

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20240000059

APPLICANT REQUESTS: entitlement to the Purple Heart and a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2823 (Sworn Statement), JAG, 9 September 2016
- DA Form 2823, SKK, 9 September 2016
- Memorandum, Commander, Company B, 1st Battalion, 3rd Special Forces Group (Airborne), 6 January 2017
- Memorandum, U.S. Army Human Resources Command (AHRC), 28 April 2017
- 2 x-rays, 13 April 2018
- Portion of a medical record, 28 February 2023
- Photograph
- Extract, Army Regulation 600-8-22 (Military Awards)

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, AHRC erroneously denied his request for award of the Purple Heart concluding his injuries were "not severe enough." Nowhere within the regulation does the severity of the wound justify approval or denial of being awarded the Purple Heart. What is a determining factor is whether further medical treatment is warranted. He has consistently sought after and has been receiving continued treatment for and assessments due to his blast injury and fragmentation received from a grenade while pursuing enemy forces in active combat. AHRC arbitrarily concluded a denial unjustly delaying what 3rd Special Forces Group and 1st Special Forces Command deemed a valid condition for award.

3. The applicant is currently serving in the Regular Army in the rank/grade of sergeant first class (SFC/E-7).

4. The applicant provides a/an:

a. DA Form 2823, JAG, 9 September 2016, who states, in effect, during a mission in Sagin District Helmand Province while clearing buildings he and Sergeant (SGT) AW responded to gunfire at a building. One fire team of Afghan commandos were engaging insurgents in a courtyard and room across the way with small arms and M240 fire. Due to the estimated enemy strength, he called for grenades to be thrown into the room. He and SGT AW both threw a grenade with the Afghans providing supporting fire. He called for more support to stack up and go in and, the applicant, showed up with a fire team of Afghans. He called for more grenades to be thrown and during the course of 2 more grenades being thrown by him and an Afghan Soldier, fragments flew back through the doorway. The applicant, who was standing near the doorway prepping to provide supporting fire caught three pieces of shrapnel, one striking him in the face (left cheek), left hand and one went through the butt stock of his rifle into his body armor. After all firing ceased, he heard the moans of one insurgent moving on to the afterlife. He made the decision against having Special Forces and Afghan commandos go fully in and clear because one of the Afghan grenades (a Russian grenade) did not explode and he did not want to risk it going off. However, the applicant was struck with grenade fragments while they were engaging the enemy.

b. DA Form 2823, SKK, 9 September 2016, who states, in effect, Master Sergeant JAG announced over the radio that they had received contact from a building. Shortly after the announcement, he heard several grenades exploding in the distance. After the threat had been eliminated, they continued with the operation. A few hours later, his element linked up with the applicant's element. The applicant sought him out, as he was the medic closest to his element, and explained that during the encounter that he had been near the barrage of grenades used to eliminate the threat, and that he had received shrapnel wounds to his face and hand. He examined the applicant and assessed that his wounds were not severe enough to warrant an evacuation, but that it was important to have them thoroughly investigated upon completion of the mission. Upon returning to base after the completion of the mission, he and the applicant immediately went to the field surgical team (FST) to receive x-rays and to have a more thorough assessment done by the physicians located at the FST. An x-ray was done on the applicant's left hand, as that was the injury that was causing him the most discomfort. On the x-ray, shrapnel was clearly visible in his left hand. The shrapnel did not impede circulation or sensation, so it was decided to let the shrapnel work its way out over time, instead of attempting to remove the shrapnel.

c. Memorandum, Commander, Company B, 1st Battalion, 3rd Special Forces Group (Airborne), 6 January 2017, justifying award of the Purple Heart to the applicant.

Company leadership recommended the applicant be awarded the Purple Heart for wounds sustained on 22 November 2015 by friendly fire while in pursuit of enemy forces. The applicant received fragmentation from MSG G's grenade in the face and to the left hand. The applicant ignored immediate care due to continued clearance operations. The applicant notified the detachment 18D (Special Forces Medical Sergeant) of his wounds and was monitored without medical evacuation. The applicant returned to base and he received X-rays from the FST, revealing shrapnel in his left hand. The applicant continued to receive medication for headaches throughout the remainder of the deployment. At the soldier readiness center the applicant was recommended to follow up at the traumatic brain injury (TBI) clinic due to the continued symptoms of TBI and medical recommendations for follow up treatment, the detachment was informed that the applicant is eligible to be awarded the Purple Heart for injuries sustained from friendly fire.

d. 2 x-ray images dated 13 April 2018.

