

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2024

DOCKET NUMBER: AR20240002356

APPLICANT REQUESTS: reconsideration of his previous request for reversal of the U.S. Army Human Resources Command (AHRC) Awards and Decorations Branch denial of his request that the Army Commendation Medal, awarded for his acts of heroism on 3 February 2020, be upgraded to a Soldier's Medal.

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

- DD Form 149 (Application for Correction of Military Record), 15 February 2024
- DD Form 149, 17 February 2024
- DD Form 149 Continuation/Additional Narrative Page
- Supporting Evidence Index
- Printscreen Army Review Boards Agency (ARBA) ACTS Online Additional Instructions
- Printscreen Army Board for Correction of Military Records (ABCMR) Webpage Instructions
- [REDACTED] Vehicle Crash Report [REDACTED] Highway Patrol, 3 February 2020 (11 pages)
- DA Form 2823 (Sworn Statement) [REDACTED] 21 May 2020
- DA Form 2823, Master Sergeant (MSG) [REDACTED] 21 May 2020
- DA Form 638 (Recommendation for Award), 12 June 2020 (downgraded)
- DA Form 638, 13 April 2021
- Permanent Order Number 258-0001, 15 September 2021
- Army Commendation Medal Certificate, 15 September 2021
- Army Commendation Medal Certificate, 15 September 2021 (dated of 3 February 2020)
- DA Form 1559 (Inspector General (IG) Action Request), 2 November 2021
- Memorandum, Subject: Request for Reconsideration of Previous Award Recommendation, 7 November 2021
- Memorandum, Subject: Soldier's Medal Reconsideration for Major (MAJ) [REDACTED] 3 January 2022
- Email Communication with AHRC IG, 25 August 2022 to 12 September 2022 (12 pages)
- Memorandum, Subject: Reconsideration for MAJ [REDACTED]

- Interactive Personnel Electronic Records Management System (iPERMS) Verification, 7 December 2022
- Army Board for Correction of Military Records (ABCMR) Docket AR 20220003032, Applicant Denial Letter and Report of Proceedings, 18 February 2023 (14 pages)
- iPERMS Audit Report, 28 March 2023
- Email Communication w/National Guard Bureau (NGB) iPERMS DM/Functional Lead, 28 March 2023 and 13 April 2023
- Press Release National Transportation Safety Board - Railroad Investigation Report 23-8, 5 July 2023
- Press Release Wisconsin Army Guard Article dated 11 July 2023
- Department of Defense (DoD) IG Complaint, 13 August 2023 (20 pages)
- Email Communication with AHRC (Interactive Customer Evaluation (ICE) Response), 30 November 2023
- Whistleblower Documents

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 AR20220003032 on 7 February 2023.

2. The applicant states:

a. He requests a review of a recommendation for a personal award and approve the original award recommendation of Soldier's Medal and that the downgraded award of the Army Commendation Medal be rescinded upon approval of the original award recommendation. Also, he included additional documentation that demonstrates administrative irregularities, lack of adherence to governing regulations, and a copy of a DoD Whistleblower Reprisal Complaint that he filed on 13 August of 2023 that, as of the date of submission of this application, is still open. He also has concerns in what appears as failure to follow DoD Directive 1332.41 with regard to communications between AHRC Awards and Decorations Branch (ADB) and ARBA that negatively impacted his initial application and prevented him from receiving a fair and impartial hearing.

b. As evidence he submitted a copy of the Whistleblower Retaliation Complaint he filed on 13 August 2023, of the administrative irregularities and retaliatory actions taken by AHRC ADB to punish him for using lines of protected communications that identified their failure to follow regulatory guidance in processing an award recommendation. He believes the evidence he provided documents ample administrative irregularities that justifies vacating the downgrade from the delegated approval authority as there was

inherent bias in adjudication. The Whistleblower Reprisal Complaint details that the AHRC ADB had knowledge of multiple protected communications he had with the Office of the IG. The undated memo that AHRC ADB inserted into his iPERMS records weeks after ARBA pulled his records was also sent directly to ARBA for inclusion into his initial board file without his knowledge or opportunity to comment prior to his application denial.

c. AHRC ADB produced an undated document after ARBA pulled his military records on 15 November 2022, and directly uploaded it into iPERMS, which contradicted the information AHRC ADB provided to the Office of the IG on the method of notification, and he was not provided a copy of nor made aware of the communication between the Board and the outside agency. The DoD Directive as well as the Webpage for ARBA both show that he should have been informed that new evidence was introduced into his board file, and he should have been afforded an opportunity to address the new evidence and any communication between ARBA and outside agencies should have been made known to him. The undated memo was not part of his official military records until after his iPERMS records were pulled. He feels the withholding of this communication prevented him from finding out that this memo was inserted as part of his application without his knowledge, depriving him of the opportunity to comment before the application was closed; this evidence is now part of his Whistleblower Retaliation Complaint.

