

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20240003453

APPLICANT REQUESTS: in effect, reversal of the U.S. Army Human Resources Command (HRC), Awards and Decorations Branch denial of his award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Enlisted Record Brief (ERB)
- CAB Award Criteria, undated
- DA Form 4187 (Personnel Action), 8 May 2005
- DA Form 638 (Recommendation for Award), 28 May 2010
- Medical Records (18 pages)
- Department of Veterans Affairs (VA) Decision Review Officer Reconsideration, 12 March 2013
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 21 March 2013
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 26 June 2013
- VA Form 21-4138 (Statement in Support of Claim), 9 October 2013
- Memorandum, subject: Removal from Temporary Disability Retired List (TDRL), 4 August 2015
- Orders D 216-05, 4 August 2015
- Letter from VA, 20 August 2022
- Letter from VA, 12 August 2023
- Digital Privacy Release Form, 2 January 2024
- Letter from U.S. Army Human Resources Command (HRC), Awards and Decorations Branch, 11 January 2024
- Letter from HRC, Awards and Decorations Branch, 20 February 2024

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:

a. He believes that his traumatic brain injury (TBI) diagnosis meets the requirements of Army Regulation (AR) 600-8-22 (Military Awards). Throughout his career he was a 12B (Combat Engineer) and an 89B (Explosive Ordnance Disposal (EOD)) technician, involved in numerous improvised explosive device (IED) blasts, more or less than one meter away. Unfortunately, all the IED attacks were not documented. However, he does have a record of his combat action badge (CAB) award from 2005 and his bronze star medal (BSM) award narrative involving an IED blast. Regrettably not all the encounters were documented.

b. He received six months of TBI rehabilitation treatment at Fort Campbell, KY, with a documented medical diagnosis of TBI due to combat exposure. At the time, the awarding of the PH had a great stigma attached to it for those with TBI, and it was still a debated topic during his time in rehabilitation. He suffers from chronic pain, mentally and physically due to combat exposure by the enemy. According to the Army HRC awards branch, his files were reviewed and met. He received an email from HRC, dated 18 January 2024, which quotes "You meet 1 of 2 lawful requirements. Medically speaking, your conditions fall within our policy. Now you just need to link that to an event involving enemy engagement."

c. He was exposed to multiple IED blasts from 2005 to 2010. He lost consciousness for roughly 30 seconds to a minute on 15 April 2010, around 2330, due to an IED blast under their Joint EOD Rapid Response Vehicle (JERRV). A pressure-initiated device blew under their JERRV, and he sustained a concussion. At the time he was offered to be written up for the award, but the current climate stigma stirred his decision to decline. He has regretted it since. He knows that he has sustained wounds from his time in combat.

3. The applicant provides the following:

a. A CAB award criteria checklist, signed by his commander, which shows he was performing his assigned duties in an area where hostile fire pay or imminent danger pay was authorized. He was personally present and actively engaging or being engaged by the enemy and performing satisfactorily in accordance with the prescribed rules or engagement. He was engaged by indirect fire and was injured or could have reasonably

been injured by the attack. The type of weapon was IED. The proximity of the blast, detonation, or explosion to the applicant was 1m.

b. DA Form 4187, requesting the applicant be awarded the CAB for personally being engaged by the enemy on 8 May 2005.

c. DA Form 638 dated 28 May 2010, which shows he was awarded the BSM for meritorious service as an EOD Technician and Weapons Intelligence Team Leader in Baghdad, Iraq from 3 October 2009 to 25 June 2010 in support of Operation Iraqi Freedom (OIF). He performed a total of 81 combat missions while assigned to Navy EOD mobile unit 12 and served as a battlefield forensics investigator charged with collecting and analyzing intelligence and physical evidence from scenes of IED events. He personally conducted 81 tactical responses, encompassing more than 347 hours outside the wire with no injuries incurred. These missions included the exploitation of intact IEDs, post-blast analysis, weapons caches, planned operations, and Iraqi election support. His vehicle was struck by an IED while responding to an IED incident. He performed emergency procedures and continued the mission by completing the forensic investigation on his own vehicle, and then utilizing a security vehicle to continue the original mission tasking for forensic support.

d. 18 pages of medical records which show he has a history of TBI.

e. A DD Form 199 shows on 21 March 2013, an informal PEB found the applicant physically unfit due to Post-Traumatic Stress Disorder (PTSD) with comorbid major depressive disorder without psychotic features and TBI with residual headache syndrome and recommended a rating of 70 percent and that the applicant's disposition be placed on the TDRL. The PEB noted that the disability disposition was based on disease or injury that incurred in the line of duty in combat with an enemy of the U.S. and as a direct result of armed conflict or cause by and instrumentality of war and incurred in the line of duty during a period of war.

f. A Statement in Support of Claim, dated 9 October 2013, submitted as evidence in VA's evaluation of the applicant's TBI symptoms.

g. A letter from VA, dated 20 August 2022, which certifies the applicant served honorably in the U.S. Armed Forces.

