

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240004058

APPLICANT REQUESTS:

- amendment of his medical records in the Armed Forces Health Longitudinal Technology Application (AHLTA), by adding his Military Acute Concussion Evaluation (MACE) and traumatic brain injury (TBI) diagnosis
- in effect, 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)
- Two DA Forms 2823 (Sworn Statement)
- Photograph, presumably of the applicant
- Newspaper Article, [Applicant]
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- U.S. Army Human Resources Command (HRC) Letter, re: Combat-Related Special Compensation (CRSC), 8 November 2010
- Department of Veterans Affairs (VA) Letter, 27 November 2012
- Email Correspondence with Doctor S-
- HRC Letter, re: Awards and Decorations Purple Heart Denial, 7 April 2023
- Congressional Inquiry, 26 January 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, in effect, while serving in Iraq in support of Operation Iraqi Freedom (OIF) he suffered a concussion, TBI and shrapnel wounds on his face, due to an improvised explosive device (IED) explosion. During the MACE exam, he was diagnosed with a concussion and TBI, however these diagnoses were never entered in AHLTA. Due to the injuries he sustained from the explosion, he is requesting the award

of the Purple Heart. In addition, he is requesting amendment of his medical records in AHLTA, by adding the MACE test results and the TBI diagnosis.

3. The applicant provides:

a. Two DA Forms 2823, dated 24 April 2009, that are available in their entirety for the Board's review, show the following:

(1) First Lieutenant (1LT) [REDACTED] explains that on 11 March 2008, while deployed to Baghdad, Iraq, in support of OIF 07-09, the applicant served as the gunner in the lead vehicle of the patrol. While on patrol, the applicant received multiple wounds, to include Mild Traumatic Brain Injury (MTBI), due to shrapnel and a blast from an explosively formed penetrator (EFP).

(2) Specialist (SPC) [REDACTED] states that during the deployment to Iraq, the applicant was injured by an IED that upon explosion expelled shrapnel and nails. The applicant suffered lacerations to his face, neck, and swelling to the back of his neck from the concussion.

b. A photograph of a Soldier, presumably the applicant, with bloody markings on his face.

c. A newspaper article of the applicant hugging a civilian, with the caption "[Applicant], [Unit], is hugged by actress [Name] after being invited to sit with her team as special guest due to his surviving a convoy attack two days prior."

d. Medical records that will be reviewed and discussed by the medical staff of the Army Review Boards Agency (ARBA).

e. A CRSC decision letter issued to the applicant by HRC on 8 November 2010, which shows he was awarded a total combat rated disability rating of 40 percent (%), effective April 2010, this document provides the summary of that decision:

- Post Concussion Headaches: 0% disability, verified as combat related, effective April 2010
- Lumbar Degenerative Disc Disease with Herniation: 20% disability, effective April 2010
- Shrapnel Scar, Left Side of the Head: 10% disability, verified as combat related, effective April 2010
- Cervical Spondylosis: 10% disability, verified as combat related, effective April 2010
- Tinnitus: 10% disability, verified as combat related, effective April 2010

f. In a letter issued by the VA, dated 27 November 2012, certifies that the applicant was honorably discharged from the Army, and is rated at 100% permanently and totally service-connected disabled.

g. Two emails that show the communication between the applicant and a VA employee, regarding his injuries and the award of the Purple Heart.

h. An Awards and Decorations decision letter issued to the applicant by HRC on 7 April 2023, which states they are unable to authorize issuance of the Purple Heart. Medical documentation provided in support of his request did not indicate he was diagnosed or treated with a concussion, traumatic brain injury (TBI), or other qualifying wound at the time of the incident. They also note, post deployment medical documentation, VA rating decisions, and board proceedings cannot be used as the sole basis for award verification.

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

a. He enlisted in the Regular Army on 25 June 2007.

b. The applicant served in Iraq in support of Operation Iraqi Freedom (OIF) from 27 November 2007 to 8 January 2009.

c. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), convened on 17 February 2010, wherein the applicant was found physically unfit with a recommended disability rating of 40%, and that the disposition be permanent disability retired, due to intervertebral disc syndrome, lumbar spine (L4-L5) with a disability rating of 20%; cervical spondylosis with a disability rating of 10%; osteoarthritis, right ankle with a disability rating of 10%. Onset of these conditions is March 2008. Functional activity limitations associated with these conditions make this Soldier unable to reasonably perform required duties of an 11B (Infantryman), impacts his ability to wear combat gear and the added weight will exacerbate his conditions. The applicant concurred with the findings, waived a formal hearing of his case, and did not request reconsideration of his Department of Veterans Affairs (VA) rating. This document further shows the PEB made the following administrative determinations:

(1) These conditions are the result of an IED blast.

(2) The Soldier's retirement is based on disability from injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurring in line of duty during a period of war.

