

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240004460

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show award of the Purple Heart.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's Statement
- Valorous Unit Award Certificate
- Standard Form (SF) 93 (Report of Medical History)
- DD Form 214 x3
- DD Form 215 (Correction to DD Form 214)
- Letter, Office of the Secretary of Defense
- Summary of the Final Combat Related Special Compensation (CRSC) Decision (Page 2)
- Email with Picture, Unknown Source
- Partial Department of Veterans Affairs (VA) Rating Decision (3 Pages)

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 Iraq, he was exposed to sarin nerve agent and sustained a traumatic brain injury (TBI), due to his proximity to an explosion. Prior to retirement there was no acknowledgement of sarin exposure, its negative effects, and no recognition of TBI unless "married" to other extreme physical injuries. His VA disability/later CRSC was based on "Gulf War Syndrome," due to little data. It was impossible to file for compensation during or after service and even more so for something that no one would recognize so he went on with his life. At the age of 73, this has become more of an issue.

3. The applicant indicated in a statement submitted with his application, approximately March 1991, he deployed with 3rd Infantry Division, 3rd Armor Division, 16th Engineer Battalion, as a combat engineer platoon sergeant. During that deployment he was exposed to sarin nerve agent, located at the Khamisiyah Iraqi ammunition dump, while in the process of destruction of various armaments.

a. He and others experienced irritated eyes, runny nose, headaches, and nausea. This was attributed to the many different types of ammunition that was burned or destroyed. The symptoms lasted several days with ongoing headaches that lasted until shortly after return to Europe. Medical care was minimally rendered since only unit medics were available except for a severe incident. No one was aware that sarin was present or its methods of dispersal, it was assumed to be the massive amounts of munitions burning day and night after destruction.

b. At one point he set up explosives and destroyed a wagon train of 14 vehicles all loaded with various types of armament. They were not wearing protective "MOPP" gear because it had been given to Iraqi prisoners to deal with the cold [weather] at night. Deserts are quite cold in the winter. In 1997, he was informed of the probable exposure to sarin by the Department of Defense (DOD) and was instructed to have continued effects monitored if they became severe. Therefore, any possibility of a Purple Heart was long gone.

c. The exposure was confirmed and that was the end of DOD's concern. This may be related to his current tentative diagnosis and VA rating of memory disorder. At the time of discharge everything was consolidated under "Gulf War Syndrome," but in the current environment of the "PACT" Act and toxic exposure this should qualify as eligible for a Purple Heart.

d. While in Iraq he was in close proximity to an explosion caused by a satchel charge of C-4. The satchel was thrown into an Iraqi bunker and thrown back out. Resulting in him being saved by diving over a mound of dirt. TBI did not exist at that time so the medic stated he was only out for a short time and should be "OK." Headaches persisted for a week or so and his tinnitus was severe. Several years later TBI was accepted as a valid injury, and he filed for disability through the VA, but that was denied. In 2016, he was a part of an investigation by Tri Cities Channel 11, which was about the VA using inappropriate methods of evaluation. The text message is attached. Currently the tinnitus effects are minimal but rated by the VA as 10% disabling (which is the maximum). The VA awarded him a 30% evaluation for undiagnosed memory loss, which is a common characteristic of TBI related problems. He believes some of his PTSD/personality issues could be side effects of TBI. However, everything was just lumped under "Gulf War Syndrome."

e. Due to the above incidents, he has experienced a dramatic change in behavior and after his assignment to the 82nd Airborne in 1993. He began to make erratic and irrational decisions. He had been a superlative leader and had just been selected for promotion to the rank/pay grade of master sergeant/E-8 and was on the promotion list.

f. This all culminated in the start of panic attacks and led to his jump refusal (after years of status). He received a field grade Article 15 for that action. He appealed the punishment based on the possible combination of the above events. He was allowed to transfer to an administrative position after 22 years of combat units and was still promoted to master sergeant/E-8. Which was unusual following a field grade Article 15. The chain of command realized the effects of these events and the commander made the promotion happen. The psychological staff at Fort Bragg, NC, also opined his behavior could be a result of the events. In 1994, he responded to a major air crash at Pope Airforce Base, NC, and was involved in the rescue and transport of numerous burned or maimed Soldiers. It was a horrible environment that brought back war and events simulating war. That was the last straw, and he submitted his retirement as soon as he had 2 years to retain the rank of master sergeant. Despite documented events and multiple items of combat related injury and approve CRSC, he still has no Purple Heart.

4. Having previously completed honorable Regular Army (RA) service from 6 April 1972 to 23 April 1975, and again from 24 April 1975 and 6 February 1978, the applicant immediately reenlisted in the RA on 6 February 1978.

5. His DA Form 2-1 (Personnel Qualification Record - Part II) includes the following information and entries:

a. Block 5 (Overseas Service) shows he was assigned either as a Permanent Change of Station (PCS) or on Temporary Duty (TDY) to the following locations:

- Germany - 21 May 1972 to 1 June 1975 (36-months - PCS)
- Germany - 28 January 1980 to 29 January 1983 (36-months - PCS)
- Germany - 12 December 1988 to 8 January 1992 (38-months - PCS)
- Saudi Arabia - 23 December 1990 to 1 May 1991 (6-months - TDY)

b. Block 9 (Awards, Decorations and Campaigns) does not list the Purple Heart, but it does list the -

- Drill Sergeant Identification Badge
- Overseas Service Ribbon (3rd Award)
- Noncommissioned Officer Professional Development Ribbon with Numeral 3
- Army Good Conduct Medal (7th Award)
- Army Commendation Medal (2nd Award)