d. He would like to highlight that this document is the only document to be directly uploaded into his file by AHRC ADB whereas the completed DA Form 638, two separate award certificates, and a denial memo were all sent either through organizational channels or mailed directly to him. Nothing else was uploaded directly into his records demonstrates the administrative irregularities that were prevalent in the handling of his award recommendation. He claims this shows that AHRC ADB had intent to ensure that one specific document was part of his iPERMS records so it would be used against him during the ARBA board process.

e. The instructions for submitting an ABCMR application are clear that it is incumbent upon the applicant to submit all records that are not part of their military records to be included in their application. The undated memo that was referenced in his ABCMR findings was not part of his military records when his official records were collected by ARBA. The undated document was uploaded after his records were collected and is clearly an administrative irregularity that he has included in his Whistleblower Reprisal Complaint.

f. There is evidence of malicious intent with the certificate that was originally produced when the award recommendation was downgraded initially. The original certificate was factually incorrect and portrayed a picture that he removed himself and the injured civilian from harm's way by dragging the individual off the side of the road.

This is contrary to all the eyewitness reports, photographic evidence, and police report. The certificate, which is a historic document to his actions, was an attempt to justify the downgrade instead of giving an accurate representation of his actions. He filed an ICE complaint through AHRC website attempting get the certificate corrected as requested the proposed citation from the DA Form 638 be used on the certificate and not the factually incorrect citation that was originally used. The new certificate is factually correct at the most basic level, it lacks any details that are required by Army Regulation (AR) 600-8-22 (Military Awards).

g. He asks the Board to take into consideration other events and details in which other Soldiers were awarded the Soldier's Medal for similar actions. His entire chain of command recommended approval of the award, from his Brigade Commander to the former Director of the Army National Guard Bureau. He has included both the original and completed DA Form 638 to demonstrate the support he received for this award and has no doubt that because he had to involve the Office of the IG in attempt to get fair treatment, steps were taken to retaliate against him by the AHRC ADB downgrading of the award.

3. A review of the applicant's official record shows the following:

a. On 29 September 2005, having had prior Regular Army enlisted service, he was appointed as a Reserve commissioned officer of the Army Under Title 10, United States Code and on 3 November 2005, the applicant executed an oath of office.

b. A DA Form 638 dated 13 April 2021 shows the applicant was recommended for the Soldier's Medal for heroism. The intermediate authorities recommended approval. The Commanding General of AHRC, the approval authority, downgraded the recommendation to an Army Commendation Medal on 15 September 2021.

c. Permanent Orders Number 258-0001 dated 15 September 2021, issued by AHRC, announced the applicant was awarded the Army Commendation Medal (4 Oak Leaf Clusters) for heroism.

d. A Memorandum, subject: Reconsideration for MAJ [REDACTED] shows that the Commanding General of AHRC determined that the applicant's actions, though certainly heroic, did not meet the criteria for the Soldier's Medal, and upheld his previous determination that the Army Commendation Medal was the appropriate award. In accordance with AR 600-8-22, paragraph 1-16, the reconsideration by the approval authority is conclusive. The applicant was advised that he has the right to petition the ABCMR if he believes a material error or injustice occurred.

e. The applicant is currently serving as a member of [REDACTED] Army National Guard ([REDACTED] ARNG).

4. On 7 February 2023, the ABCMR rendered a decision in Docket Number AR20220003032. The Board noted 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. The Board noted that the Soldier's Medal is awarded for distinguished heroism not involving actual conflict with the enemy. The extraordinary act must have resulted in an accomplishment so exceptional and outstanding as to clearly set the individual apart from his or her comrades or from other persons in similar circumstances. The performance must have involved personal hazard or danger and the voluntary risk of life under conditions not involving conflict with an armed enemy. Awards of the Soldier's Medal will not be made solely on the basis of saving a life, assisting emergency personnel, or acting as a "good Samaritan." A Soldier's Medal recommendation will be disapproved or downgraded to an Army Commendation Medal. Given the totality of the situation, including what the applicant perceived as missing documents, the Board determined the Army Commendation Medal is the appropriate award for his actions.

