

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 October 2024

DOCKET NUMBER: AR20240001222

APPLICANT REQUESTS: Reconsideration of his previous request for award of the Purple Heart.

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

- Memorandum from the applicant, Subject: Appeal of ABCMR disapproval of Purple Heart, 21 December 2023
- Memorandum, Subject: Combat Testimonial of Colonel (COL) (Retired), KMM, 21 December 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 AR20210017008 on 23 May 2022.

2. In a memorandum submitted to the Board, the applicant states:

a. His original request for the Purple Heart for being wounded in combat on 17 May 2004 was denied by the ABCMR. He has submitted new evidence and he will provide additional information showing his original ABCMR request was not properly articulated.

b. The Standard Form (SF) 600 (Chronological Record of Medical Care) from Major (MAJ) CC (Retired) *[previously available to/considered by the Board]* documents his medical encounter, diagnoses, and directed disposition. Following that recommendation, he was directed to stay in his quarters for 3 days. He was experiencing headaches, body aches, nausea, and disorientation. His disposition was directed due to the injuries and symptoms, consistent with mild traumatic brain injury (mTBI) following a concussive event. He was unable to carry out his regular duties due to his symptoms. During those 3 days, he only ate and slept while he waited for the mTBI symptoms to stop. On the 4th day, he resumed combat patrols, but in a different role while he continued to re-adjust from the traumatic experience. His 3-day rest period was directed by MAJ [REDACTED] and was interpreted as a directive from a medical professional.

He was unable to perform his duties which included driving combat vehicles and participating in mounted and dismounted combat patrols.

c. His treatment for mTBI, on 17 May 2004, is documented in a late addition to his medical record as well as his resulting medical diagnosis. He currently suffers from the following medical conditions.

(1) PTSD: He struggles with daily activities that center around driving, confined spaces, and loud sounds. He has uncontrollable flashbacks that causes him to believe that he feels heat and pressure while driving. He has to convince himself that it is not actually happening. This can make even short drives physically and emotionally taxing. This is linked to exposure to traumatic events while driving tactical vehicles. The primary event is the landmine strike on 17 May 2004. He avoids driving and it effects his daily life.

(2) Vision Problems: He experiences headaches when exposed to bright light and he has a vision condition where his eyes fail to hit intended vision targets, which causes eye fatigue and headaches. Both conditions are synonymous with mTBI.

(3) Memory Deficiencies: He has documented deficiencies in memory recall that fall in the "profound" category. Also associated with mTBI.

(4) Sleep issues: He suffers from a combination of obstructive and central sleep apnea associated with mTBI.

(5) Hearing Problems. He suffers from significant hearing loss on his left side (nearest landmine strike) and must wear hearing aids to accomplish basic tasks. His hearing is a constant source of stress as he struggles with daily conversations, even with hearing aids. He also suffers from masking, where he hears sounds in one ear that are actually on the opposite side.

(6) Emotional Distress: The totality of his mTBI symptoms causes significant distress every day. Simple tasks such a driving, carrying on conversations, and daily environmental conditions trigger many problems. Recently, the combination of attending casualty notification officer training coupled with a stressful week caused him to have a semi-breakdown with worse than normal flashbacks of the landmine strike. He has sought help from mental health professionals since the diagnoses with varying success. He is still working towards achieving a long-term sense of peace with his issues.

d. His medical, health, and emotional issues were diagnosed following multiple failures of mTBI screenings. These screening failures originate from the deployment where he was exposed to the landmine strike. He did not understand the connections between the symptoms until he was formally and fully evaluated for mTBI.

e. He requests the Board re-examine his previous request for award of the Purple Heart. He was wounded by a concussion during a time when a concussion was not considered an injury. He was treated before the advent of digital medical records in a very expeditionary environment. He was treated for mTBI by a medical professional with an injection and directed to be on bed rest as his symptoms persisted. He was young and mission focused and did not understand his symptoms until a medical professional directed him to conduct a full mTBI evaluation. Once he discovered the nexus of his symptoms, he contacted MAJ [REDACTED] to document their encounter. He was encouraged by multiple professionals to seek full recognition for his 17 May 2004 injuries.

