

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240000868

APPLICANT REQUESTS: award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters, 3rd Infantry Division Permanent Orders 238-90, 26 August 2005
- DA Form 2166-8 (Noncommissioned Officer (NCO) Evaluation Report), ending 30 June 2008
- Installation Management Command Orders 274-0029, 1 October 2010
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 7 December 2010
- Department of Veterans Affairs (VA) letter, 16 December 2010

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:

a. He has not been awarded the Purple Heart, but he believes he is eligible. He is submitting this request to have his records reviewed and corrected. He has evidence of his injury and that it occurred as a result of enemy or hostile act.

b. He is eligible for the prestigious Purple Heart due to the injuries he incurred as a result of enemy or hostile act, but he was previously unaware of his eligibility due to a lack of information or notification from the military. He was unable to apply for the Purple Heart at the time due to a physical and mental incapacity as the result of post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI).

3. After 4 years, 6 months, and 22 days of total prior active service and 7 years, 6 months, and 2 days of total prior inactive service, the applicant enlisted in the Regular Army on 26 October 2004.
4. The applicant deployed to Iraq from 31 January 2005 through 22 January 2006.
5. Headquarters, 3rd Infantry Division Permanent Orders 238-90, dated 26 August 2005, awarded the applicant the Combat Medical Badge for performing medical duties while engaged in active ground combat operations under enemy hostile fire to liberate Iraq in support of Operation Iraqi Freedom III on 30 June 2005.
6. The applicant deployed to Iraq for a second time from 5 November 2007 through 22 January 2009.
7. The applicant's NCOER covering the period from 1 July 2007 through 30 June 2008, shows he performed flawlessly, assisting local doctors in Talafar, Iraq, with medical assistance during several vehicle-borne improvised explosive device (VBEID) attacks when the hospital was overflowing with wounded.
8. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), are not in his available records for review and have not been provided by the applicant.
9. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows:
 - a. A PEB convened on 24 September 2010, where the applicant was found physically unfit with a recommended combined rating of 50 percent and that his disposition be placement on the temporary disability retired list (TDRL) with reexamination in June 2011.
 - b. The applicant's unfitting condition is PTSD; 50 percent; MEB diagnosis (Dx) 1; combat-related during two deployments. It is unfitting as he has no access to firearms or ammunition. However, TBI with headaches and vertigo meet retention standards and are found to be not unfitting.
 - c. Conditions listed as MEB Dx 2-15 were determined to meet retention standards.
 - d. Item 10 shows, if retired because of disability, the Board makes the recommended finding that:

(1) 10A: The Soldier's retirement is based on disability from injury or disease received in the line of duty (LOD) as a direct result of armed conflict or caused by an instrumentality of war and incurring in the LOD during a period of war as defined by law.

(2) 10C: The disability did result from a combat-related injury as defined in Title 26, U.S. Code, section 104.

d. On 27 September 2010, the applicant signed the form concurring with the PEB findings and recommendations, waiving his right to a formal hearing, and indicating he did not request reconsideration of his VA ratings.

10. Installation Management Command Orders 274-0029, dated 1 October 2010, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his placement on the TDRL effective 28 December 2010, with a disability rating of 50 percent. The orders further show his disability is based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a period of war as defined by law and resulted from a combat-related injury as defined in Title 26, U.S Code, section 104.

11. Installation Management Command Orders 277-0026, dated 4 October 2010, amended above-referenced orders dated 1 October 2010, to reflect the applicant's date of separation as 7 December 2010, and his placement on the TDRL as 8 December 2010.

12. The applicant's DD Form 214 shows he was retired on 7 December 2010, due to temporary disability (enhanced) with corresponding separation code SEK. He was credited with 6 years, 1 month, and 12 days of net active service this period; 4 years, 6 months, and 22 days of total prior active service; and 7 years, 6 months, and 2 days of total prior inactive service.

