

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240003247

APPLICANT REQUESTS: reconsideration of the previous Army Board for Correction of Military Records (ABCMR) decision promulgated in Docket Number AR20230003900 on 1 November 2023. Specifically, he requests entitlement to the Purple Heart and a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Permanent Orders C344-44, U.S. Army Garrison, Hawaii, 10 December 2003
- 4 Defense Casualty Information Processing System (DCIPS) screenshots, 13 November 2004
- 4 pages of Standard Form (SF) 600 (Chronological Record of Medical Care), 14-15 November 2004
- DD Form 1380 (U.S. Field Medical Card), 15 November 2004
- Memorandum, U.S. Army Human Resources Command (AHRC), 2 March 2006
- DA Form 2823 (Sworn Statement), Major (MAJ) BTS, 3 March 2014
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Bound Journal, 20 September 2022
- Letter, Freedom of Information Office, AHRC, 12 October 2022
- Applicant Statement, 19 October 2022
- Applicant Memorandum, Request Reconsideration, 23 January 2024
- Witness Statement, Master Sergeant (MSG) JTJ, 13 February 2024
- Witness Statement, Sergeant (SGT) PWK, 15 February 2024
- 6 Photographs

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 AR20230003900 on 1 November 2023.
2. The applicant provides new evidence or argument which warrants consideration by the Board.

3. The applicant states, in effect, he was wounded in Action (WIA) as the result of a vehicle accident caused by enemy fire on 13 November 2004, in Rashad, Iraq while conducting combat operations and ambushed by a hostile enemy. He is registered and was processed as WIA. His original Purple Heart request was lost, and he was never awarded the Purple Heart.

a. Upon review of the applicant's original petition and available military records, the Board determined there was insufficient evidence to grant award of the Purple Heart. The Board determined the applicant's wounds were caused by the vehicle accident and not by hostile enemy actions. Further, the Board noted there is no medical record showing the applicant received wounds caused by enemy forces that required treatment by medical personnel.

b. In accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-8, section i, "It is not intended that such a strict interpretation of the requirement for the wound or injury to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must also take into consideration the circumstances surrounding an injury, even if it appears to meet the criteria. Note the following example: in a case such as an individual injured while making a parachute landing from an aircraft that had been brought down by enemy fire; or, an individual injured as a result of a vehicle accident caused by enemy fire, the decision will be made in favor of the individual and the award will be made.

c. The situation described by the applicant is the exact same example that the regulation uses, when cautioning against too strict of an interpretation that would preclude the award to deserving personnel. Keeping paragraph 2-8, section i, in mind, the board was too strict rendering their initial judgement despite the evidence presented. This appeal will make it clear that the applicant was injured as a result of a vehicle accident caused by enemy fire, as proven by seven different pieces of evidence/arguments and that there are five different documents of official record that indicate the applicant was wounded in action.

(1) Personal narrative stating, "One RPG hit the front of my vehicle, as a result of the ambush initiated by insurgents, there was a vehicle accident between C-6 and C-17." A RPG hitting the front of a vehicle is clear evidence of hostile enemy action.

(2) Enclosed sworn statement from the applicant's commander during the ambush clearly states that this collision was the direct result of hostile enemy actions. DA Form 2823 states, "As a result of the ambush initiated by insurgents there was a vehicle accident between C-6 and C-17, which resulted in C-17 (the applicant's vehicle) being disabled within the ambush kill zone."

(3) Enclosed sworn statement from MSG JTJ who observed the ambush. He

states "A RPG hit the front right of the middle vehicle (the applicant's vehicle). C-17 and the applicant have both also been confirmed in this sworn statement. Additionally, this sworn statement details that because of enemy fire, C-17 ran into the front truck which stopped unexpectedly. There were multiple casualties due to enemy attack, observed from a different angle by MSG JTJ.

(4) Enclosed sworn statement from SGT PWK which is the same account that MSG JTJ gives in the statement above. SGT PWK observed both the ambush, the RPG, the small arms fire, and the collision caused by the enemy fire.

(5) Before and after pictures of applicant's damaged truck make it clearly visible that vehicle damage sustained from an enemy RPG and small arms fire affected the ability to properly steer. The bumper number C-17 is only visible on one photo, however, while looking at the attached PowerPoint document, slide 5 zooms in and highlights the white stickers affixed to the windshield, both before and after pictures include the same white stickers, at the same slightly imperfect angle. This proves that both the before and after pictures are the exact same truck. Additionally, the meta data from each digital tile reveals the dates that each picture was taken, and furthermore, the meta data can identify that the camera used to take the photos. A Cannon PowerShot A60, a camera released in 2002, places the meta data of date photo was taken in the correct time frame, dissolving suspicion that these photos are fabricated or not relevant to the ambush.

(6) DCIPS clearly states "SM was on checkpoint patrol when first team was ambushed", and furthermore lists the applicant as "Wounded in Action".

