

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240001516

APPLICANT REQUESTS: reconsideration of his previous request for award of the Purple Heart and a personal appearance before the Board.

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

- Online Application with signature page
- Memorandum, Purple Heart Reconsideration, dated 4 January 2024
- DA Form 4187 (Personnel Action), Purple Heart Award, dated 15 June 2022, and associated documents
- Memorandum, U.S. Army Human Resource Command (AHRC), Fort Knox, KY, dated 12-September 2022
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20230003738, Record of Proceedings (ROP), dated 19 October 2021, and associated documents
- Letter, Physician Assistant (PA) Purple Heart Narrative, dated 18 October 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20230003738 on 19 October 2021.

2. The applicant states, in effect:

a. His previous application for award of the Purple Heart was denied by the Board, following AHRC's denial in September 2022. He has since received a letter from the battalion aid station physician's assistant (PA) who treated him following the blast in which he was wounded. The ABCMR specifically cites "insufficient contemporaneous documentation or other probative evidence" that his injury warranted a reversal of AHRC's decision. However, the PA's written statement refutes this conclusion because he was the medical officer who treated him. He made an attempt to submit the letter prior to the previous consideration. However, it was received too late.

b. Lieutenant Colonel, Retired, (LTC (R)) [REDACTED] letter is an assessment of his treatment in the immediate aftermath of the Improvised Explosive Device (IED) blast on 31 May 2005. He establishes his position as the battalion PA. His letter also explains the absence of a Standard Form (SF) 600 (Chronological Record of Medical Care) in the applicant's permanent medical record.

c. This new evidence from the PA overcomes the challenges with contemporaneous documentation for an injury that was not a Purple Heart qualifying injury at the time of the event.

3. The applicant enlisted in the Reserve Officers' Training Corps Program on 27 August 2001. He was appointed as a Reserve Commissioned Officer on 14 May 2004, and was subsequently ordered to active duty.

4. Permanent Orders 323-2909, issued by Headquarters, U.S. Army Infantry Center, Fort Benning, GA, dated 18 November 2004, show he was awarded the Ranger Tab on or about 24 November 2004.

5. The applicant was deployed to Southwest Asia/Kuwait, in support of Operation Enduring Freedom, on or about 20 March 2005.

6. His Officer Record Brief (ORB) shows he served in Afghanistan from 10 April 2005 to 17 March 2006.

7. A DA Form 67-9 (Officer Evaluation Report), for the period 10 May 2005 to 9 May 2006, shows the applicant's principal duty during his deployment was Rifle Platoon Leader. He led and trained a 35-man Parachute Infantry Rifle Platoon, spent many hours on the small arms and heavy weapons ranges in Afghanistan, and planned and executed more than 170 combat patrols.

8. The applicant was awarded the Army Commendation Medal and the Bronze Star Medal for exceptionally meritorious service in support of Operation Enduring Freedom from 13 April 2005 to 12 April 2006.

9. The applicant provides a DA Form 4187, endorsed by his chain of command, dated 15 June 2022, and associated documents, wherein a recommendation for award of the Purple Heart was submitted to AHRC. The documents provide the following information:

a. The applicant was injured, receiving a perforated eardrum, from an IED, on 31 May 2005, in Nadir Shah Khot, Khost Province, Afghanistan.

b. Military Personnel Message (MILPER) Number 22-215, Purple Heart for Perforated Eardrum, issued 8 June 2022, states that effective "immediately" the U.S.

Army will recognize a perforated eardrum as a qualifying injury for award of the Purple Heart. The MILPER Message also provides a list of necessary documentation to request the award.

c. In a memorandum for record, dated 15 June 2022, the applicant stated that on 31 May 2005, he was part of an infantry patrol in Nadir Shah Khot, Khost Province, Afghanistan. At 0900, his vehicle was struck by a remote controlled IED. Pressure from the blast perforated his left eardrum causing fluid to leak out and an overpowering ringing sensation in his ear. The platoon medic, Specialist (SPC) [REDACTED] treated him for his injury. The following day he was treated by the battalion PA, who prescribed him Motrin and the continued use of hearing protection. He reported the injury on his post-deployment health assessment. On 26 April 2006, he was seen by an audiologist at Womack Army Medical Center who attributed his intermittent tinnitus and hyperacusis to the IED.

d. An incident report and statements from the Commander, 1st platoon team leader, and the platoon medic attest to the incident. The IED was confirmed by Explosive Ordnance Disposal (EOD) technicians. The applicant sought medical attention from the platoon medic after assuring the other vehicle occupants were medically evacuated. The platoon medic stated the applicant had bilateral perforated eardrums with discharge and noise sensitivity. He did not warrant emergency medical evacuation. The following day he was assessed by the battalion PA, who confirmed the injury. Following deployment he was referred to audiology. On 1 December 2007, he was seen a second time by the battalion PA due to progressively worsening hearing loss and tinnitus.

e. Medical documentation shows he was diagnosed with tinnitus on 26 April 2006, by audiology, Womack Army Medical Center. On 1 December 2007, he was seen by the PA at the Battalion Aid Station for worsening hearing loss and tinnitus. Additionally, he reported tinnitus on his Post-Deployment Health Re-Assessment on 24 November 2008.

f. As part of the Purple Heart request, he also provided a copy of his deployment orders, dated 28 February 2005, and an Officer Record Brief, dated 10 June 2022.