13. A VA Rating Decision, dated 13 December 2010, shows the applicant was granted a service-connected disability rating for the following conditions effective 8 December 2010:

- PTSD, Gulf War incurred – combat; 50 percent
- TBI and cognitive disorder with vertigo, fatigue, migraine headaches, cranial nerve XII involvement, gaze convergence spasm, right hand clumsiness, and memory loss, Gulf War incurred – combat; 40 percent
- low back strain with left transverse process fracture, Gulf War incurred; 10 percent
- tinnitus; Gulf War incurred; 10 percent

14. A U.S. Army Human Resources Command (AHRC) Combat-Related Special Compensation Branch (CRSC) letter, dated 17 March 2011 [while the applicant was still receiving retired pay on the TDRL and eligible for CRSC], shows the following conditions were verified as combat-related, awarding him a combined CRSC rating of 70 percent effective January 2011:

a. PTSD: Combat Code AC (Direct Result of Armed Conflict); 50 percent VA rating; CRSC effective date January 2011; Justification: this condition is conceded due to combat awards.

b. Tinnitus: Combat Code IN (Instrumentality of War); 10 percent VA rating; CRSC effective date January 2011; Justification: this condition is conceded due to combat awards.

c. Traumatic brain disease, TBI, and cognitive disorder with vertigo, fatigue, migraine headaches, cranial nerve XII involvement, gaze convergence spasm; right hand clumsiness and memory loss; Combat Code AC; 40 percent VA rating; CRSC effective dated January 2011; Justification: documentation verified disability as combat related.

15. A review of the AHRC Soldier Management System (SMS) reveals the applicant was removed from the TDRL and involuntarily discharged due to physical disability with severance pay effective 2 June 2015. The relevant PEB proceedings and orders are not in the applicant's available records for review.

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. Upon review of the applicant's petition and available military records, the Board determined that the applicant does not meet the criteria for the award of the Purple Heart. 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.

2. The Board agreed the applicant did not provide sufficient evidence demonstrating that his conditions were the direct result of wounds sustained from hostile enemy action. The Board acknowledged the applicant's diagnoses of post-traumatic stress disorder

(PTSD) and traumatic brain injury (TBI). While both conditions are serious and may result from combat-related experiences, regulatory standards require that the Purple Heart be awarded exclusively for injuries sustained as a direct result of hostile enemy action. Based on the preponderance of evidence and established eligibility criteria, the Board 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.



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 to any member who, while serving under competent authority in any capacity with one of the Army Services, has been wounded or killed or who has died or may hereafter die after being wounded:

(1) In any action against an enemy of the United States;

(2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged;

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party;

(4) As a result of an act of any such enemy of opposing armed forces;

(5) As a result of an act of any hostile foreign force;

(6) After 23 March 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate armed services concerned if persons from more than one service are wounded in the attack;

(7) After 28 March 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force; or

(8) Members killed or wounded by friendly fire.

b. Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by a medical officer, and the medical treatment must have been made a matter of official record.

c. When contemplating eligibility for the PH, the two critical factors commanders must consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer. Some examples of enemy-related actions that justify eligibility for the PH are as follows:

(1) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(2) Injury caused by enemy emplaced trap, mine, or other improvised explosive device.

(3) Injury caused by chemical, biological, or nuclear agent released by the enemy.

(4) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(5) Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract.

(6) Perforated eardrum caused by enemy action (two critical factors to consider are the degree to which the enemy or hostile force caused the wound and whether the wound was so severe that it required treatment by a medical officer).

(7) Concussions or mild(m) TBI caused as a result of enemy-generated explosions that result in 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.

d. Some examples of injuries that do not justify eligibility for the PH are as follows:

(1) Frostbite, excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951.

(2) Trench foot or immersion foot.

(3) Heat stroke.

(4) Food poisoning not caused by enemy agents.

(5) Exposure to chemical, biological, or nuclear agents not directly released by the enemy.

(6) Battle fatigue, neuropsychosis, and post-traumatic stress disorders.

(7) Disease not directly caused by enemy agents.

(8) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding, not related to or caused by enemy action.

(9) Self-inflicted wounds, except when in the heat of battle and not involving gross negligence.

(10) First-degree burns.

(11) Airborne (for example, parachute or jump) injuries not caused by enemy action.

(12) Hearing loss and tinnitus (for example, ringing in the ears).

(13) mTBI that does not 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.

(14) Abrasions or lacerations, unless of a severity requiring treatment by a medical officer.

(15) Bruises or contusions, unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer.

(16) Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth).

e. It is not intended that such a strict interpretation of the requirement for the wound to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must take into consideration the circumstances surrounding a wound.

//NOTHING FOLLOWS//