3. The applicant's Officer Record Brief shows he served in a variety of stateside or overseas assignments, including Iraq and Afghanistan. He was promoted in the Regular Army (RA) to the rank of chief warrant officer three on 1 April 2020, and he is currently serving in the RA.

4. The available evidence contains the applicant's Memorandum for Record, dated 2 June 2020, wherein he states, in summary:

a. On 17 May 2004, he was serving as a HMMWV driver for C Battery, Task Force 1st Battalion, 7th Field Artillery in Baiji, Iraq when the HMMWV struck a landmine during a combat operation that disabled and partially destroyed the front of the HMMWV. He felt the concussion of the landmine through his entire body, and he was temporarily disoriented from the blast.

b. Once he gained his bearings, he helped evacuate the vehicle gunner, and under enemy fire, moved to the cover of a small wall surrounding the adjacent building. While moving to the cover of the compound he was extremely dizzy, nauseous, and disoriented. Once inside the wall he maintained visual contact with his vehicle, it had sensitive items, weapons, and explosives inside. He fought through his symptoms and continued to return fire with his M4, M203, and eventually an "AT 4," which ceased the enemy fire.

c. After enemy contact ceased, they recovered the damaged vehicle, and he was "CASEVAC'ed" back to Forward Base Summerall where he went to the "TF 1-7FA" Battalion Aid Station and was treated with a Toradol Injection. He was extremely nauseous, had a headache, body pains, and he was disoriented. He returned to the barracks and slept for approximately 2 days. He has limited memory of anything between the landmine strike and when he arrived at the "TF 1-7 BAS." He has derived the details of this narrative from his limited memory, official statements from fellow Soldiers, and his award citation for valor in combat.

d. In December 2019, he began treatment for PTSD at the Fort Carson Behavioral Health Clinic. Over the course of his career, he has failed several TBI tests and exams,

but he was never formally evaluated for TBI. At the direction of Behavioral Health professionals in conjunction with his "PCM," he was referred to the Fort Carson TBI Clinic and he was diagnosed with mTBI and received treatment for several deficiencies that directly correlate to the land mine incident in 2004.

5. The applicant enlisted in the regular Army on 18 July 2002.

a. he was assigned to Germany from 21 November 2002 to 17 October 2006.

b. He was deployed on combat tours to/during the following locations/periods:

- Iraq - 14 February 2004 to 14 February 2005
- Iraq - 5 November 2007 to 2 January 2009
- Iraq - 12 March 2010 to 12 October 2010
- Jordan - 19 October 2012 to 5 February 2013

6. On 30 April 2013, he was honorably discharged from active duty to accept a commission or warrant in the Army. His DD Form 214 does not reflect the Purple Heart.

7. On 1 May 2013, he was appointed as a Regular Army Warrant Officer. He is currently serving on active duty in the rank/grade of Chief Warrant Officer 3 (CW3).

8. A DA Form 4187 (Personnel Action), dated 29 June 2020, shows in accordance with Army Regulation (AR) 600-8-22, paragraph 2-8, the applicant's chain of command recommended him for award of the Purple Heart for wounds/injuries received in action caused directly by the enemy. The recommendation was forwarded to the AHRC in March 2021.

9. On 5 May 2021, AHRC returned the recommendation for the Purple Heart without action, pending further documentation. The AHRC official acknowledged receipt of the Chronological Record of Medical Care dated 18 May 2020; however, in accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-8c, "to qualify for award of the Purple Heart the wound must have been of such severity that it required treatment not merely examination, by a medical officer," therefore, they required an SF 600 from or near the time of the event for the individual requesting the award. Without the documentation they would be unable to process the request.

10. On 14 July 2021, the AHRC disapproved his request for the Purple Heart for injuries received [on 17 May 2004, while deployed in support of Operation Iraqi Freedom. The AHRC official stated, "After a thorough review of the information provided and in consultation with the AHRC Office of the Surgeon General, the forwarded recommendation for award of the Purple Heart did not meet the statutory guidance outlined in Army Regulation 600-8-22, paragraph 2-8g. To qualify for award of the

Purple Heart the wound must have been of such severity that it required treatment, not merely examination, by a medical officer.”

