

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240002989

APPLICANT REQUESTS:

- award of the Purple Heart (PH)
- correction of the void in his medical records documenting his injury by creating a Standard Form (SF) 600 (Chronological Record of Medical Care), SF 502 (Medical Record – Narrative Summary (Clinical Resume)) or equivalent military medical document to properly document the injury he sustained during combat.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement with Exhibits
- Exhibit 1 – DA Form 638 (Recommendation for Award), Narrative Summary, and Bronze Star Medal Certificate, 31 August 2005
- Exhibit 2 – DA Form 2-1 (Personnel Qualification Record), 6 May 2012
- Exhibit 3 – DD Form 214 (Certificate of Release or Discharge from Active Duty), 2 November 2005
- Exhibit 4 – Dental Records and X-rays
- Exhibit 5 – Department of Veterans Affairs (VA) Claim Letter, 25 September 2013
- Exhibit 6 – Foreign Terrorist Organizations List
- Exhibit 7 – Military Transition Team (MTT) Orders:
 - Permanent Orders Number 088-025, 29 March 2005
 - Orders Number 05-99-055, 9 April 2005
 - Orders Number 108-01, 18 April 2005
 - Permanent Orders Number 123-001, 15 June 2005
 - Orders Number 270-022, 27 September 2005

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, in effect:

a. On 30 May 2005, while on a dismounted patrol in Tal Afar, Iraq, he was struck by shrapnel from an enemy sniper round that impacted six inches from his head. His combat injury was a result of an enemy or hostile act or international terrorist attack, when he was wounded by an enemy sniper round while engaged in a firefight with Anti-Iraqi Forces (AIF). His injury is the type of injury that under normal circumstances would require treatment by a medical official, and though he lacks official medical records documenting the injury his substantiating documents prove, by a preponderance of the evidence, the circumstances in which he is entitled to the PH.

b. He deployed to Tal Afar, Iraq from 10 November 2004 to 6 September 2005 in support of Operation Iraqi Freedom (OIF). He was an 11B, Infantry, noncommissioned officer (NCO) assigned to a MTT as the team advisor. He and his team operated out of a Combat Outpost (COP) in Tal Afar, Iraq. On 30 May 2005, he was conducting a combat patrol with the Iraqi Army (IA) in a hostile neighborhood within the vicinity of the Tal Afar General Hospital. Shortly into the patrol, he and his squad began to receive small arms fire from AIF. Disregarding his own personal safety, he exposed himself to enemy sniper fire while an IA Soldier attempted to recover his weapon and ammo from the ground. He drew attention to himself by moving from his covered position to provide cover fire for the IA Soldier. While exposed, a sniper bullet impacted on a wall six inches from his head. Shrapnel from the enemy sniper round impacted the left side of his face. Consequently, fragments of the sniper round were embedded in his left cheek. These fragments remain in his cheek to this day. He and his team eventually gained fire superiority, causing the AIF to retreat. Following the enemy retreat, he returned to his COP with his team. Due to the absence of medical personnel at the COP, he did not receive medical attention for his wound.

c. The injury that he sustained from the AIF sniper round is the type of injury that exceeds mere examination and requires treatment by a medical official under normal circumstances. According to the Joint Trauma System Clinical Practice Guideline facial wounds require special care and attention. Specifically, facial wounds sustained in combat typically require infection prevention procedures, irrigation, and primary closure of the wound (the use of stitches). The applicant states, it is undisputed that he sustained a facial injury from the fragmented sniper round. Thus, at minimum, his wound should have been flushed with fluids to sterilize and stabilize the wound and subsequently closed with sutures. Unfortunately, he was unable to receive the proper medical treatment as he and his team returned to the COP following the firefight. Though his wound did not receive the proper medical attention and did not worsen, this is immaterial. It matters only that the wound was of such severity that it required

medical treatment, not whether the wound got worse due to a lack of such treatment. Thus, in accordance with the Joint Trauma System Clinical Practice Guideline, since he sustained a facial wound from the sniper round, his wound was of such severity that it required medical treatment, not mere examination, by a medical officer.

d. A lack of recorded medical treatment in official Army records does not preclude someone from awarding of the PH, despite the requirement of Army Regulation (AR) 600-8-22 (Military Awards). He cites, in *Haselwander v. McHugh*, the District of Columbia Court of Appeals held that it is within the Board's authority to create the relevant medical records needed to establish that Haselwander was in fact injured and that the absence of this document was not sufficient to deny him the PH. In that case, Haselwander, the applicant, was wounded in Vietnam by an exploding enemy rocket, however, he was never able to fill out any medical paperwork to document the injury. He applied to the Board to award the PH, but the Board denied his application. Much like Haselwander, the applicant was not able to receive medical treatment for his injury following the firefight with AIF and instead, returned to the COP with his team. The absence in his medical records is the error he seeks to correct so that he may be awarded the PH to which he is entitled. As such, his lack of medical records documenting his injury from AIF sniper fire is not sufficient to outright deny awarding him the PH.

