

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240003631

APPLICANT REQUESTS:

- award of the Purple Heart
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement, 10 July 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 6 August 2004
- Ear Nose and Throat Specialty Care Evaluation, dated 29 May 2020
- E-mail Correspondence, re: Buddy Statement from D__ T__, 10 August 2022
- Department of Veterans Affairs (VA) Form 10-0493 (Authorization for Use and Release of Individually Identifiable Health Information Collected for VHA Research), dated 23 August 2021
- VA Problem List, dated 21 September 2022
- Memorandum, subject: [Applicant], dated 28 September 2022 [Buddy Statement from Command Sergeant Major (CSM) R__ C__]
- Letter to the Applicant from the Awards and Decorations Branch of the U.S. Army Human Resources Command (HRC), re: Denial of the Purple Heart, 27 December 2023

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. During the first week of January 2004, his platoon escorted the battalion Chaplain handing out Christmas gifts to churches around Mosul, Iraq. While at one church, a

rocket-propelled grenade (RPG) fired towards his position from an alley. The RPG went over his right shoulder about 1-2 feet away. He could feel the burn as it passed and it exploded against the wall directly behind him. The impact knocked him unconscious for an estimated 5-10 minutes.

b. When he came to, he was lying on the ground with Sergeant (SGT) C___ asking if he had been hit. There was blood coming from both ears, but no other wounds were visible. He went back to his position and pulled security as the chaplain and staff were accounted for.

c. After all were accounted for, he left the church and went to a nearby police station to assess further damages. The police station was unable to assist since they were holding a recruitment that day and a line company was there for security.

d. He was evaluated by SGT C and found to have no physical injuries other than bleeding from his ears. For the next few months after the attack, he contends he suffered from vision issues, loss of hearing, migraines, smelled burnt objects at random times and had loss of balance while standing or walking.

e. When he turned in a claim to the VA for injuries sustained in Iraq, he learned he could potentially be eligible for a Purple Heart.

3. The applicant provides:

a. An Ear Nose and Throat Specialty Care Evaluation, dated 29 May 2020, he highlighted his chief complaint buzzing sound/pressure and pain in his left ear. He contends the symptoms started in 2004 after an RPG exploded over his left shoulder.

b. An Authorization for Use and Release of Individually Identifiable Health Information Collected for VHA Research form, dated 23 August 2021. He highlighted his participation in a Study entitled LIMBIC-CENC Study 1: The two major points he wanted noted were:

- Prospective Longitudinal Study on Late Neurologic Effects of Combat. Further, the purpose of the study was to learn more about the effects of deployment on the brain.
- The rationale was to understand how symptoms of concussion, brain function, and other deployment-related conditions change over time.

c. An email from DT, a member of the 5th Platoon, Delta Company, dated 10 August 2022, states, in effect, he heard the explosion. The applicant requested he tell what knowledge he had of the explosion. DT stated his company was at the local Christian church in downtown Mosul, Iraq with the chaplain handing out Christmas toys

to children. DT was in the basement of the church with the chaplain and his platoon leader when they heard an explosion outside. DT ran upstairs and out to the street where the vehicles were parked along the curb. An RPG was fired at the trucks and detonated on a house very close to the applicant's truck. Expecting a gunfight, they assessed the area for possible threats. It was determined there were no threats, allowing them to focus on the men and equipment. All equipment was accounted for. The applicant informed DT he was rendered unconscious and noticed blood from his ears. After many reunions in recent years, he regularly complained of intense ringing in his ears and a very difficult time hearing.

d. VA Problem List dated 21 September 2022 was deemed confidential but submitted by the applicant to support his claim. He highlighted the following problems:

- traumatic brain injury reported on 20 July 2022
- concussion with loss of consciousness of unspecified duration reported on 6 April 2010

e. Memorandum from CSM C, dated 28 September 2022, which states he was the team leader with the unit in Mosul, Iraq. His team was assigned as protection security for a sister element that was working at a church. The applicant was the 50-cal. machine gunner, and his vehicle was parked next to a wall at the church. He was responsible for 180-degree security away from the wall. CSM C stated:

- their element came under attack and a rocket propelled grenade was fired at the applicant's position
- it wasn't a direct hit but did impact the wall behind the applicant, knocking him unconscious for several minutes
- He reiterated the statement the applicant made about the attack
- CSM C further stated he was the one who evaluated the applicant for wounds and found nothing remarkable other than blood coming from both ears

f. On 27 December 2023, HRC reviewed documentation provided by the applicant and determined he was not qualified for the Purple Heart. They determined eligibility for the Purple Heart required medical documentation describing both diagnosis and treatment of injuries caused by the enemy immediately after, or close to a singular incident date and signed or endorsed by a medical professional in accordance with Army Regulation 600-8-22 (Military Awards), paragraph 2-8. A copy of the documentation that details what is required for the Purple Heart was provided to the applicant.

