

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240000624

APPLICANT, WITH COUNSEL, REQUESTS: reconsideration of the previous Army Board for Correction of Military Records (ABCMR) decision promulgated in Docket Number AR20190009858 on 14 November 2019. Specifically, he requests 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:

- DD Form 149 (Application for Correction of Military Record)
- 4-page legal brief dated 1 November 2023

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 AR20210005964 on 14 December 2021.

2. The applicant, with counsel states, in effect:

a. No additional documents are provided given the documents and records supporting the applicant's request are in the applicant's Official Military Personnel File (OMPF) and in the files of the ABCMR from its March 2022 consideration.

b. In the Board's 18 March 2022, decision, the panel supported the U.S. Army Human Resources Command's (AHRC) incorrect conclusion that the applicant was not "performing in an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy." Further, the Board incorrectly concluded Army Regulation 600-8-22 (Military Awards), paragraph 8-8 requires "that request for retroactive awards must also include a justification, reviewed by the wartime chain of command, that explains why the combat action badge is not awarded in theater."

c. Insofar as the applicant was engaged in defensive combat operations between March 2003 and February 2004, a justification by his wartime chain of command would be impossible to obtain. A justification was, however, provided by his then current chain

of command who was familiar with the applicant's service. The prior (and denied) request was also supported through statements by other Soldiers awarded the Combat Action Badge in the same Improvised Explosive Device (IED) explosion and Rocket Propelled Grenade (RPG) blast; in the same vehicle convoy; in the same vehicle in which the applicant was traveling; and, within mere feet of the applicant when the explosions occurred. Further, given that the Army Regulation 600-8-22 criteria was not approved until years after the Chief of Staff of the Army's 5 May 2005, approval of the creation of the Combat Action Badge, reconstructing the applicant's wartime chain of command would be nearly impossible, and wholly unnecessary given the facts, the supporting documents provided, and the administrative regulatory reality nearly 20 years after the facts and the enormous movements, changes, and other administrative machinations the Army has undergone since those very first days of the War on Terrorism.

d. As was previously provided to the ABCMR, from March 2003 to February 2004, the applicant (then serving in the rank of Captain) was deployed to Iraq in support of Operation Iraqi Freedom. He served as the battalion intelligence officer during this period and was assigned to Forward Operating Base (FOB) Pacesetter. The applicant was responsible for partaking in daily combat patrols to maintain accurate intelligence assessments of the battalion area to secure the unit and collect intelligence. During one of these patrols, the applicant came under direct enemy small arms fire, then was subject to fire from an IED. On 24 October 2003, while out on patrol in Iraq, the enemy ambushed the applicant's patrol. The enemy was less than 100 meters away and engaged with the patrol by firing an RPG at the patrol. The RPG missed the patrol vehicles but came within 10 meters of the applicant's location. The applicant was also within 5m of impact from enemy rounds. Further, each of the applicant's patrol was awarded the Combat Action Badge as would have the applicant had his paperwork not been lost - several times. This is just one of the many instances that would qualify the applicant for the Combat Action Badge. On 18 March 2022, the ABMCR denied the applicant's application for the Combat Action Badge. This denial should be overturned as it incorrectly applies Army Regulation 600-8-22 paragraph 8-8d(2) to the facts at hand.

e. The legal standard for a combat action badge, according to Army Regulations is "A soldier must be performing in an offensive or defensive act while participating in combat operations, engaging or being engaged by the enemy." This is a two-prong analysis. The Soldier must be (1) personally present in performing an offensive or defensive task and (2) the Soldier must be engaging or engaged by the enemy.

f. Being "personally present in performing an offensive or defensive task," is defined by Army Doctrine Publication (ADP) 3-90 (Offense and Defense) which outlines the criteria and definitions for offensive and defensive actions. An offensive task can be categorized into four categories: movement to contact, attack, exploitation, and pursuit.

Defensive tasks, which are the focus of this analysis, have three categories: area defense, mobile defense, and retrograde operations. Area defense is further defined in the Army Doctrine Supplement as: "An area defense concentrates on denying enemy forces access to designated terrain for a specific time rather than destroying the enemy outright. The focus is on retaining terrain where the bulk of the defending force positions itself in mutually supporting positions and controls the terrain between positions.

g. Area defense specifically seeks to maintain and secure a perimeter, without outright attacks on an enemy. The applicant's responsibilities at the time included daily patrols to maintain an accurate intelligence assessment of the battalion's location. This task is a quintessential function of area defense. Without the applicant's intelligence analyses and assessments, the battalion's stronghold could be compromised. The applicant's assessments were crucial to the security and safety of the battalion's location and meet the criteria for an area defense task.

h. "Engaging or engaged by the enemy" is defined under Chapter 1 of the ADP 3-90 as "a tactical conflict, usually between opposing lower echelon maneuver forces ... Engagements result from deliberate closure with or chance encounters between two opponents. " It cannot be disputed that on 24 October 2003, the applicant and his patrol were engaged with the enemy. The applicant and his patrol were ambushed and subject to enemy fire by RPGs and enemy rounds. The applicant's application for the Combat Action Badge also contains affidavits from other Soldiers who experienced the firefight and can attest to its validity. This prong of the two-part analysis is easily met and should not be subject to further debate.