5. The applicant provides:

a. Screenshots of the ARBA Case Tracking System Online additional instructions of documents required for submission of his case to the ABCMR for action and details and overview of the ABCMR and the agency's mission statement.

b. Montana Vehicle Crash Report (11 pages) dated 3 February 2020, that includes diagrams and photographs of the incident and approximate location of MAJ [REDACTED] during and throughout the incident. The report states the applicant maintained a position close to the pedestrian that was struck so he could provide first aid in the middle of the interstate. Due to the hazard of the vehicle that struck the pedestrian being struck by other vehicles, the applicant was forced to position himself between oncoming traffic and the pedestrian, risking his own safety in order to prevent further injury to the pedestrian.

c. Two DA Forms 2823 of Sergeant Major (SGM) [REDACTED] and MSG [REDACTED] dated 21 May 2020 attested that the applicant provided them details of the incident in which he had stopped to help someone at a car accident on the morning of 3 February 2020. They state the applicant explained to them his actions and aid he rendered to safeguard the injured pedestrian while putting himself in harm's way by directing traffic in the middle of a busy interstate.

d. DA Form 638 dated 12 June 2020, which shows he was recommended for the Soldier's Medal for heroism for an incident that occurred on 3 February 2020. His entire chain of command recommended approval. The award narrative is the same; however, the certificate citation reads for:

“Exceptional meritorious service and extraordinary heroism while providing medical care under extreme conditions for a critically injured man. MAJ [REDACTED] used his own body to shield a helpless individual in predawn hours on a major interstate while responding to the scene of an accident. MAJ [REDACTED] remained calm and took control of a terrifying situation until first responders could arrive. MAJ [REDACTED] risked his life in order to protect the life of another. His selfless actions and bravery reflect great credit to himself, [REDACTED] Army National Guard and the United States Army.”

e. An affidavit from [REDACTED] the driver of the vehicle that hit the pedestrian dated 23 December 2020, states that she witnessed the applicant stop to render aid and ensure no one else was hurt. She saw the applicant check on the casualty and redirect traffic from the middle of the road. The applicant moved between the man in the road and redirecting traffic for about 20 minutes until the ambulance arrived.

f. An Affidavit from [REDACTED] a motorist who avoided hitting the pedestrian by swerving onto the shoulder dated 23 December 2020, states the applicant restored order to a catastrophic situation. The applicant put himself between the oncoming traffic and the pedestrian in order to preserve the integrity of the accident scene and prevent injuries to any one from another vehicle barreling through the accident scene.

g. Two DA Forms 638 dated 13 April 2021, which shows he was recommended for the Soldier's Medal for heroism for an incident that occurred on 3 February 2020. His chain of command recommended approval. On 15 September 2021, the approval authority downgraded the award recommendation from the Soldier's Medal to an Army Commendation Medal.

h. Army Commendation Medal Certificate dated 15 September 2021 that's includes the additional date of 3 February 2020 and the below citation:

“FOR heroism on 3 February 2020, while providing medical care for an injured man and directing vehicle traffic around the scene. Major [REDACTED] selfless actions reflect great credit upon him, [REDACTED] Army National Guard, and the United States Army.”

i. DA Form 1559 dated 2 November 2021, forwarded by the applicant to the Office of the IG, in which the applicant requested copies of all documents and all supporting evidence with notes, which was provided to the approving authority prior to final determination for an award recommendation of the Soldier's Medal.

j. Memorandum, Subject: Request for Reconsideration of Previous Award Recommendation dated 7 November 2021 show the applicant's request for

reconsideration of the previous award recommendation. The applicant stated that with the assistance of the IG he had determined that evidentiary documents submitted by his unit were not seen by the approving authority. He believed the missing documents provided new, substantive and material evidence on the risk to bodily harm by voluntarily placing himself in harm's way, as well as the totality of his actions on 3 February 2020. There were five missing documents that were not seen by the approval authority of which three supported the original recommendation for award of the Soldier's Medal: a story board with photographic evidence of the scene, the sworn statements by [REDACTED] and [REDACTED]

k. Memorandum, Subject: Soldier's Medal Reconsideration for MAJ [REDACTED] dated 3 January 2022, shows the Chief, Awards and Decorations Branch, AHRC, notified the Director, National Guard Bureau, that the applicant's reconsideration request to award the Soldier's Medal in lieu of the Army Commendation Medal, including all of the information in support of the request, was being returned without action. The applicant's packet did not constitute new and substantive information.

l. Email correspondence, with the Office of the IG and the applicant indicating the final notice to him reference his case of the Reconsideration of an Award Approval. The IG office stated that his case is closed and there is no further action and directed him to the AHRC Awards and Decorations Branch if he requires further assistance.