4. A review of the applicant's service record shows:

- a. He enlisted into the Regular Army on 7 August 2002.

b. He served in Iraq from 7 March 2003 to 27 April 2004.

c. He was honorably released from active duty on 6 August 2004 and transferred to the Army National Guard. His DD Form 214 shows he completed 2 years of active service. He was awarded or authorized:

- Army Good Conduct Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Bar (2nd Award)
- Combat Infantryman Badge

5. By regulation (AR 15-185), 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.

6. By regulation, the Purple Heart is awarded for a wound/injury 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 medical personnel
- the medical treatment must have been made a matter of official record

BOARD DISCUSSION:

1. 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. Based on the evidence, the Board determined the applicant does not meet the criteria for award of the Purple Heart.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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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 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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.

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

a. 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 medical personnel, and the medical treatment must have been made a matter of official record.

b. Paragraph 2-8e specifically states 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 in the regulation. 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.

4. U.S. Army Human Resources Command (HRC) Military Personnel (MILPER) Message Number 11-106 (Retroactive Wartime Awards and Decorations Processing Procedures), dated 5 April 2011, states the purpose of this message is to clarify the processing procedures for retroactive wartime awards and decorations. All requests that are not processed within the Theater are considered retroactive and must be processed through the former wartime chain of command and then through the peacetime chain of command to HRC.

5. HRC MILPER Message Number 11-125, dated 29 April 2011, states the Secretary of the Army approved Army Directive 2011-07 (Awarding the Purple Heart). The directive provides clarifying guidance to ensure the uniform application of advancements in medical knowledge and treatment protocols when considering recommendations for award of the Purple Heart for concussions (including mild traumatic brain and concussive injuries that do not result in a loss of consciousness).

a. HRC verified award of the Purple Heart for a TBI injury is retroactive only to 11 September 2001 and that all requests that are not processed within theater must be processed through the peacetime chain of command. Awards of the Purple Heart for injuries incurred in a previous deployment and requests that are not processed in the combat theater must be processed through the Soldier's current chain of command to the Commander, HRC. When recommending and considering award of the Purple Heart, the chain of command will ensure the Purple Heart criteria in Army Regulation 600-8-22, paragraph 2-8, are met and that both diagnostic and treatment factors are present and documented in the Soldier's medical records by a medical officer.

b. The following non-exclusive list provides examples of signs, symptoms, or medical conditions documented by a medical officer or medical professional that meet the standard for award of the Purple Heart:

- diagnosis of concussion or mild traumatic brain injury
- any period of loss or decreased level of consciousness
- any loss of memory for events immediately before or after the injury
- neurological deficits (weakness, loss of balance, change in vision, praxis (i.e. difficulty with coordinating movements), headaches, nausea, difficulty with understanding or expressing words, sensitivity to light, etc.) that may or may not be transient
- intracranial lesion (positive computerized axial tomography (CAT) or magnetic resonance imaging (MRI) scan)

c. The following non-exclusive list provides examples of medical treatment for concussion that meet the standard of treatment necessary for award of the Purple Heart:

- limitation of duty following the incident (limited duty, quarters, etc.)
- pain medication such as acetaminophen, aspirin, ibuprofen, etc., to treat injury
- referral to neurologist or neuropsychologist to treat the injury
- rehabilitation (such as occupational therapy, physical therapy, etc.) to treat injury

d. Combat theater and unit command policies mandating rest periods or "down time" following incidents do not constitute qualifying treatment for concussion injuries. To qualify as medical treatment, this rest period must have been directed by a medical officer or medical professional for the individual after diagnosis of an injury.

e. Paragraph 4a, states award of the Purple Heart may be made for wounds (including TBI and concussive injuries) treated by a medical professional other than a medical officer, provided a medical officer includes a statement in the Soldier'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.

//NOTHING FOLLOWS//