i. It is also important to note that in the applicant's application for the Combat Action Badge, it is stated that other Soldiers in his battalion, who were also present for the events that occurred on 24 October 2003, have received the Combat Action Badge. With award of the Combat Action Badge to the Soldiers - Soldiers that were in some cases mere feet from the applicant, it is clear they met the criteria for the Combat Action Badge, and thereto should the applicant.

j. Considering the legal standards and facts herein, it would be an injustice to deny the applicant the Combat Action Badge for the events on 24 October 2003. The applicant meets the regulatory standards set out by the Army Regulations. The applicant was physically present on 24 October 2003 and was conducting a defensive task in the form of area defense by helping to secure the battalion location. Further, the applicant and his patrol were engaged by the enemy in an ambush attack where they came under small arms and enemy RPG fire. This is the textbook, regulatory definitive example of an event that qualifies an individual for the award of the Combat Action Badge as it meets all regulatory requirements when juxtaposed correctly with the events of 24 October 2003.

3. Having prior enlisted service in the U.S. Army Reserve, the applicant was appointed as a Reserve commissioned officer on 7 May 1999.

4. The applicant previously provided:

a. His Officer Record Brief which summarized his service, including assignments, awards, promotions, and other administrative data.

b. Permanent Orders 021-25 dated 21 January 2003, which direct a temporary change of station for the applicant, with an effective date of 24 February 2003 to deployment.

c. His Officer Evaluation Report (OER), for the period ending 1 June 2003, which shows he was serving as a battalion intelligence officer in Iraq.

d. A Bronze Star Medal Certificate, for the period 5 April 2003 to 1 October 2003, for exceptionally meritorious achievement while assigned as the battalion intelligence officer during Operation Iraqi Freedom.

e. An Army Commendation Medal Certificate, for the period 23 February 2000 to 31 March 2004, for exceptionally meritorious service while assigned as a linebacker platoon leader, battery executive officer, and battalion intelligence officer.

f. Memorandum, subject: Recommendation for Award of the Presidential Unit Citation, which shows his unit of assignment was awarded the Valorous Unit Award from submission of the Presidential Unit Citation.

g. His OER, for the period ending 15 April 2004, which shows he was serving as a battalion intelligence officer during Operation Iraqi Freedom.

h. A transcript excerpt from the House Committee on Armed Services, dated 8 September 2004, which shows testimony of the applicant's commander while deployed relating to the area the unit was assigned.

5. On 31 July 2007, the applicant was honorably discharged from the Regular Army. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 2 months, and 24 days of active-duty service, including service in Iraq from 6 April 2003 to 19 February 2004.

6. On 30 August 2012, he once again was appointed as a commissioned officer of the Army in the U.S. Army Reserve.

7. He further provided:

a. Memorandum, Subject: Combat Action Badge Verification for Applicant, dated 15 August 2019, from the applicant which states:

(1) He verifies that he deployed to Iraq in support of Operation Iraqi Freedom as the battalion intelligence officer from March 2003 to February 2004. From June 2003 to February 2004, the battalion was assigned to FOB Pacesetter. It was his responsibility to participate in the daily combat/presence patrols to maintain an accurate area intelligence assessment of the battalion area. It was during several of these patrols at various locations, he came under direct enemy small arms fire and IED detonations.

(2) One incident occurred on 24 October 2003 while on a mounted presence patrol in the area of Al Dulyah, Iraq. The enemy utilized the nearby tree line to conceal their location and conducted a linear ambush against their patrol. The enemy was less than 100 meters away when the enemy engaged the patrol with RPG. One RPG missed by flying over their vehicles but came within 10 meters of his location. He was within 5 meters of the impact of multiple rounds.

(3) He performed his duties in accordance with established rules of engagement and was personally at risk of injury or worse.

b. Memorandum, subject: Combat Action Badge Verification for Applicant from the applicant's wartime commander, dated 20 August 2019, which states:

(1) He was the commander while deployed. The applicant was his intelligence officer while deployed to Iraq in support of Operation Iraqi Freedom from March 2003 to February 2004. He verifies that the applicant was engaged by small arms fire and IEDs at various times and multiple locations. The applicant performed his duties well and satisfactorily in accordance with established rules of engagement and was personally at risk of injury or worse.

(2) He was present on at least two of the occasions the applicant was engaged. Specifically, one incident occurred on 24 October 2003 in the vicinity of Al Dulyah, Iraq. The enemy engaged his patrol from not more than 100 meters away with small arms fire and RPGs. The applicant was in his patrol when they were attacked. The applicant could reasonably have been injured or worse from the direct fire and RPG.

c. Memorandum, subject: Combat Action Badge Verification for Applicant, dated 20 August 2019, from Chief Warrant Officer Four (CW4) D_ F_, which states:

(1) He verifies the applicant was engaged by small arms fire and IEDs. The applicant and he were assigned to FOB Pacesetter from June 2003 to February 2004.