(3) Evidence of record reflects the Soldier was not a member or obligated to become a member of an armed force or reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(4) The disability did result from a combat-related injury as defined in 26 U.S.C. 104.

d. Orders 055-0316, dated 24 February 2010, show the applicant was to be retired because of a physical disability incurred while entitled to basic pay and under conditions that permit his retirement for a permanent physical disability. The percentage of disability is 40%, with an effective date of retirement of 23 March 2010.

e. His DD Form 214 shows he was honorably retired from active duty on 22 March 2010, due to a permanent (enhanced) disability. He completed 2 years, 8 months, and 28 days of active service and 1 year, 1 month, 12 days of foreign service (Iraq). His grade at the time of discharge was private (PVT)/E-1. He was awarded or authorized:

- Army Commendation Medal
- Valorous Unit Award
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with one bronze service star
- Army Service Ribbon
- Overseas Service Ribbon
- Combat Infantryman Badge

f. A CRSC decision letter issued to the applicant by HRC on 1 August 2012, which shows he was awarded a total combat rated disability rating of 60 percent (%), effective January 2011, this document provides the summary of that decision:

- Lumbar Degenerative Disc Disease with Herniation: 20% disability, effective April 2010, previously awarded; verified percentage and effective date
- Post Concussion Headaches: 0% disability, verified as combat related, effective April 2010
- Post Traumatic Stress Disorder (PTSD): 30% disability, effective January 2011, this condition is conceded due to his combat awards
- Shrapnel Scar, Left Side of the Head: 10% disability, verified as combat related, effective April 2010, previously awarded; verified percentage and effective date
- Cervical Spondylosis: 10% disability, verified as combat related, effective April 2010-December 2010, previously awarded; changed percentage and adjusted effective date

- Cervical Spondylosis: 20% disability, verified as combat related, effective January 2011, previously awarded; changed percentage and adjusted effective date
- Tinnitus: 10% disability, verified as combat related, effective April 2010, previously awarded; verified percentage and effective date

5. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

6. Due to the applicant's claim of injuries sustained during his service, which resulted in TBI, the case is being forwarded to the medical staff at ARBA.

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting that a diagnosis of concussion documented on a Military Acute Concussion Evaluation (MACE) be added to his AHLTA medical file and the awarding of the Purple Heart for a traumatic brain injury (TBI) from an explosively formed penetrator (EFP) device on 11 March 2008. He states:

"According to Dr. [REDACTED] there was a diagnosis of a concussion per the MACE exam, however it was not uploaded in AHLTA at the time."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case.

d. In their 7 April 2023 response to United States Representative Rashida Tlaib, the U.S. Army Human Resources Command's Awards and Decorations Branch nicely explains the reasons for their previous denial of the applicants' request for a Purple Heart:

“We remain unable to authorize issuance of the requested award. As stated in previous correspondence on Mr. [Applicant]’s behalf, this Command has determined the medical documentation provided in support of his request does not indicate he was diagnosed or treated with a concussion, traumatic brain injury (TBI), or other qualifying wound at the time of the incident. Army Regulation 600-8-22 (Military Awards) explicitly states abrasions and lacerations, unless incapacitating, nor mild concussion/TBI’s justify award of the Purple Heart. As such, there is no further recourse our office may take regarding this matter.

We must note, we cannot utilize post deployment medical documentation, Department of Veterans Affairs rating decisions, or board proceedings as the sole basis for award verification.”

e. Page 11 of the supporting documents is the applicant’s MACE obtained at 1322 on 11 March 2008 with the time of injury noted as 0745 that day. His MACE score was 27 out of a possible 30. From the MACE itself:

“In studies of non-concussed patients, the mean total score was 28. Therefore, a score less than 30 does not imply that a concussion has occurred. Definitive normative data for a “cut-off” score are not available. However, scores below 25 may represent clinically relevant neurocognitive impairment and require further evaluation for the possibility of a more serious brain injury.”

f. AHLTA shows the applicant was evaluated the day of the attack at the Forward Operating Base Loyalty Clinic after which he was diagnosed with “Multiple minor facial lacerations.” A headache was the only potentially TBI related symptom noted on this encounter at 1622 that day:

“Presents after IED [improvised explosive device] Blast at 0730 this morning. Pt [patient] sustained multiple minor lacerations to both cheeks and a headache. Bleeding was controlled on its own. Pt was gunner in lead truck. The IED hit one truck behind pt. The pt has no memory loss / dizziness / tinnitus / N/V [nausea/vomiting] / Irritability / visual disturbances / irritability.

g. The MACE score documented on this encounter was also 27 out of 30. The applicant was provide with some oral medication and discharged from the clinic.

h. The applicant was evaluated and conservatively treated for low back pain three days after the attack and for neck pain later that month, conditions he related to the 11 March 2008 attack.