11. On 14 July 2021, the applicant requested the ABCMR decline/disregard the AHRC’s denial of his request for award of the Purple Heart and show his entitlement to the award.

a. The ABCMR initially considered the applicant's request for award of the Purple Heart, in ABCMR Docket Number AR20210017008, on 23 May 2022.

b. "After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. To be awarded the PH, 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 LOC; 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. The Board thoroughly reviewed the documents provide by the applicant and determined he does not meet the criteria for award of the PH. To qualify for award of the PH the wound must have been of such severity that it required treatment, not merely examination, by a medical officer."

12. The applicant submitted a memorandum from Colonel [REDACTED] (Retired), in support of his request, dated 21 December 2023, stating:

a. He served as the Battalion Commander for Task Force 1-7, which conducted combat operations in and around Baiji, Iraq from February 2004 to February 2005. Charlie Company, Task Force 1-7 was his main effort Company and bore the brunt of combat operations, leading to numerous deaths and severe life-threatening injuries in their area of operations (AOR). The unit was exposed daily to Improvised Explosive Devices, ambushes, landmines, indirect fire, and direct fire attacks. He has firsthand knowledge, as he often patrolled with the unit.

b. The applicant served as the company first sergeant’s driver, at the time. On 15 May 2004, while conducting clearing operations, the applicant’s vehicle struck a landmine, which initiated a direct fire insurgent ambush. He was made aware of the attack, while patrolling their sector, the incident was reported over the battalion radio net. Upon returning to Forward Operating Base Summerall, the applicant was treated for TBI by the unit medical staff, led by then Captain (CPT) [REDACTED]. Upon medical diagnosis, CPT [REDACTED] directed [the applicant to] quarters and bed rest for 3 days.

c. The AOR was austere and in a remote location. The battalion medics worked miracles treating wounded Soldiers, but medical treatment records were not automated and not a priority due to the operational tempo. At the time, TBI was also not recognized as a qualifying injury awarding the Purple Heart, which he personally awarded following qualifying incidents. The applicant's medical records did not properly reflect his injury, symptoms, and treatment, through no fault of his own.

d. He can personally attest that nearly every Soldier performing combat operations in their AOR suffered from some form of post-traumatic stress disorder (PTSD) and/or TBI. After further review, He personally and professionally believes the applicant's injuries met the threshold for award the Purple Heart. As a former ABCMR member, he highly recommends reconsidering and reversing the Board's previous decision. The applicant has provided a detailed accounting of this incident with quantifying documentation and testimony from the attending physician and fellow Soldiers.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows, on 17 May 2004, while serving as a HMMWV driver for C Battery, Task Force 1st Battalion, 7th Field Artillery in Bayji, Iraq, the HMMWV struck a landmine during a combat operation that disabled and partially destroyed the front of the HMMWV. He states he felt the concussion of the landmine through his entire body, and he was temporarily disoriented from the blast.

b. To be awarded the Purple Heart, 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 (LOC); 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.

c. The question raised by the Board appears to be whether or not the applicant was "treated" or just "evaluated" by medical professionals, and it's accepted that he meets the other requirements for award of the Purple Heart. The Board believed the terminology is subjective enough that some interpretation is required, but the collection of witness statements, and fact actual damage resulted seems a clear indication we've moved beyond any reasonable doubt. The Board determined there is sufficient evidence to award him the Purple Heart.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20210017008 on 23 May 2022. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by

- awarding him the Purple Heart for wounds received as a result of hostile action on 17 May 2004
- adding award of the Purple Heart to his DD Form 214

10/31/2024

X

CHAIRPERSON

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 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 mTBI or concussion severe enough to cause either "LOC" 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 PTSD, hearing loss and tinnitus, mTBI or concussions that do not either result in "LOC" 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 “LOC).” The directive also revised AR 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) or magnetic resonance imaging scan.

g. The following nonexclusive list provides examples of medical treatment for concussion that meets 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 (ABCMR) 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//