During this time, he was a noncommissioned officer and in charge of conducting daily combat/presence patrols and quick reaction force around Al Duliyah, Iraq. The applicant was assigned as the battalion intelligence officer and participated in the patrols nearly daily. The applicant provided the intelligence products necessary to be proactive about deterring the enemy in their area and volunteered to go on every patrol possible to ensure mission success. During several of these patrols at various times and multiple locations, the applicant and the team came under direct enemy small arms fire and IEDs. Four team members sustained injuries during the deployment, and it is very reasonable that the applicant could have been injured during any of the attacks and performed his duties satisfactorily in accordance with established rules of engagement.

(2) He was physically present during many of the patrols that they were attacked and received a Combat Action Badge for the same enemy engagement. One attack occurred on 24 October 2003 in Al Duliyah, Iraq. While patrolling with the battalion commander, his team (to include the applicant) was attacked from less than 100 meters away with small arms fire and RPGs.

d. Memorandum, subject: Combat Action Badge Justification, dated 10 February 2020 from the applicant, which states:

(1) The listed qualifying event for the Combat Action Badge occurred on 24 October 2003. The Combat Action Badge was not approved until 2 May 2005, which is 19 months after the event. Therefore, he could not have been awarded the Combat Action Badge in theater or up to 12 months after the event. Additionally, when he returned from deployment, he immediately relocated to Arizona and did not want to speak or discuss events regarding deployment. He resigned his commission in July 2007. He later returned to the U.S. Army Reserve in August 2012. Since then, he has come to terms with events that occurred in theater and now seeks recognition with the approval of an award he earned.

(2) The action on 24 October 2003, is one of multiple events that would qualify for the Combat Action Badge. During the deployment in Iraq from April 2003 to February 2004, he was involved in multiple enemy small arms direct engagements and IED attacks.

(3) According to the 4th Infantry Division G-1, items such as a trip ticket, manifest, or significant activity report do not exist. The personal experience and memories of those he served with, including his former battalion commander, are included as attachments.

e. E-mail chain correspondence from the applicant with his unit of assignment regarding his submission and request for the Combat Action Badge.

f. Memorandum, subject: Award Submission Letter of Lateness, dated 1 June 2020, from the applicant, which states his request is being submitted late and he has gathered all of the required information.

8. On 25 June 2020, by memorandum, AHRC disapproved the applicant's request for the Combat Action Badge. The Chief, Awards and Decorations Branch stated:

a. After a thorough review of the information provided, the forwarded recommendation of the Combat Action Badge does not meet the statutory guidance outlined in Army Regulation 600-8-22, paragraph 8-8d(2), "A Soldier must also be performing in an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy."

b. The Army Combat Action Badge was created in 2005 by the Chief of Staff of the Army to provide special recognition to Soldiers who personally engaged or are engaged by the enemy. The Combat Action Badge is intended to serve as a companion to the Combat Infantryman Badge and Combat Medical Badge to recognize the greatly expanded role of non-infantry Soldiers in active, ground combat.

c. Retroactive award of the Combat Action Badge is authorized for fully qualified individuals, however, in accordance with Army Regulation 600-8-22, paragraph 8-8, such awards will not be made except where evidence of injustice is presented. Requests for retroactive awards must also include justification - reviewed by the wartime chain of command - that explains why the Combat Action Badge was not awarded in theater.

d. If the applicant believes this determination to be unjust, he has the right to appeal to the ABCMR, the highest appellate authority on personnel matters. The applicant may apply to the ABCMR by completing a DD Form 149. In addition, he must provide a copy of this correspondence and follow the submission instructions on the form.

e. Although this response was not favorable, this determination in no way reflects negatively on his honorable service to or Nation.

9. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered counsel's statement, 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. Upon review through counsel of the applicant's petition and available military records, the Board considered the memorandum from the U.S. Army Human Resources Command – Military Awards Branch recommending disapproval. However, the Board determined there is sufficient evidence to support the applicant met the criteria for award of the Combat Action Badge. The Board agreed, based on the applicant battalion commander's endorsement statement of the detailed actions that occurred on 24 October 2003, the applicant met the criteria for award of the Combat Action Badge (CAB). The Board found the applicant while patrolling with the battalion commander, his team was attacked from less than 100 meters away with small arms fire and RPGs. Based on this, the Board grant relief to award the combat action badge.

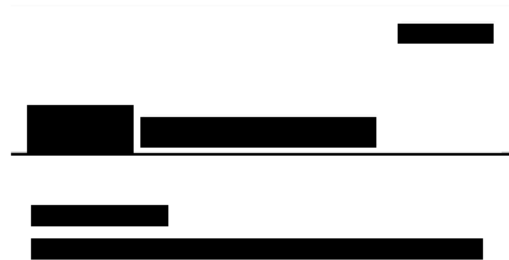
BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending his DD Form 214 for the period ending 31 July 2007, to award him the Combat Action Badge.



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. Army Regulation 600-8-22 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.

2. 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//