had been back to the FOB for upwards of an hour, the medic came to perform a Military Acute Concussion Evaluation (MACE) test to check for a concussion, which he and his gunner both scored poorly on.

3. The applicant enlisted in the Regular Army on 2 November 2010. He held military occupational specialty 12B (Combat Engineer).

4. He served in Afghanistan from 9 July 2012 to 9 April 2013.

5. He was awarded the Combat Action Badge on 16 September 2012, for engaged or engaging the enemy.

6. The applicant provides:

a. SF 600, 23 April 2013, showing he was being seen for a headache. It stated patient reports loss of consciousness while operating a military vehicle on IED patrol during explosion of IED. Patient reports that he did not hit his head but that possibly the blast knocked him unconsciousness. He reports being dazed and confused times a few minutes. No issues with vision. Reports intermittent tinnitus in both ears when it is quiet. Reports current issues with memory and concentration. No headaches reported currently. He was having headaches all day everyday x 2 months after incident. Dull pain near both temples with no nausea, vomiting, and with sensitivity to light during the headaches. MACE exam performed the night of incident. No visit to licensed profession until a month later. No previous head injury.

b. SF 600, 5 September 2013, showing his reason for visit was TBI follow-up for headaches and heterotopic ossification concussion.

7. The applicant was honorably released from active duty to attend civilian school on 12 January 2014. His DD Form 214 shows he was awarded or authorized:

- Afghanistan Campaign Medal with 2 campaign stars
- Army Commendation Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- NATO Medal
- Combat Action Badge
- Driver and Mechanic Badge
- Driver and Mechanic Badge with Driver Wheeled Device

8. The applicant provides:

a. Photo of rated disabilities highlighting post-traumatic stress disorder and TBI rated at 70 percent effective 13 January 2014.

b. Excerpt of AR 600-8-22, Paragraph 2-8 describing the Purple Heart in which the applicant underlined f (2) which states injury cause by enemy trap, mine, or other improvised explosive device.

c. HRC denial letter, 19 August 2016, which HRC stated after careful consideration and consultation with the United States Army HRC Surgeon's office, his request for an award of the Purple Heart for injuries received while deployed in support of Operation Enduring Freedom is disapproved. After a thorough review of the information provided, the award of the PH for this particular event does not meet the statutory guidance in accordance with Army Regulation AR 600-8-22, paragraph 2-8h (13). There are no medical records in Armed Forces Health Longitudinal Technical Application in proximity to the incident date and the submitted hardcopy medical documentation does not show a diagnosis of Traumatic Brain Injury (TBI) from the time of the incident. The lack of supporting medical documentation in AHLTA combined with the submitted documentation makes it impossible to connect an injury to the incident.

d. HRC denial letter, 8 July 2021, which HRC stated in further response to his request concerning his desire to obtain an award of the Purple Heart for injuries received while deployed to Afghanistan in support of Operation Enduring Freedom. HRC remained unable to render favorable action concerning this matter. Per HRC previous correspondence dated 19 August 2016, the incident in question does not meet the regulatory guidelines as outlined in AR 600-8-22, paragraph 2-8. HRC reviewed the newly provided medical documentation and witness statements; however, there is no formal diagnosis or treatment of a qualifying injury as required by Army regulation. As such, HRC's previous determination remains unchanged.

e. Witness statement by (J.P.) stating the applicant was a vehicle operator for a specified piece of equipment built for interrogating improvised explosive devices or IED. During this deployment. He can recall two instances when on mission the vehicle the applicant was operating and inside of was blown up by an IED.

f. Witness statement by (Z.L.G.) stating he and the applicant were on route clearance patrol with their platoon. While on patrol the dismount team had come across an IED at which time they called for himself and the applicant to come uncover it with the arm of their vehicle. While the applicant was using the arm to uncover the IED, he lifted the bolder in the road covering it and the IED detonated. Once the IED detonated it through the arm over their discounts heads over 600 meters away, it cracked the front windshield, and knocked himself and the applicant unconscious for around 10 to 15 seconds, during the time of unconsciousness the entire unit was calling for them over the radio and got no response for about 15 seconds. After the discounts cleared around the truck for secondaries, after the truck had been cleared of secondaries the medic came to the truck and gave them both a MACE test to decipher if they had a concussion and they both had been diagnosed with a concussion. They then finished the mission and returned to the post. After about 30 minutes of returning from the mission they received another MACE test and failed it for the second time.

9. By regulation, (AR 40-66) prescribes policies for preparing and using medical reports and records for Soldiers receiving medical treatment or evaluation in an Army military treatment facility.

