

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240003314

APPLICANT REQUESTS: reconsideration of his prior requests for award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Service and post-service medical records

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers:

- AR20150014240 on 1 September 2016
- AR20170008285 on 17 April 2019
- AR20200009554 on 28 December 2021
- AR20220008393 on 1 June 2023

2. The applicant states:

a. He was injured in Kandahar, Afghanistan on 23 February 2012 when his convoy was attacked by a Taliban fighter who threw a grenade at his vehicle. When the grenade went off, the force of the blast threw him into the edge of the turret. In his witness statements, it states he said he was told to duck, his brain was fuzzy for a week after the attack. when he finally made it to a medic for evaluation, he was told he had a concussion from the blast and that he could only be given ibuprofen for the headaches and migraines he was receiving. That is why his witness statement said he was told to duck because he couldn't remember what happened exactly and either could the driver or truck vehicle commander.

b. He was injured during combat operations; his chain of command didn't assist him when asked for them to put him in for the award. He was sent home early from deployment and his name was not added to the Operation Enduring Freedom injury

roster due to poor chain of command. With the addition of step (s) for the requirements that justify the award of the Purple Heart, which states concussion injuries caused as a result of enemy generated explosions. He falls under this qualification for the award of the Purple Heart.

3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD), and Traumatic Brain Injury (TBI) as contributing and mitigating factors.

4. The applicant enlisted in the Regular Army on 30 August 2006. He served in military occupational specialty 91B (Wheeled Vehicle Mechanic). He served in Afghanistan from 6 June 2011 to 3 April 2012.

5. The applicant was honorably retired due to permanent disability on 13 November 2013. The DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 7 years, 2 months, and 14 days of active service and was awarded or authorized:

- Afghanistan Campaign Medal with 2 campaign stars
- Army Commendation Medal (2nd Award)
- Army Achievement Medal (5th Award)
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- North Atlantic Treaty Organization Medal
- Expert Marksmanship Qualification Badge with Rifle Bar
- Driver and Mechanic Badge with Driver-W Clasp
- Driver and Mechanic Badge with Mechanic Clasp

6. On 1 July 2014, the Chief, Awards and Decorations Branch, U.S. Army Human Resources Command, responded to a Congressional inquiry concerning the applicant's request for award of the Purple Heart. The Awards and Decorations Branch Chief stated the applicant's entitlement to award of the Purple Heart could not be verified and the Defense Casualty Records for Operation Enduring Freedom did not list the applicant's name. Requirements for award of the Purple Heart were explained and the applicant was advised to provide evidence meeting these requirements.

7. On 7 August 2014, the Chief, Awards and Decorations Branch, U.S. Army Human Resources Command responded to a Congressional inquiry concerning the applicant's request for award of the Purple Heart. The Army Human Resources Command stated

they were unable to authorize award of the Purple Heart based on the documentation provided which showed the injury was sustained as a result of taking cover and not as a direct result of the grenade.

8. On 16 March 2016, the Chief, Soldier Programs and Services Division, U.S. Army Human Resources Command, responded to a Congressional inquiry concerning the applicant's request for award of the Purple Heart. The Soldier Programs and Services Division Chief stated that after careful consideration and consultation with the U.S. Army Human Resources Command Surgeon's Office, the original decision to disapprove award of the applicant's Purple Heart remained firm. The applicant was advised to appeal to the ABCMR if he believed the determination was unjust.

9. The applicant provided the following documentation in consideration of his request. The service and post service medical records are not referenced in any of his prior reviews.

a. On 24 February 2012, he was gunner in the third truck in a four truck convoy. The first truck missed a turn on the highway and the convoy stopped to allow truck to back up and make the turn. As the convoy came to a stop, a Taliban fighter ran across the highway and threw a grenade at his turret. The grenade bounced off the netting and landed between his truck and the fourth truck. He was instructed to duck back inside the vehicle injuring his left elbow.

b. Post concussion Incident -TBI assessment dated 24 April 2012, he was diagnosed with a concussion with lose of consciousness and referred for a TBI screening.

c. A medical evaluation report, dated 26 September 2012, that indicates he injured his left elbow by ducking to avoid a grenade in Afghanistan on 24 February 2012. He underwent surgery on 1 August 2012 for intramuscular ulnar nerve transportation (a procedure performed to move the ulnar nerve from behind the medial epicondyle (elbow) to a suitable position where it is not irritated or pinched by this bony prominence.

d. He received a follow-up evaluation for a TBI on 3 October 2012 with medication continuation.

e. On 8 November 2012 he was seen for a Behavior Health Evaluation for possible PTSD, occupational problems, and being highly irritable.

f. A progress note, dated 7 June 2018, lists the applicant's diagnoses as:

- Major depressive disorder

- PTSD
- Chronic Headaches

10. The applicant previously petitioned the ABCMR for award of the Purple Heart.

a. On 1 September 2016, the Board denied relief finding the sworn statements insufficient as a basis to grant him the award of the Purple Heart. The applicant ducked into his turret to avoid a grenade and hurt his elbow as he was entering the vehicle. He did not sustain the injury as a direct result of enemy action, in that the grenade did not cause his injury.

b. On 17 April 2019, the Board denied relief finding the applicant did not provide substantiating evidence to verify he was injured, that the wound was a result of hostile action, and that the wound required treatment by medical personnel and was made a matter of official record. The Board found the evidence did not meet the regulatory standard for the Purple Heart.

c. On 28 December 2021, the Board denied relief finding the applicant's injury was not a result of direct combat from an armed enemy and concluded the applicant did not meet the criteria for award of the Purple Heart.

d. On 1 June 2023, the Board denied relief finding all elements of the award criteria for the Purple Heart were not met. The applicant did not provide proof the wound was incurred as a result of enemy action, the wound did not require treatment by medical personnel, and that the medical personnel made such treatment a matter of official record. The evidence shows the injury was sustained as a result of taking cover and not as a direct result of the grenade.

BOARD DISCUSSION:

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 review based on law, policy, and regulation. The Board determined to be awarded the Purple Heart, the regulatory guidance 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. The Board noted the applicant's contention that a grenade launch caused him to be duck inside of his turret. The Board also noted the applicant's contention he was concussed; however, was not convinced by a preponderance of the evidence that he

was restricted from full duty due to persistent signs, symptoms, or a clinical finding of a concussion or that impaired brain function occurred for a period greater than 48 hours from the time of the incident. The Board did not find documentary evidence that clearly and convincingly established criteria for the Purple Heart and denied relief based on the foregoing.

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 amendment of the ABCMR decision rendered in Docket Numbers AR20150014240 on 1 September 2016, AR20170008285 on 17 April 2019, AR20200009554 on 28 December 2021, and AR20220008393 on 1 June 2023.

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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. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases on the evidence of record, and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. Paragraph 2-8 (Purple Heart), while clearly an individual decoration, the Purple Heart differs from all other decorations in that an individual is not "recommended" for the decoration; rather, he is entitled to it upon meeting specific criteria:

- 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
- on or after 11 September 2001, a member killed or wounded in an attack by a
- foreign terrorist organization in circumstances where the death or wound is the
- result of an attack targeted on the member due to such member's status as a
- member of the Armed Forces, unless the death or wound is the result of the
- member's willful misconduct

a. 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. When contemplating eligibility for the Purple Heart, the two critical factors commanders must consider is the degree to which the enemy or hostile force caused the wound, and was the wound so severe that it required treatment by a medical officer.

b. Some enemy-related actions which justify eligibility for 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

//NOTHING FOLLOWS//