

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240001605

APPLICANT REQUESTS: reversal of the decision of U.S. Army Human Resources Command (HRC) Awards and Decorations Branch for the award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief with Exhibits A thru H____

- Exhibit A: U.S. Army Human Resources Command (HRC) letter
- Exhibit B: Chronological Record of Medical Care, with medical notes
- Exhibit C: Applicant's statement
- Exhibit D: Emergency Care and Treatment, with medical notes
- Exhibit E: Consultation Sheet, with medical notes
- Exhibit F: Applicant's letter to unknown recipient
- Exhibit G: Chronological Record of Medical Care, with medical notes
- Exhibit H: DA Form 199 (Physical Evaluation Board (PEB) Proceedings)

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. Counsel states, via legal brief:

a. The applicant's Department of the Army hospitalization record proves that she received medical treatment for her multiple physical and neurological injuries suffered while on deployment. Her resulting head injury caused memory loss to such an extent that she "had to remind herself that she had kids and what they looked like..." The Awards and Decorations Branch denied the applicant the Purple Heart because it incorrectly concluded that insufficient medical documentation was provided.

b. The denial letter acknowledges that the DA form 2173 (Statement of Medical Examination and Duty Status) states that the applicant suffered injuries to both wrists after her involvement in a motor vehicle collision. For this reason, the Awards Branch denied the applicant the Purple Heart. However, it did not address the official records that show she hit her head on the windshield during the collision, her back and neck pain, right skull pain, her pain in her shoulders and knees, her memory loss, her post-concussion syndrome, or that she was rated at a permanent total disability rating of 100%, all of which is documented in medical records and were provided to the Awards Branch in her application.

c. The medical records clearly demonstrate that the applicant suffered more severe injuries than just those to her wrists, such as those to her shoulders, skull, and both knees. On 10 June 2003, the applicant hit her head on the windshield when the Iraqi truck crashed into her convoy at 50 mph. This collision was strong enough to kill one of the Iraqis in the opposing vehicle. According to her medical records, 11 hours after the incident, the applicant sought treatment at the 21st Combat Support Hospital and the medical providers stated that she suffered "back and neck pain, right skull pain, shoulders, and both knees pain. The medical records also state that she did not have prior medical history of spinal injury.

d. On 10 June 2003, the applicant was severely injured by enemy action and required medical treatment, thus, meeting both requirements for a Purple Heart. The evidence provided clearly corroborates these claims. Hence, the applicant respectfully requests the Board to review this memorandum and accompanying evidence and award her the PH.

3. Counsel provides:

a. Exhibit A: HRC letter, dated 10 March 2023, acknowledges receipt of the applicant's request to obtain an award of the Purple Heart. However, they remain unable to authorize the request award for issuance. In order to determine eligibility for the Purple Heart, the office requires military medical documentation describing both diagnosis and treatment of injuries caused by the enemy immediately after, or close to the incident date and signed or endorsed by a medical professional in accordance with AR 600-8-22 (Military Awards), paragraph 2-8. Without this documentation, they will not be able to process her request.

b. Exhibit B: Chronological Record of Medical Care, with medical notes, dated 11 August 2003, reflects the applicant was in a motor vehicle accident on 10 June 2003. Onset July 2003 the applicant experienced forgetfulness, which required disciplining action (destruction of rank).

c. Exhibit C: Applicant's statement provides a brief summary of her life prior to enlisting in the Army, the timeline of events that took place on the day of her motor vehicle accident, her admittance to the Veterans Administration hospital in Palo Alto, California for a traumatic brain injury, and what she is currently doing post-service/accident.

d. Exhibit D: Emergency Care and Treatment, with medical notes, dated 10 June 2003, reflects the applicant arrived at 2117 (9:17pm), her chief complaints being motor vehicle accident (MVA) on Main Supply Route (MSR) Jackson, back and neck pain. She was prescribed Motrin. It also states, "Pain in R post skull, both shoulders, both knees, VS WNL, no acute Resp Distress noted, no open wounds noted, No previous med history of spinal injury S/29 yo AD (female sign) on passenger side of fuel truck S/P MVC TSPD ~ 50 mph - was hit head on by Iraqi."