e. In 2015, in ABCMR Case Number AR20150014782, the Board awarded the PH to an applicant who was injured from an enemy mortar round in Vietnam but lacked the medical documents to substantiate his injury. In that decision, the Board stated, "in the absence of any official record of an injury, the Board may still determine that a preponderance of the evidence supports awarding the PH." The Board reasoned that "under wartime conditions, wounds requiring treatment by a medical officer will not always receive such treatment, and, even if a Soldier requiring such treatment receives it, there will be cases where the treatment is not made a matter of official record."

f. His substantiating documents clearly demonstrate, by a preponderance of the evidence, the circumstances which entitle him to the PH. Indeed, he did not receive the proper medical treatment, nor was his combat injury documented in his official records. However, his DA Form 638, narrative summary, dental records, and VA claim letter clearly substantiate his injury and exceed the preponderance standard needed for the Board to correct his military records and award him the PH.

3. The Board will not consider the applicant's request to correct the void in his medical records to document his injury and the issue to correct his medical records will not be considered in this Record of Proceedings.

a. Medical records reflect the observations and opinions of medical professionals at the time they were created. Alteration of a diagnosis in those records after the fact may

lead to fundamental questions about the veracity of the records in this case and in general. For these reasons, it would not be proper to change any of the medical documents which would, in effect, alter a diagnosis in the applicant's medical records.

b. Medical record entries will be made in all inpatient, outpatient, service treatment, dental, Army Substance Abuse Program, and occupational health records by the healthcare provider who observes, treats, or cares for the patient at the time of observation, treatment, or care. No healthcare practitioner is permitted to complete the documentation for a medical record on a patient unfamiliar to him or her.

c. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice. Medical records are not within the purview of this Board.

4. The Board will consider the applicant's request for award of the PH.

5. The applicant provides the following:

a. A DA Form 638 dated 31 August 2005, which shows he was approved for award of the Bronze Star Medal (BSM) with valor, by Permanent Order Number 243-0090.

b. A narrative justification for award of the BSM with valor, which states, the applicant distinguished himself by exceptionally valorous achievement as a MTT Advisor while deployed with the Multi-National Security Transition Command, in support of OIF. On 30 May 2005, the applicant was part of an IA dismounted patrol in the city of Tal Afar, Iraq. Approximately 30 minutes into the patrol they began to receive AIF small arms fire. The applicant took action by returning fire and calling out the location of enemy positions. While exposed, a sniper bullet impacted on a wall six inches in front of the applicant's head, and seconds later a rocket-propelled grenade (RPG) impacted about 60 feet in front of the applicant's position. Despite enemy fire, he continued to cover the Iraqi Soldier with his own fire until the Soldier retrieved his ammunition and weapon and was safely behind cover. The applicant displayed unwavering courage under fire, disregard for his own personal safety, commitment to mission accomplishment, and teamwork which resulted in the eventual defeat of the enemy.

c. A BSM with valor certificate, dated 31 August 2005, which states the applicant was awarded the BSM with valor for his valorous conduct in the face of the enemy of the U.S. as a MTT Advisor, during combat operations in support of OIF III.

d. A copy of his dental records and x-rays, wherein the doctor noted that the applicant complained of tingling sensation (occasionally) around facial area with bullet, and his jaw pops as well but not painful.

e. VA claim letter dated 25 September 2013, which shows he was service connected and granted 10 percent for painful scar, left cheek, residual of retained shell fragment.

f. U.S. Department of State Foreign Terrorist Organizations listing which shows Al-Qaida as a designated foreign terrorist organization since 8 October 1999.

g. Permanent Orders Number 088-025, issued by the Multi-National Security Transition Command – Iraq, Baghdad, Iraq on 29 March 2005 which attached him to the Multi-National Corps – Iraq, effective 1 April 2005 for the purpose of deployment in support of OIF.

h. Orders Number 05-99-055, issued by the Multi-National Corps Iraq, Baghdad, Iraq on 9 April 2005, attaching the applicant to MNF-NW (Task Force Freedom) for the purpose of MTT.