h. A letter from VA, dated 12 August 2023, which shows his combined service-connected evaluation is 100 percent. He is considered to be totally and permanently disabled due to his service-connected disabilities.

i. A digital privacy release form, dated 2 January 2024, authorizing the Office of Representative S_ to receive any information that they may need to provide assistance in resolving the applicant's matter.

j. HRC, Awards and Decorations Branch response to the U.S. Representative, dated 11 January 2024, which shows the request for award of the PH for injuries the applicant received while deployed in support of OIF was returned for additional documentation. The Chief, Awards and Decorations Branch stated that in order to determine the applicant's eligibility for the PH, HRC 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, paragraph 2-8. Without the documentation, HRC would not be able to process the request.

k. HRC, Awards and Decorations Branch response to the U.S. Representative, dated 20 February 2024, wherein the Chief, Awards and Decorations Branch stated they acknowledged the medical documentation submitted by the applicant; however, none of the information provided tied his mild TBI (mTBI) to a specific corresponding event. Additionally, they were unable to locate documentation indicating the applicant was diagnosed or treated for a TBI near the time of his medically evacuated departure. As such, they can take no further administrative action regarding the request, and noted the applicant's next course of action was to appeal this decision to the highest appellate authority on personnel matters, the ABCMR.

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

a. He enlisted in the U.S. Army Reserve on 20 February 2001 and on 4 January 2004 he was discharged for enlistment in the Regular Army.

b. The applicant enlisted in the Regular Army on 5 January 2004

c. His ERB contains the following information:

- Section I (Assignment Information Overseas/Deployment Combat Duty):
 - Iraq: 10 January 2004 – 18 April 2004 (3 months)
 - Iraq: 2 February 2005 – 7 January 2006 (11 months)
 - Iraq: 28 September 2009 – 2 July 2010 (9 months)
 - Iraq: 16 September 2011 – 25 November 2011 (2 months)
- Section VIII (Awards and Decorations): does not list the award of the PH.

d. Orders Number 093-0624, issued by Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, Fort Campbell, KY on 3 April 2013, shows he was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his placement on the TDRL. His effective date of retirement was 26 June 2013, and he was placed on the retirement list on 27 June 2013. His orders show he received a 70 percent disability rating, and his disability resulted from a combat related injury.

e. His DD Form 214 shows he was honorably retired on 26 June 2013, by reason of disability, temporary (enhance). He completed 9 years, 5 months, and 22 days of net active service this period. It also shows in:

- Item 11 (Primary Specialty): 89D (EOD Specialist) and 12B (Combat Engineer)
- Item 12f (Foreign Service): 1 year, 10 months, and 21 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): does not list a PH; it lists:
 - Iraq Campaign Medal with four campaign stars
 - Bronze Star Medal
 - Army Commendation Medal (4th Award)
 - Army Achievement Medal (3rd Award)
 - Joint Meritorious Unit Award
 - Army Good Conduct Medal (2nd Award)
 - National Defense Service Medal
 - Global War on Terrorism Expeditionary Medal
 - Global War on Terrorism Service Medal
 - Noncommissioned Officer Professional Development Ribbon (2nd Award)
 - Army Service Ribbon
 - Overseas Service Ribbon (3rd Award)
 - Combat Action Badge
 - Senior Explosive Ordnance Disposal Badge
 - Driver and Mechanic Badge with driver-wheeled vehicle(s) clasp

f. A DA Form 199 which shows on 15 July 2015, an informal PEB found the applicant physically unfit due to PTSD with comorbid depressive disorder without psychotic features and TBI, with residual headache syndrome and recommended a rating of 70 percent and that the applicant's disposition be permanent disability retirement.

g. Order D 216-05, issued by the U.S. Army Physical Disability Agency, Arlington, VA shows he was removed from the TDRL on 4 August 2015 because of permanent

physical disability and on 5 August 2015 he was permanently retired with 70 percent disability. His orders state his disability is based on injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war period as defined by law and his disability resulted from a combat related injury as defined in 26 U.S. Code 104.

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

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 did not find documentary evidence that clearly or explicitly shows criteria for award of the Purple Heart. The Board noted the medical documentation provided by the applicant; however, could not determine the event in which his traumatic brain injury (TBI) was sustained or treated for TBI. Based on the evidence, the Board determined the applicant does not meet the criteria for award of the Purple Heart.

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. The Purple Heart is awarded for a wound sustained while in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record.

a. A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required. However, the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound will be documented in the Service member's medical and/or health record. Award of the Purple Heart may be made for wounds treated by a medical professional other than a medical officer, provided a medical officer includes a statement in the Service member's medical record that the extent of the wounds was such that they would have required treatment by a medical officer if one had been available to treat them.

b. When contemplating an award of the Purple Heart, 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 the sole justification for award.

c. Examples of enemy-related injuries that clearly justify award of the Purple Heart include concussion injuries caused as a result of enemy-generated explosions resulting in a mTBI 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.

d. Examples of injuries or wounds that clearly do not justify award of the Purple Heart include post-traumatic stress disorders, hearing loss and tinnitus, mTBI 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.

//NOTHING FOLLOWS//