e. Exhibit E: Consultation Sheet, with medical notes, dated 12 August 2003, states, "S/P MVA, where she was passenger in tanker truck. Iraqi small truck crossed the center line + hit their vehicle. Pt was wearing helmet, hit head on windshield, strained neck, (unclear) was Otherwise uninjured, as was the driver. However, one of the Iraqis was killed. Another injured. Pt felt for the pulse of the dead Iraqi. Otherwise was not involved in management of the injured/killed. Pt states she is not particularly bothered by the death and is unhappy that it happened, but not bothered by it. No (unclear) recollection (unclear) etc. Mood is Ok, worried about not being able to function at her job. Has constant HA+ neck pain Has very stiff posture, tries to keep from moving because it hurts her neck. Sleeps 5 hrs/night, only forward."

f. Exhibit F: Applicant's letter to an unnamed recipient, undated, details events that took place upon her arrival to the unit in Phoenix, her minimal interaction with fellow Soldiers, the harassment she endured from staff sergeant (SSG) [REDACTED] due to her introvert personality, the MVA while deployed, and the injuries that she sustained from the MVA, how the injuries negatively impacted her abilities to perform her duties, as well as the memory loss she now suffers from.

g. Exhibit G: Chronological Record of Medical Care, with medical notes, dated 15 June (year not annotated), indicates the applicant "has had pain in back of neck and, (unclear) her R (unclear) auto. The top of her fingers. This has been since the 10th. Patient was in an MVA on the 10t Patient has been taking Motrin and Tylenol #3. She had X rays (unclear) everything. Was normal. Patient alert and in moderate distress from back and neck Pain. Extreme pain in R side of neck. Spasms in muscular."

h. Exhibit H: DA Form 199 reflects the Physical Evaluation Board convened on 3 October 2004 to consider the applicant's medical condition (Major Depressive Disorder with Comorbid Diagnosis of Anxiety Disorder and Posttraumatic Stress

Disorder). The Board found the applicant physically unfit and recommended a combined rating of 100 percent and that her disposition be permanent disability retirement.

4. A review of the applicant's service record shows:

a. She enlisted in the Army National Guard on 28 July 2000.

b. Headquarters Arizona Army National Guard Orders 030-182, dated 7 February 2003, reflects the applicant was ordered to active duty in support of Operation Enduring Freedom, with a report date of 10 February 2003, for a period of active duty not to exceed 365 days.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects she was honorably discharged and transferred back to her unit in [REDACTED] on 8 January 2004 under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 8, pregnancy. She served 11 months and 2 days of net active service this period, receiving imminent danger pay from 19 April 2003 to 13 August 2003.

d. NGB Form 22 (National Guard Bureau Report of Separation and Record of Service) reflects the applicant was honorably discharged from the Army National Guard [REDACTED] and as a Reserve of the Army on 12 September 2004, under the provisions of NGR 600-200, paragraph 8-26a(2), Enlistment/Reenlistment Immediate Reenlistment in any other Component of the Armed Forces. She served 4 years, 1 month, and 15 days of net service this period. As of note, there were no subsequent movement orders and/or enlistment/extension contracts that indicated what (if any) component she enlisted/reenlisted into.

e. HRC Orders A-08-518204, dated 30 August 2005, reflects the applicant was ordered to active duty under the provisions of section 12301 (D), Title 10 U.S. Code for the period of active duty of 179 days, with a report date of 22 August 2005, assigned to Medical Retention Center, [REDACTED] for the purpose to voluntarily participate in Reserve Component Medical Holdover Medical Retention Processing Program for completion of medical care and treatment.

f. Headquarters, I Corps and Fort Lewis Permanent Orders 111-603, dated 21 April 2006, reflects the applicant was assigned and/or deployed to 654th Area Support Group Forward Fort Lewis, WA, with further duty at Palo Alto Veterans Administration Medical Center, Traumatic Brain Injury Program, with a proceed date of 23 August 2005, for 356 days, as a Temporary Change of Station (TCS) in support of Operation Iraqi Freedom.

g. As previously stated in paragraph 3h, the Physical Evaluation Board convened on 3 October 2004 to consider the applicant's medical condition (Major Depressive

Disorder with Comorbid Diagnosis of Anxiety Disorder and Posttraumatic Stress Disorder). The board found the applicant physically unfit and recommended a combined rating of 100 percent and that her disposition be permanent disability retirement.

h. U.S. Army Physical Disability Agency orders D071-07, dated 12 March 2010, reflects the applicant was removed from the Temporary Disability Retired List on 12 March 2010 because of permanent physical disability and, on the date following, permanently retired, with a percentage of disability of 100 percent.