i. Orders Number 108-01, issued by Headquarters, Multi-National Forces – Northwest, Mosul, Iraq on 18 April 2005, which attached him to the 3rd Armored Cavalry Regiment, effective 22 April 2005 for the purpose of MTT.

j. Permanent Orders Number 123-001, issued by Headquarters, 3rd Armored Cavalry Regiment on 15 June 2005, which shows the Soldiers of the 98th Training Division attached to the 3rd Armored Cavalry Regiment during OIF was awarded authorization to wear the 3rd U.S. Cavalry Regiment shoulder sleeve insignia for Former Wartime Service for participation in Operation Enduring Freedom and Operation Iraqi Freedom.

k. Orders Number 270-022, issued by the Department of the Army, Camp Atterbury, Edinburgh, IN on 27 September 2005, which released the applicant from active duty on 2 November 2005.

6. A review of the applicant's service records show:

a. He enlisted in the U.S. Army Reserve on 23 April 1999.

b. DA Form 2-1 contains the following information:

- Item 6 (Military Occupational Specialties): 11B, Infantryman

- Item 5 (Oversea Service): 10 November 2004 thru 6 September 2005 – OIF – Tal Afar, Iraq, 11 months
- Item 9 (Awards, Decorations & Campaigns): does not list the award of the PH.
- Item 35 (Record of Assignments): while deployed to Iraq, he was assigned to the 3rd Armored Cavalry Regiment, Tal Afar, Iraq as a Military Transition Team NCO

c. He was honorably released from active duty on 2 November 2005. He completed 1 year and 1 month of net active service this period. His DD Form 214 shows in:

- Item 11 (Primary Specialty): 11B4H – Infantryman
- Item 12f (Foreign Service): 10 months, 9 days
- Item 13 (Decoration, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Does not list the PH, it shows the Bronze Star Medal with “V” device, Bronze Star Medal, Army Commendation Medal, Army Achievement Medal, Army Good Conduct Medal, Marine Corps Good Conduct Medal – 2, Army Reserve Components Achievement Medal, National Defense Service Medal, Armed Forces Expeditionary Medal, Iraq Campaign Medal, Global War on Terrorism Service Medal, Armed Forces Reserve Medal with “M” device, NCO Professional Development Ribbon – 3, Army Service Ribbon, Overseas Service Ribbon, Marine Corps Security Guard Ribbon, Joint Meritorious Unit Award, Marine Meritorious Unit Citation, and the Combat Infantryman Badge
- Item 18 (Remarks): Service in Kuwait from 14 November 2004 to 24 November 2004; service in Iraq from 24 November 2004 to 22 September 2005

7. There are no documents in the applicant's record that indicate he was recommended for or awarded the PH.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined there is sufficient evidence based on the applicant's VA records and award recommendation from the applicant's command awarding him the Bronze Star with Valor accounting the detail that led to him having shrapnel lodged in his face during enemy engagement.

2. The Board noted, it is not in the purview of the Board to recreate medical records to document injuries received in combat. However, the Board noted although the applicant's record is absent supporting medical documentation from the time of the encounter. The Board agreed the applicant was injured during combat and meets the criteria for award of the purple heart. Therefore, the Board granted relief.

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 his DD Form 214 by awarding him the Purple Heart.

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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 (AR) 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 (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) 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.

c. The authority to approve or disapprove recommendations for the award for Servicemembers who did not receive a PH while serving in a unit with wartime awards approval authority is the Chief, Awards and Decorations Branch. Although a Servicemember may be deployed, award of the PH for injuries incurred in a previous deployment must be processed through the servicemember's current chain of command to the Commander, HRC for approval. The first general officer in the current chain of command may disapprove the recommendation.

d. Any member of the Army who believes that they are eligible for the PH but, through unusual circumstances no award was made, may submit an application through

the member's chain of command to Commander, HRC (AHRC-PDP-A). If the requestor has separated from the military, the application may be mailed directly to the Commander, HRC (AHRC-PDP-A). The application will include the following documentation pertaining to the wound and inflicting force:

- DA Form 4187 (for currently serving members)
- Chain of command endorsement (through the first general officer in the Soldier's current chain of command for currently serving members)
- Deployment orders
- DA Form 4037 (Officer Record Brief)/enlisted records brief (ERB)/DA Form 2-1 (Personnel Qualification Record)
- One-page narrative describing the qualifying incident and the conditions under which the member was injured or wounded.
- 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.
- Casualty report (if available)
- SF 600 (Medical Record - Chronological Record of Medical Care)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) (if applicable)

//NOTHING FOLLOWS//