m. Memorandum, Subject: Reconsideration for MAJ [REDACTED] shows that the Commanding General, AHRC, reconsideration, determined that the applicant's actions, though certainly heroic, did not meet the criteria for the Soldier's Medal, and upheld his previous determination that the Army Commendation Medal was the appropriate award. In accordance with AR 600-8-22, paragraph 1-16, the reconsideration by the approval authority is conclusive. The applicant was advised that he has the right to petition the ABCMR if he believes a material error or injustice occurred.

n. Email correspondence to the applicant indicating an award document had been added to his Army Military Human Resource Record (AMHRR) in iPERMS dated 7 December 2022.

o. Email correspondence between the applicant and NGB iPERMS staff dated 28 March 2023 and 13 April 2023 referencing the requested audit list; the list shows the award was added to his iPERMS an Active Component Domain through AHRC.

p. Press releases pertaining to other Soldiers who were awarded the Soldier's Medal for similar instances (7 pages).

q. DoD IG Complaint confirmation dated 13 August 2023 (20 pages), in which the applicant alleged wrongdoings of the AHRC ADB and requested a review of the policies

and procedures for individual decorations processing at the AHRC ADB to ensure that the processes are being executed within regulatory guidelines. The applicant also requested a review to determine if proper application of policies and procedures were adhered to during the processing of his award recommendation (Soldier's Medal) as well as a request for reconsideration that was returned without action.

r. Email communication with AHRC ICE Response dated 30 November 2023, and the Deputy Chief, Soldier Programs and Services Division, The Adjutant General Directorate at AHRC stated that in response to the applicant's ICE comment their ADB had reviewed the certificate and produced another certificate with the facts per the supporting documentation and asked the applicant to provide a mailing address and the new certificate will be mailed to him.

s. Documents labeled by the applicant as Whistleblower documents detail a timeline of his requested action and complaint information. He proclaims in the document that he believes the ADB at AHRC downgraded an award recommendation for him once he had contacted the office of the IG. He stated he believes the downgrade of the award was done in reprisal for him requesting assistance from the Office of the IG since he identified a failure of the ADB to follow regulatory guidance in processing an award recommendation for him on two separate occasions.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Board noted that the applicant raises concerns about administrative irregularities in the processing of his case. The Board found that any administrative irregularities have no impact on the basic issue in this case, which is the question of whether or not his heroic actions on 3 February 2020 rose to the level required to meet the criteria for the Soldier's Medal.

3. The Commanding General, AHRC, the approval authority for the Soldier's Medal, determined the Army Commendation Medal was the appropriate recognition for the applicant's actions. The Board found insufficient evidence to support a recommendation to change the decision made by the Commanding General, AHRC. Based on a preponderance of the evidence, the Board determined the Army Commendation Medal was the appropriate recognition for the applicant's heroic actions on 3 February 2020.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20220003032 on 7 February 2023.

12/8/2024

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. AR 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It states:

a. The decision to award an individual a decoration and the decision as to which award is appropriate are both subjective decisions made by the commander having award approval authority.

b. The Soldier's Medal is awarded for distinguished heroism not involving actual conflict with the enemy. The minimum degree of heroism is required as for award of the Distinguished Flying Cross. The extraordinary act must have resulted in an accomplishment so exceptional and outstanding as to clearly set the individual apart

from his or her comrades or from other persons in similar circumstances. The performance must have involved personal hazard or danger and the voluntary risk of life under conditions not involving conflict with an armed enemy. Awards of the Soldier's Medal will not be made solely on the basis of saving a life, assisting emergency personnel, or acting as a "good Samaritan." A Soldier's Medal recommendation will be disapproved or downgraded to an Army Commendation Medal.

c. The Army Commendation Medal may be awarded to any member of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941, distinguished himself or herself by heroism, meritorious achievement or meritorious service. It can be awarded for acts for noncombatant-related heroism which do not meet the requirements for an award of the Soldier's Medal.

d. Paragraph 3-21w(6) states properly constituted award recommendations will include records, extracts, sketches, maps, diagrams, and photographs which support and amplify the award of heroism.

2. Department of Defense Directive Number 1332.41 (Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs) dated 8 March 2004 directs the policy that:

a. Procedures established by the Secretaries of the Military Departments for the correction of military records and for the review of discharges and dismissals must conform to the requirements of reference (c) and this Directive.

b. The boards consider applications individually and fashion relief appropriate to the facts and circumstances of each case.

c. Applications be submitted by the individual seeking relief or by an appropriate representative as defined in reference (c), as applicable.

d. Before granting relief, sufficient evidence justifying the relief must be on the record or provided by the applicant. Relief shall be denied if there is insufficient material evidence in the record or provided by the applicant to warrant relief.

//NOTHING FOLLOWS//