(7) DD Form 1380 dated 15 November 2004, less than a day after the applicant returns from patrol, which clearly states "Injury, RPG Attack, 13 NOV" which corroborates both statements from above evidence.

d. There would have been no vehicle collision if the element had not been ambushed by the enemy. This is in complete compliance with Army Regulation 600-8-22, paragraph 2-8, g, (4) which states "Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows: Injury caused by vehicle or aircraft accident resulting from enemy fire." This is undeniable evidence that counters the discussion by the board, to which they conclude "applicant's wounds were caused by the vehicle accident and not by hostile enemy actions." Additionally, Army Regulation 600-8-22, paragraph 2-8, section f, states "When contemplating an award of this decoration, 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 sole justification for award." The key verbiage from this section is "degree to which the enemy caused the injury". In this case, once again, the degree of which the enemy

caused this collision is 100%. According to the evidence provided, the vehicle collision did not take place until the enemy initiated the ambush on the convoy. Subsequently are the arguments and evidence validating that there are multiple documents the applicant provided that clearly shows the applicant received wounds that required treatment, and the applicant saw multiple medical personnel. Despite the Board's statement that there are no medical records with the aforementioned criteria, there are numerous.

(1) DD Form 1380 is a medical record that clearly states injuries sustained from the RPG attack, to include a right elbow abrasion and contusion as well as right ulnar sensory neuropathy. This document not only acknowledges clearly that the injury was sustained as a consequence of enemy actions, but there was both a diagnosis and a clear treatment plan provided by a medical professional, as signed, which meets the criteria in Army Regulation 600-8-22.

(2) Given that DD Form 1380 is a cursory patient assessment, the applicant also included the SF 600, which further details in his medical record that he did receive wounds and there was treatment required, also signed by a medical doctor. The SF 600 indicates on page 2 that the applicant required x-rays; and the follow up on SF 600 page 3 indicates that there was no fracture after the applicant received x-rays.

(3) A Freedom of Information Act Request reveals a Casualty Basic Form. The information in this request specifies both a Case Number and status of the applicant. The case number reads that applicant sustained a Non Serious Injury III. The fact that information was not in the applicant's possession but obtained via FOIA request, concludes that this information was made a matter of official record, as indicated by the Board as necessary criteria. This also corroborates data from the DCIPS database.

(4) Additional information in DCIPS also includes a diagnosis to include a possible fracture.

(5) Memorandum regarding indebtedness for debts owed by WIA, the applicant is included on an official list as WIA, and was subsequently billed for treatment, with the included memo cancelling that debt. The list in which the applicant falls on is titled "20 WIA CASES FAVORABLY CONSIDERED/ APPROVED."

e. Regardless of whether the applicant sustained a fracture or not, it is clear from the DD Form 1380, SF 600, and DCIPS that there was a diagnosis and medical treatment, which is precisely the data the Board said is not present. The applicant was seen by two different medical doctors for injuries sustained due to enemy actions, one for the initial appointment Dr. KK (DD Form 1380) and one being an Orthopedic Surgeon (See signature block on SF 600).

f. One might wonder after clearly being WIA, with supporting medical documents, why did the applicant did not originally receive the Purple Heart. In 2004, the conflict was relatively new and paperwork was still completed in an analog fashion. As an example, Soldiers were often required to "jury rig" or fabricate new pieces of armor and equipment simply to survive on the battlefield. If things of that nature weren't solidly in place, one could be sure that paperwork became an afterthought amidst the chaos of frequent and violent patrolling, as was common at the time. Frankly the Soldier's chain of command failed in following the paperwork to the end. Even now in whatever electronic records exist, the applicant is registered as WIA in the Army Casualty Processing system; however, he was never awarded the Purple Heart.

4. Having 3 months and 24 days prior active service, the applicant entered active duty in the Regular Army on 17 October 2000. He served in military occupational specialty 11B (Infantryman). Evidence shows he served in Iraq from 9 January 2004 to 28 February 2005.

5. Having sufficient service for retirement, on 30 September 2020, he retired honorably in the rank/grade of Sergeant First Class/E-7. The DD Form 214 he was issued does not reflect award of the Purple Heart.

6. An AHRC letter dated 14 December 2022, denied his request for entitlement to the Purple Heart for injuries sustained while deployed in support of Operation Iraqi Freedom. AHRC acknowledge that MILPER Message Number 22-215, dated 8 June 2022, allows for awards to be made in the case of a perforated ear drum injury; however, after review of his medical documents, it did not appear he was diagnosed with such a wound as the direct result of enemy action. Further, Army Regulation 600-8-22, paragraph 2-8, prohibits the award of the Purple Heart for accidental injuries, abrasions and lacerations, bruises and contusions, and conditions such as hearing loss and/or tinnitus. In this regard, they remained unable to justify an award of the Purple Heart for the events of 13 November 2004.