i. Paragraph 2-8 of AR 600-8-22, Military Awards (11 December 2006), lists the criteria for the awarding of the Purple Heart. Paragraph 2b lists the circumstances under which the injury is eligible for a Purple Heart (enemy action, friendly fire, peace keeping, etc.). Paragraph 2e states the wound and medical care requirements for the award:

“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 by medical personnel and records of medical treatment for wounds or injuries received in action must have been made a matter of official record.”

j. Paragraph 2-8f(6) of AR 600-8-22 addresses criteria justifying a mTBI related Purple Heart:

“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. Refer to paragraph 2–8l for additional information.”

k. Paragraph 2-8g of AR 600-8-22 list examples of conditions not justifying a Purple Heart, including paragraph 2-8g(13):

“mTBI that does not 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.”

l. Clarification of the standards for awarding a Purple Heart for a combat related TBI were provided in Army Directive 2011-07 (Awarding the Purple Heart) issued 29 April 2011. While it makes clear a concussion / mTBI may be eligible for the awarding of a Purple heart, paragraph 3 continues to maintain the eligibility criteria of AR 600-8-22:

“When recommending and considering award of the purple heart, the chain of command will ensure the criteria in paragraph 2-8 of reference 8 is met, and that both diagnostic and treatment factors are present and documented in the soldier's medical record by a medical officer. Paragraph 4c below defines medical officer.”

m. Paragraph 4c: “a medical officer is defined as a physician with officer rank.”

n. Including the documentation submitted by the applicant (MACE, etc.) there is no documentation the applicant sustained a TBI or evidence he sustained any qualifying wound(s) which required medical evaluation and treatment by a medical officer at the time of the injury.

o. As to the placement of his MACE test into his medical records, the Privacy Rule, part of the Health Insurance Portability and Accountability Act (HIPAA), gives patients, with few exceptions, the right to inspect, review, and receive a copy of their medical records and billing records that are held by health plans and health care providers covered by the Privacy Rule. This includes the ability to request corrections or amendments to these records when a patient believes information in their medical or billing record is incorrect.

p. The Privacy Rule provides individuals with this right to have their protected health information (PHI) amended in a manner that is fully consistent with the Correction Principle in the Privacy and Security Framework (See 45 C.F.R. § 164.526). The health care provider or health plan must respond to this request, and if it created the information, it must amend inaccurate or incomplete information. If the provider or plan does not agree to the request, the patient has the right to submit a statement of disagreement that the provider or plan must add to the record.

q. It is the opinion of the ARBA Medical Advisor the awarding of a Purple Heart remains unwarranted.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the evidence reflected on the applicant's DA Form 199 and the statements of fellow Soldiers related to events of 11 March 2008, the Board concluded there was sufficient evidence to award and add the Purple Heart to the applicant's record.

2. The Board found insufficient evidence or justification warranting any modification to the applicant's medical record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

■ ■ ■ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial 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 Purple Heart for injuries incurred while serving in Baghdad, Iraq on 11 March 2008.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any modification of the applicant's medical record.

3/31/2025

X

CHAIRPERSON

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 (Armed Forces), United States 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 Army Board for Correction of Military Records (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), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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. Army Regulation 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.

c. 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), 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, 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 mTBI 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.

6. Army Regulation 40-66 (Medical Record Administration and Healthcare Documentation) prescribes policies for preparing and using medical reports and records for Soldiers receiving medical treatment or evaluation in an Army military treatment facility.

a. Paragraph 1-6 pertains to medical record ownership. It states Army medical records are the property of the Government. Thus, the same controls that apply to other Government documents apply to Army medical records. Army medical records, other than those of Reserve Components, will remain in the custody of the Medical Treatment Facilities at all times. Reserve Component records will remain in the custody of the appointed Service Treatment Record custodian. The Armed Forces Health Longitudinal Technology Application (AHLTA) record will remain in the custody of the U.S. Army Medical Department (AMEDD) and Department of Defense via electronic storage, and hardcopy of the treatment records will be retried to the National Personnel Records Center in accordance with the records dispositions schedule in Army Regulation 25-400-2 (The Army Records Information Management System (ARIMS)).

b. Chapter 3 (Preparation of Medical Records) states that unless authorized by this regulation, only documents prepared by authorized AMEDD personnel will be filed in Army medical records. This restriction does not prohibit the use of other documents created by attending physicians and dentists outside AMEDD (Navy, Air Force, civilian, and so forth) or the filing of other documents as summaries or brief extracts. If such documents are filed, their source and the physician or dentist under whom they were prepared must be identified.

c. 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. In unusual extenuating circumstances (for example, death of a provider), local policy will ensure that all means have been exhausted to complete the record.

7. Title 10 (Armed Forces), United States Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does

not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//