10. On 12 September 2022, AHRC disapproved the applicant's request for award of the Purple Heart. AHRC determined the recommendation for the Purple Heart did not meet the statutory guidance outlined in MILPER 22-215 or Army Regulation 600-8-22 (Military Awards), which state the wound must be so severe that it required treatment by a medical officer and the treatment must be documented in the servicemember's medical record.

11. The ABCMR reviewed the applicant's request for award of the Purple Heart on 19 October 2023. In the processing of this case, the Army Review Boards Agency

(ARBA) Medical Advisor was asked to review the case and provide a medical advisory opinion. After careful consideration of the applicant's request, supporting documents, his service record and the medical advisory opinion, the Board concluded the evidence did not show the applicant incurred an injury that required treatment by a medical officer. The Board denied the applicant's request.

12. Email correspondence between the applicant and ARBA, dated 17 October and 19 October 2023, shows the applicant's request to provide additional evidence in support of his case was denied as his case was already reviewed by the Board.

13. The applicant is currently serving in the Regular Army.

14. As new evidence, the applicant provides a narrative from LTC (R) [REDACTED], dated 18 October 2023, wherein he states, as the battalion PA at the time of the incident, he treated the applicant on 1 June 2005 for a perforated eardrum, which he sustained as a result of an IED blast on 31 May 2005. He diagnosed the applicant, prescribed ibuprofen and antibiotics, and issued hearing protection. Unit standard operating procedure did not require him to complete an SF 600 for the applicant as, at the time, a perforated eardrum did not qualify for the Purple Heart. Following the amendment of eligibility, he strongly believes the applicant qualifies for the award based upon his examination and treatment as the battalion medical officer (PA).

15. The regulatory guidance pertaining to the award of the Purple Heart, requires all elements of the award criteria to be met. There must be proof a wound was incurred as a result of enemy action, the wound required treatment by a medical officer; and the medical personnel made such treatment a matter of official record.

16. 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.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the corroborating evidence confirming the injury of the applicant from a combat event provided by LTC(R) John Elliott, Physician Assistant, as well as the justification outlined in his memorandum for the failure to have a SF 600 submitted at the time of the injury, the Board concluded there was sufficient evidence to award and add the Purple Heart to the applicant's military record.

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 a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by awarding and adding the Purple Heart for injuries incurred while serving in Afghanistan on 31 May 2005.


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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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration. 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.

2. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It provides that the Purple Heart is awarded for a wound sustained 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 a medical officer, and the medical treatment must have been made a matter of official record.

a. Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

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

(2) Injury caused by enemy-placed trap or mine.

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

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

(5) Concussion injuries caused as a result of enemy-generated explosions.

(6) Mild traumatic brain injury 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.

b. Examples of injuries or wounds which clearly do not justify award of the Purple Heart are as follows:

(1) Frostbite

(2) Trench foot or immersion foot.

- (3) Heat stroke.
 - (4) Food poisoning not caused by enemy agents.
 - (5) Chemical, biological, or nuclear agents not released by the enemy.
 - (6) Battle fatigue.
 - (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) Post traumatic stress disorders.
 - (11) Airborne (for example, parachute/jump) injuries not caused by enemy action.
 - (12) Hearing loss and tinnitus (for example: ringing in the ears).
 - (13) Mild traumatic brain injury 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.
 - (14) Abrasions and lacerations (unless of a severity to be incapacitating).
 - (15) Bruises (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).
 - (17) First degree burns.
3. MILPER Message Number 22-215 (Purple Heart for Perforated Eardrum), issued on 8 June 2022, was set to expire in 1 year after the issue date. It provided that the U.S. Army will recognize a perforated eardrum (ruptured tympanic membrane) as a qualifying injury for award of the Purple Heart provided all below-listed requirements are met.

a. Applications for award of the Purple Heart will include the following documentation pertaining to the wound and inflicting force:

(1) A DA Form 4187 (Personnel Action) for currently serving members or written request for veterans.

(2) Chain of command endorsement (through the first general officer in the Soldier's current chain of command for currently serving members).

(3) Deployment orders.

(4) DA Form 4037 (Officer Record Brief), Enlisted Record Brief, DA Form 20/2/66 (Personnel Qualification Record), or other substantiating personnel qualification records for Veterans.

(5) One-page narrative describing the qualifying incident and the conditions under which the member was injured or wounded.

(6) Statements from at least two individuals, other than the proposed recipient, who were personally present, observed the incident, and have direct knowledge of the event. Alternatively, other official documentation may be used to corroborate the narrative.

(7) Casualty report (if available).

(8) Standard Form (SF) 600 (Chronological Record of Medical Care), SF Form 502 (Clinical Records), or equivalent military medical document.

(9) DD Form 214 (Certificate of Release from Active Duty), WD Form AGO 53-55, or WD Form AGO 53-98 (Official Certificate of Release or Discharge from Active Duty) (if applicable).

b. Commanders will consider two critical factors when considering eligibility for the Purple Heart for perforated eardrum. The two critical factors 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.

//NOTHING FOLLOWS//