

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 August 2024

DOCKET NUMBER: AR20240000610

APPLICANT REQUESTS:

- reconsideration of his prior request to correct his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show 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)
- Letter from the NAAB Road Surgical Group, P.C.

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210014507 on 2 March 2022.

2. The applicant requests reconsideration of his request for the Purple Heart so that he may have the award pass on to his family. Additionally, he states he cannot always make it to the Department of Veterans Affairs (VA), due to his head injuries, multiple concussions, and syncope [loss of consciousness for short periods of time] most days. He cannot even drive. But he is having surgeries, and seeing neurologists, and others outside of the VA. His current disabilities are rated 100 percent (%) disabling. He believes he meets the criteria for award of the Purple Heart. He requests the military do right by him and his family and award him the Purple Heart. He also annotated his application to show he suffers from post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues.

3. The applicant was ordered to active duty as member of the Army National Guard (ARNG) on 10 July 2009. He deployed to Afghanistan for the period 5 August 2009 to 2 July 2010.

4. On 19 October 2010, he was honorably released from active duty under the provisions of chapter 4, Army Regulation (AR) 635-200, due to completion of required

active service, in the rank of sergeant/E-5. The DD Form 214 he was issued shows he was awarded or authorized the:

- Afghanistan Campaign Medal with Campaign Star
- Meritorious Service Medal
- Army Achievement Medal (2nd Award)
- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Medal (2nd Award)
- Armed Forces Reserve Medal with "M" Device (2nd Award)
- North Atlantic Treaty Organization Medal
- Driver and Mechanic Badge with "S" (Special Equipment) Operator Clasp

5. The available evidence contains the following evidence:

a. DA Form 3349 (Physical Profile) showing, on 23 September 2013, he was issued a permanent profile for chronic radiating neck and low back pain, blacking out, and long-term opioid use. He was not a surgical candidate for neck and back issues. He no longer met retention standards and was referred to the medical evaluation board.

b. Memorandum from the United States Army Physical Disability Agency (USAPDA) showing, on 27 October 2014, he was advised that in accordance with the findings and recommendation of the USAPDA, he was found to have a disability and would be permanently retired with a disability rating of 80%.

c. Orders 316-1028 from Joint Forces Headquarters, Indiana showing, on 30 November 2014, he was honorably discharged from the ARNG in the rank of staff sergeant/E-6.

d. Orders 300-42 from the USAPDA showing, on 1 December 2014, he was placed on the retired list.

6. Letter from the U.S. Army Human Resources Command (AHRC) showing on 10 November 2020, AHRC advised the applicant his request was being returned for additional documentation, it was not a disapproval, rather a request for submission of missing information.

7. Letter from AHRC showing, on 3 May 2021, the applicant was informed AHRC was unable to take favorable action concerning his desire to obtain the Purple Heart and Combat Action Badge (CAB). With respect to the Purple Heart they could not utilize the forwarded documentation, such as post-deployment medical documentation and Department of Veterans Affairs (VA) Rating Decisions, to justify award eligibility. They

had not yet received military medical documentation confirming the diagnosis of and treatment for qualifying injuries from the time of the event. Therefore, without significant evidence to the contrary, they could not verify he met the regulatory criteria for award of the Purple Heart.

8. The applicant provided a letter from the NAAB Road Surgical Group, P.C., on NAAB Letterhead, dated 31 August 2023, showing the applicant was evaluated for possible removal of a foreign body in his pelvis. He was age 51, and he was originally involved in the Afghanistan conflict. While in Afghanistan he received either shrapnel or a gunshot wound, accompanied by a fall. The fall was significant, leading to TBI and a severe back injury. He required multiple procedures and would be having a cervical fusion in the near future. Prior to an MRI, he had x-rays showing a foreign body in the pelvis. In 2016, he had a "CT" scan, which appeared to show shrapnel located behind his bladder and in the tissues underneath the peritoneal reflection and anterior of the rectum. It is impossible to remove this foreign body, which most likely represented shrapnel or portion of a bullet. It was the opinion of this Surgical Group that an attempt at removal of the [foreign body] could do damage to his rectum and bladder and would not benefit the applicant at all. It was believed the foreign body should be left alone. Apparently, the military needed confirmation of this, which was the purpose of this statement.

9. AR 15-185 (ABCMR) states an applicant is not entitled to a personal appearance or video hearing before the Board. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

10. On 2 March 2022, the ABCMR denied the applicant's request for award of the Purple Heart. The Board determined there was no medical record(s) showing he received wounds caused by an enemy force that required treatment by medical personnel.

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. The Board noted the applicant's provided medical documentation indicating removal of a foreign body in his pelvis; however, could not determine clearly and convincingly it was shrapnel from an enemy force.

Based on the evidence, the Board determined the applicant does not meet the criteria for award of the Purple Heart.

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 amendment of the ABCMR decision rendered in Docket Number AR20210014507 on 2 March 2022.

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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. AR 600-8-22 prescribes policies and procedures for military awards and decorations, to include the PH.

a. The Purple Heart (PH) 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 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. When contemplating an award of this decoration, 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 the award.

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

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy-placed trap or mine
- Injury caused by enemy-released chemical, biological, or nuclear agent
- Injury caused by vehicle or aircraft accident resulting from enemy fire
- Concussion injuries caused as a result of enemy-generated explosions
- Mild TBI 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

3. AR 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//