e. A portion of medical record which notes back pain, knee pain and a health condition feared but not present. Stated, "reviewed the heavy metal screening with elevated arsenic level. It was not speciated, so suspect this was from organic arsenic, likely from fish. He does not have signs/symptoms or arsenic toxicity, and this will likely resolved with abstinence from seafood. Additionally, while he did not see the new hand x-ray showing the referenced fragment, it is of a size and in a location that he thinks it would be unlikely that surgeon would agree to remove it. There is a risk of damage to his hand with such a surgery that may not have significant benefit. He recommended he focus on non-surgical management If the hand is hurting: it may be related to an ulnar neuropathy which he may have on the left limb."

f. A photograph of a Soldier, presumably the applicant, with what appears to be a small circular scab on his left cheek.

g. An extract of Army Regulation 600-8-22, 5 March 2019, paragraph 2-8, which pertains to the Purple Heart. The applicant highlighted the areas within the paragraph he deemed relevant.

5. On 28 April 2017, the Chief, Soldier Programs and Services Division, AHRC, disapproved his request for the Purple Heart for injuries received while deployed in support of Operation Enduring Freedom. After a thorough review of the information provided, award of the Purple Heart for this particular event did not meet the statutory guidance outlined in Army Regulation 600-8-22, paragraph 2-8e., stating, "the supporting medical documentation from 8 November 2015, reflects [the applicant] was examined for a soft tissue injury that was not of sufficient severity to require treatment by a medical provider."

6. Army Regulation 600-8-22 contains the regulatory guidance pertaining to entitlement to the Purple Heart and 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.

7. Army Regulation 15-185 (ABCMR) states an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

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 and standard review based on law, policy and regulation. Per the regulatory guidance on awarding the Purple Heart, the applicant must provide or have in his service records substantiating evidence to verify that he was injured, 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. After reviewing the application and all supporting documents, the Board found insufficient medical evidence to meet the regulatory standard for the Purple Heart and thus recommended denying the request. As such, relief was denied.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify that 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. 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, 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.

c. When contemplating an award of the Purple Heart, the key issue that commanders must take into consideration is the degree to which the enemy caused the injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite but is not the sole justification for award.

d. Examples of enemy-related injuries that clearly justify award of the Purple Heart include concussion injuries caused as a result of enemy-generated explosions resulting in a m(mild) mTBI 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.

e. Examples of injuries or wounds that clearly do not justify award of the Purple Heart include post-traumatic stress disorders, hearing loss and tinnitus, mTBI 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.

f. When recommending and considering award of the Purple Heart for a mTBI or concussion, the chain of command will ensure that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

3. Army Directive 2011-07 (Awarding the Purple Heart), dated 18 March 2011, 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 mTBI and concussive injuries that do not

result in a loss of consciousness). The directive also revised Army Regulation 600-8-22 to reflect the clarifying guidance.

a. Approval of the Purple Heart requires the following factors among others outlined in Department of Defense Manual 1348.33 (Manual of Military Decorations and Awards), Volume 3, paragraph 5c: wound, injury or death must have been the result of an enemy or hostile act, international terrorist attack, or friendly fire; and the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound shall be documented in the Soldier's medical record.

b. 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 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.

c. A medical officer is defined as a physician with officer rank. The following are medical officers: an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer in accordance with Title 10, United States Code, Section 101.

d. 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 (for example, independent duty corpsmen and Special Forces medics). Basic corpsmen and medics (such as combat medics) are not physician extenders.

e. When recommending and considering award of the Purple Heart for concussion injuries, the chain of command will ensure that the criteria are met and that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

f. The following nonexclusive 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:

- (1) Diagnosis of concussion or mTBI;
- (2) Any period of loss or a decreased level of consciousness;
- (3) Any loss of memory of events immediately before or after the injury;
- (4) Neurological deficits (weakness, loss of balance, change in vision, praxis (that is, difficulty with coordinating movements), headaches, nausea, difficulty with

understanding or expressing words, sensitivity to light, etc.) that may or may not be transient; and

(5) Intracranial lesion (positive computerized axial tomography (CT) or Magnetic Resonance Imaging scan.

g. The following nonexclusive list provides examples of medical treatment for concussion that meet the standard of treatment necessary for award of the Purple Heart:

- (1) Limitation of duty following the incident (limited duty, quarters, etc.);
- (2) Pain medication, such as acetaminophen, aspirin, ibuprofen, etc., to treat the injury;
- (3) Referral to a neurologist or neuropsychologist to treat the injury; and
- (4) Rehabilitation (such as occupational therapy, physical therapy, etc.) to treat the injury.

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

4. 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. 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//