7. The applicant provides evidence in the form of a/an:

a. DCIPS screenshots which lists the applicant's casualty type as hostile, status as not seriously injured, and category as WIA. Circumstances states, the applicant was on check point patrol when first team was ambushed. Second team tried to assist first team, when first and second vehicles of second team made impact. First vehicle swerved and second vehicle made contact. Diagnosis states the applicant sustained a bruise to his right elbow and possible fracture.

b. 4 pages of SF 600 from 14 and 15 November 2004, which shows he was examined and treated for, among others, right elbow pain and probable right ulnar nerve neuropathy. It appears he received 30 mg of Toradol, 1 gram Ancef, 500 mg Naproxen

for 3 days and 10 mg Flexeril. The elbow was cleaned and placed in a sling. He received a no lifting, physical training, weapon profile for 2 weeks. Follow up x-rays revealed no fracture and no evidence of compartment syndrome.

c. DD Form 1380 listing a right elbow abrasion and contusion to dorsal compartment and right ulnar sensory neuropathy as the result of an RPG attack on 13 November 2004. Received a sling and 30 mg Toradol intravenously. Referred for x-rays. No compartment syndrome but limited range of motion in right elbow and hand.

d. Memorandum from the Chief, Special Actions Branch, AHRC, 2 March 2006, cancelling the indebtedness of 20 Soldiers to include the applicant for debts owed by WIA and Disease, Non-Battle Injury Soldiers.

e. DA Form 2828, MAJ BTS, 3 March 2014, who states, in effect, while enroute to support the other patrol element, in contact with insurgents, their patrol element was ambushed with small arms fire and RPGs. As a result of the ambush there was a vehicle accident between C-16 and the applicant's vehicle which resulted in the applicant's vehicle being disabled within the kill zone. While under direct enemy fire the applicant provided emergency first aid to a fellow Soldier and moved the remaining Soldiers out of the kill zone. During the ambush, the applicant sustained injuries which required medical attention and prevented him from immediately returning to duty for approximately a week.

f. Witness Statements from MSG JTJ and PWK dated 13 and 15 February 2024, respectively. The statements are effectively the same and claim, in effect, an RPG hit the front right of the applicant's vehicle followed by heavy machine gun fire and more RPGs. The truck was partially disabled and needed to get out of the kill zone as soon as possible, so the driver hit the gas to leave, however due to the smoke and dust caused by the attack, visibility was poor in the kill zone. They were listening to the radio traffic and following with their eyes their activity; they saw that their lead vehicle, an M119 up-armored vehicle, turn left in front of the applicant's vehicle, and in the chaos and confusion of the battlefield, the applicant's vehicle ran head-on the left side of C-6. Then C-6 turned right and drove away 300 meters from the kill zone then pulled over to the left side of the road leaving the applicant downed in the kill zone while continuing to take heavy machine gun fire and RPGs. The applicant carried and treated a wounded Soldier and had his other two Soldiers return fire; the gunner was unable to fire into the enemy due not having a clear line of sight and did not want to have a fratricide incident and hit any friendly forces. Subsequently, another vehicle pulled up to the applicant's position, the applicant and another Soldier carried the wounded to the vehicle and drove out of the kill zone. On 17 November 2004, at Forward Operating Base Gainesville, there was a field funeral service for a fallen Soldier who was killed during a mission the day prior. He noticed the applicant was wearing an arm sling on his right arm along with bandages, so they chatted for a few moments about the ambush and he described and

showed him the injuries that he suffered during the enemy ambush, which included lacerations, hematomas, contusions, muscle and ligament damage, and his right arm was deformed and appeared to be fractured. He was in a lot of physical pain, and under a lot of medications. He showed him his doctor's note, he was incapacitated due to the injuries and was placed on light duty for two weeks, then they went their separate ways.

g. Six before and after photographs of the applicant's vehicle showing the results of the enemy RPG attack.

8. Army Regulation 600-8-22 contains the regulatory guidance pertaining to entitlement to the Purple Heart and requires all elements of the award criteria to be met. 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.

9. Army Regulation 15-185 (ABCMR) states an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

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 multiple documents in the record showing the applicant was wounded in action while serving in Iraq, on 13 November 2004, the Board concluded there was sufficient evidence to award and add the Purple Heart to the applicant's military record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:X	:X	:X	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 Iraq on 13 November 2004.

X //SIGNED//

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 600-8-22 states the Purple Heart is awarded to members of the Armed Forces of the United States who, while serving under the authority with any of the U.S. Armed Services, have been wounded, were killed, or who have died or may hereafter die of wounds received as a result of hostile enemy action. When contemplating this award authorization officials must take into consideration the degree to which the enemy caused the injury. The wound, injury, or death must have been the result of hostile enemy action; the wound or injury must have required treatment, not merely examination, by a medical officer or a medical professional; and treatment of the wound must be documented in the Service member's medical and/or health record.
2. 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. 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//