10. 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 to have his medical records modified and a Purple Heart for a mild traumatic brain injury (mTBI). He states:

“When I got blown up, it was not properly noted in medical records. It was a month later that they finally added TBI problems from the blast. I feel like leadership failed to ensure proper steps were taken. I now have proof that I have a TBI connected injury and should be documented accordingly.”

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 2 November 2010 and was honorably discharged on 12 January 2014 under paragraph 5-16 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Early separation to further education.

d. Paragraph 2-8 of AR 600-8-22, Military Awards (15 September 2011), 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 records."

e. Paragraph 2-8k(3) of 600-8-22 succinctly lists the requirements for this award:

Each approved award of the Purple Heart must exhibit all of the following factors: wound, injury or death must have been the result of enemy or hostile act; international terrorist attack; or friendly fire (as defined in paragraph b(8) above) the wound or injury must have required treatment by medical officials; and the records of medical treatment must have been made a matter of official Army records."

f. In a 23 April 2013 EMR encounter, the applicant tells the provider he had previously sustained a brief loss of consciousness for an improvised explosive device (IED) detonation, was not treated and the time, his headaches had resolved, and he was currently having some memory issues and tinnitus:

"Patient reports loss of consciousness while operating a military vehicle on IED patrol during explosion of IED. Patient reports that he did not hit his head but that possibly the blast knocked him unconsciousness. He reports being dazed and confused for a few minutes. No Issues with vision.

Reports intermittent tinnitus in both ears when it is quiet. Reports current issues with memory and concentration. No headaches reported currently. He was having headaches all day everyday x 2 months after incident. Dull pain near both temples with no nausea, vomiting, and with sensitivity to light during the headaches. MACE

[military acute concussion evaluation] exam performed the night of incident. No visit to licensed professional until a month later. No previous head injury.”

g. The provider diagnosed him with a history of concussion and provided him with a routine referral to the TBI clinic. He was evaluated at the TBI Clinic on 5 September 2012 at which time the date of blast was noted as approximately 4 November 2012 and that he had no significant injury at that time:

“SM [service member] was evaluated by medic immediately after blast [w]as negative for red flags [signs of significant injury requiring care] and no need to proceed with MACE evaluation. SM states that 2 days after exposure to blast he started to experience HAs [headaches] daily that are described as tension type HAs - ...”

h. Clarification of the standards for awarding a Purple Heart for a combat related TBI were provided in Army Directive 2011-07 (Awarding the Purple Heart) issued 29 April 2011. While it makes clear a concussion / mTBI may be eligible for the awarding of a Purple heart, paragraph 3 continues to maintain the eligibility criteria of AR 600-8-22:

WHEN RECOMMENDING AND CONSIDERING AWARD OF THE PURPLE HEART, THE CHAIN OF COMMAND WILL ENSURE THE CRITERIA IN PARAGRAPH 2-8 OF REFERENCE 8 IS MET, AND THAT BOTH DIAGNOSTIC AND TREATMENT FACTORS ARE PRESENT AND DOCUMENTED IN THE SOLDIER'S MEDICAL RECORD BY A MEDICAL OFFICER. PARAGRAPH 4C BELOW DEFINES MEDICAL OFFICER.

i. Paragraph 4C: “A MEDICAL OFFICER IS DEFINED AS A PHYSICIAN WITH OFFICER RANK.”

j. AR 600-8-22 requires the Soldier to be treated by a military physician or “treated by a medical professional other than a medical officer (e.g., a physician, corpsman, or combat medic) 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” (paragraph 2-8c(3).

k. No such contemporaneous medical documentation was submitted with the application or found in the EMR.

l. JLV shows the applicant has several VA service-connected disability ratings, including 10% for tinnitus and 0% for migraine headaches. He does not have a rating for TBI.

m. It is the opinion of the ARBA medical advisor there is insufficient documentation in the official record.

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 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. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient documentation in the official record.

a. The Board concluded the record must show or the applicant must provide substantiating evidence to verify he or she was injured, the wound was the result of hostile action, and the wound must have required treatment by medical personnel and made a matter of official record.

b. The Board further concluded in events involving traumatic brain injury (TBI) and other similar injuries, the applicant's record must show the brain injury or concussion was 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.

c. The Board noted the applicant's incident statement for 2 November 2012; however, does not find, by a preponderance of the evidence, he meets the requirements necessary for the amendment of his medical records to add an entry to show he was concussed or restricted from duty for more than 48 hours in order to meet the regulatory guidance for award of the Purple Heart. The Board, therefore, denied relief.