5. To be awarded the Purple Heart, the regulatory guidance requires all elements of the award criteria to be met; (1) there must be proof a wound was incurred as a result of enemy action, (2) that the wound required treatment by medical personnel, and (3) 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; 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.

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, available military records, and the advisory opinion from the U.S. Army Human Resources Command – Awards and Decorations Branch, the Board concurred with the advising official's recommendation for denial. The Board found that the applicant did not meet the criteria for the Purple Heart, as the injuries sustained resulted from a motor vehicle accident involving Iraqi civilians rather than direct enemy action.

2. The Board acknowledged the applicant's medical conditions stemming from the accident. However, in accordance with regulatory guidance, the Purple Heart is not awarded for injuries resulting from accidents—including explosive, vehicular, or other incidental events unless they are directly linked to enemy actions. The Board found insufficient evidence to support that the motor vehicle accident was caused by hostile forces. Supporting documentation indicated that the applicant was struck by an Iraqi civilian rather than enemy combatants. Based on the preponderance of evidence and applicable regulatory standards, the Board determined that a reversal of its previous decision was not warranted and, therefore, 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 of an Armed Force of the United States under the jurisdiction of the Secretary of the Army, who, after 5 April 1917, has been wounded, killed, or who has died or may hereafter die of wounds received, under any of the following circumstances:

- In any action against an enemy of the United States.

- 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.
- 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.
- As the result of an act of any such enemy or opposing Armed Forces.
- As the result of an act of any hostile foreign force.
- After 7 December 1941, certain rules apply to friendly fire
- On or after 7 December 1941, certain rules apply to Prisoners of War

b. 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. A wound is defined as an injury to any part of the body from an outside force or agent. A physical lesion is not required.

(1) Treatment of the wound will be documented in the member's medical and/or health record.

(2) Award may be made for a wound treated by a medical professional other than a medical officer provided a medical officer includes a statement in the member's medical record that the severity of the wound was such that it would have required treatment by a medical officer if one had been available to provide treatment.

(3) 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 (to include Special Forces medics). Medics (such as combat medics – military occupational specialty 68W) are not physician extenders.

(4) A medical officer is defined as a physician with officer rank. The following are medical officers: (a) An officer of the medical corps of the Army; (b) An officer of the medical corps of the U.S. Navy; (c) An officer in the U.S. Air Force designated as a medical officer in accordance with Title 10, United States Code, section 101.

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

- Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action
- Injury caused by enemy emplaced trap, mine, or other improvised explosive device
- Injury caused by chemical, biological, or nuclear agent released by the enemy
- Injury caused by vehicle or aircraft accident resulting from enemy fire.

- Smoke inhalation injuries from enemy actions that result in burns to the respiratory tract
- Concussions (and/or mild traumatic brain injury (mTBI)) 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. Examples of injuries or wounds which clearly do not justify award of the Purple Heart are as follows:

- Frostbite (excluding severe frostbite requiring hospitalization from 7 December 1941 to 22 August 1951)
- Trench foot or immersion foot
- Heat stroke
- Food poisoning not caused by enemy agents
- Exposure to chemical, biological, or nuclear agents not directly released by the enemy
- Battle fatigue, neuro-psychosis, and post-traumatic stress disorders
- Disease not directly caused by enemy agents
- Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action
- Self-inflicted wounds, except when in the heat of battle and not involving gross negligence
- First degree burns
- Airborne (for example, parachute/jump) injuries not caused by enemy action.
- Hearing loss and tinnitus (for example: ringing in the ears, ruptured tympanic membrane)
- Mild traumatic brain injury (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
- Abrasions or lacerations (unless of a severity requiring treatment by a medical officer)
- Bruises or contusions (unless caused by direct impact of the enemy weapon and severe enough to require treatment by a medical officer).
- Soft tissue injuries (for example, ligament, tendon or muscle strains, sprains, and so forth)

//NOTHING FOLLOWS//