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.

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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 (AR) 40-66 (Medical Record Administration and Healthcare Documentation) prescribes policies for preparing and using medical reports and records for Soldiers receiving medical treatment or evaluation in an Army military treatment facility.

a. Paragraph 1-6 pertains to medical record ownership. It states Army medical records are the property of the Government. Thus, the same controls that apply to other Government documents apply to Army medical records. Army medical records, other than those of Reserve Components, will remain in the custody of the Medical Treatment Facilities at all times. Reserve Component records will remain in the custody of the appointed Service Treatment Record custodian. The Armed Forces Health Longitudinal Technology Application (AHL TA) record will remain in the custody of the U.S. Army Medical Department (AMEDD) and Department of Defense via electronic storage, and hardcopy of the treatment records will be retried to the National Personnel Records Center in accordance with the records dispositions schedule in AR 25-400-2 (The Army Records Information Management System (ARIMS)).

b. Chapter 3 (Preparation of Medical Records) states that unless authorized by this regulation, only documents prepared by authorized AMEDD personnel will be filed in Army medical records. This restriction does not prohibit the use of other documents created by attending physicians and dentists outside AMEDD (Navy, Air Force, civilian, and so forth) or the filing of other documents as summaries or brief extracts. If such documents are filed, their source and the physician or dentist under whom they were prepared must be identified.

c. Medical record entries will be made in all inpatient, outpatient, service treatment, dental, Army Substance Abuse Program, and occupational health records by the healthcare provider who observes, treats, or cares for the patient at the time of observation, treatment or care. No healthcare practitioner is permitted to complete the documentation for a medical record on a patient unfamiliar to him or her. In unusual extenuating circumstances (for example, death of a provider), local policy will ensure that all means have been exhausted to complete the record.

3. AR 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. 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 medical personnel, and the medical treatment must have been made a matter of official record.

b. Paragraph 2-8e specifically states 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 in the regulation. 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.

4. U.S. Army Human Resources Command (HRC) Military Personnel (MILPER) Message Number 11-106 (Retroactive Wartime Awards and Decorations Processing Procedures), dated 5 April 2011, states the purpose of this message is to clarify the processing procedures for retroactive wartime awards and decorations. All requests that are not processed within the Theater are considered retroactive and must be processed through the former wartime chain of command and then through the peacetime chain of command to HRC.

5. HRC MILPER Message Number 11-125, dated 29 April 2011, states the Secretary of the Army approved Army Directive 2011-07 (Awarding the Purple Heart). The directive 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 mild traumatic brain and concussive injuries that do not result in a loss of consciousness).

a. HRC verified award of the Purple Heart for a TBI injury is retroactive only to 11 September 2001 and that all requests that are not processed within theater must be processed through the peacetime chain of command. Awards of the Purple Heart for injuries incurred in a previous deployment and requests that are not processed in the combat theater must be processed through the Soldier's current chain of command to the Commander, HRC. When recommending and considering award of the Purple Heart, the chain of command will ensure the Purple Heart criteria in Army Regulation 600-8-22, paragraph 2-8, are met and that both diagnostic and treatment factors are present and documented in the Soldier's medical records by a medical officer.

b. The following non-exclusive 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:

- diagnosis of concussion or mild traumatic brain injury
- any period of loss or decreased level of consciousness
- any loss of memory for events immediately before or after the injury neurological deficits (weakness, loss of balance, change in vision, praxis (i.e. difficulty with coordinating movements), headaches, nausea, difficulty with understanding or expressing words, sensitivity to light, etc.) that may or may not be transient
- intracranial lesion (positive computerized axial tomography (CAT) or magnetic resonance imaging (MRI) scan

c. The following non-exclusive list provides examples of medical treatment for concussion that meet the standard of treatment necessary for award of the Purple Heart:

- limitation of duty following the incident (limited duty, quarters, etc.)
- pain medication such as acetaminophen, aspirin, ibuprofen, etc., to treat injury
- referral to neurologist or neuropsychologist to treat the injury
- rehabilitation (such as occupational therapy, physical therapy, etc.) to treat injury

d. Combat theater and unit command policies mandating rest periods or "down time" following incidents do not constitute qualifying treatment for concussion injuries. To qualify as medical treatment, this rest period must have been directed by a medical officer or medical professional for the individual after diagnosis of an injury.

e. Paragraph 4a, states award of the Purple Heart may be made for wounds (including mTBI and concussive injuries) 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.

//NOTHING FOLLOWS//