- National Defense Service Medal with 2 bronze service stars
- Driver and Mechanic Badge with "T" Bar
- Army Service Ribbon
- Air Assault Badge
- Army Achievement Medal
- Parachutist Badge
- Army Physical Fitness of Excellence Badge
- Army Commendation Medal (3rd Award)
- Bronze Star Medal
- Southwest Asia Service Medal with 3 bronze service stars
- Kuwait Liberation Medal - Saudi Arabia
- German Schutzenschnur - Gold
- Expert Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

6. On 30 September 1994, he was honorably retired from active duty under the provisions of chapter 12, Army Regulation (AR) 635-200, due to sufficient service for retirement. His DD Form 214 and subsequently issued DD Form 215 (Correction to DD Form 214) do not list the Purple Heart; however, they do include the following entries and information:

a. He completed a total of 16 years, 7 months, and 25 days of net active service during the covered period, of which, 6 years and 29 days were credited as foreign service.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) (all periods of service) list the -

- Army Service Ribbon
- National Defense Service Medal with bronze service star
- Overseas service Ribbon with Numeral 3
- Army Good Conduct Medal (7th Award)
- Army Commendation Medal (4th Award)
- Army Achievement Medal
- Noncommissioned Officer Professional Development Ribbon with Numeral 3
- Drill Sergeant Identification Badge
- Driver and Mechanic Badge with "T" Bar
- Air Assault Badge
- Parachutist Badge
- Army Physical Fitness of Excellence Badge
- Bronze Star Medal
- Southwest Asia Service Medal with 3 bronze service stars

- German Marksmanship Badge - Gold
- Meritorious Service Medal
- Valorous Unit Award

c. Block 18 (Remarks) shows the applicant served in Southwest Asia from 23 December 1990 to 1 May 1991.

8. The applicant provided the following evidence in support of his request; in part a/an:

a. Valorous Unit Award Certificate, dated 19 April 1991, issued by the 16th Combat Engineer Battalion, 3rd Infantry Division, for extraordinary heroism during combat actions against hostile enemy forces in the Republic of Iraq during operation Desert Storm, from 24 to 28 February 1991.

b. SF 93, dated 7 June 1994, showing he annotated this form to show the following entries and added the following descriptions in Item 11 (Have you Ever Had or Have You Now), he answered "Yes" to the following:

- Ear, nose, or throat trouble – Tinnitus in right ear, treated in Nurenburg Germany
- Hearing loss – (No description)
- Hay Fever – Fort Bragg, NC, Allergy Clinic
- Cramps in your Legs – (No description)
- Frequent Indigestion – Frequent Stomach Discomfort
- Adverse Reaction to Serum Drug, or Medicine – Allergic reaction to hay fever shots, Germany
- Broken Bones – Broke right heel treated at Fort Leonard Wood, MO
- Recent Gain or Loss of Weight – Was due to reduced energy level
- Arthritis, Rheumatism Bursitis – (No description)
- Painful or "Trick" Shoulder, or Elbow – Discomfort and loss of range of motion; left shoulder, physical therapy, Womack, Army Hospital, Fort Bragg, NC; injured right shoulder during a mortar attack in Iraq, field treatment; also injured left elbow during "PLF" treated at Fort Campbell, KY
- Wear Glasses or Contact Lenses
- Have Vision in Both Eyes
- Frequent Trouble Sleeping – Dramatic change in sleep pattern

c. Letter from the Office of the Secretary of Defense stating it was determined that his unit was near Khamisiyah, Iraq in early March 1991. The purpose of this letter was to update him on the investigation of the U.S. demolitions of Iraqi weapons at Khamisiyah and what this may mean for him.

(1) When rockets were destroyed in the pit area at Khamisiyah on 10 March 1991, the nerve agents sarin and cyclosarin may have been released into the air. If he was with the unit at this time, he may have been in an area where exposure to a very low level of nerve agents was possible. However, their analysis showed the exposure levels would have been too low to activate chemical alarms or to cause any symptoms at the time.

(2) Although little is known about the long-term effects from a brief, low level exposure to nerve agents, the current medical evidence indicates that long-term health problems are unlikely. Because the scientific evidence is limited, the DOD and the Department of Veterans Affairs are committed to gaining a better understanding of the potential health effects of brief, low level nerve agent exposures, and they have funded several projects to learn more about them.

(3) He was advised, if he had health concerns which might be related to his Gulf War service, he was encouraged to enroll in the DOD Comprehensive Clinical Evaluation Program. He was provided their phone number and the number for the Department of Veterans Affairs Persian Gulf Registry. He was also advised there were many possible medical reasons for most symptoms, if he had health concerns, he was encouraged to request a medical evaluation. If he had already received a registry examination and continued to have health concerns, he should contact his closest military treatment facility or the VA Medical Center to schedule a follow-up appointment. If he was healthy and not experiencing any symptoms, there was no need for him to seek medical attention.

d. Summary of his Final Decision under CRSC, showing as of May 2012, he had a combined rating of 60 percent. This included:

- Bilateral Plantar Fasciitis and Metatarsalgia with Right Heel Pain, rated as 10 % disabling
- Residuals, Status Post Left-Hand Carpal Tunnel Release, rated as 10% disabling
- Post-Traumatic Stress Disorder (PTSD) with Dysthymic Disorder, rated as 50% disabling
- Sleep Apnea, rated as 50% disabling

e. Partial VA Rating Decision dated 9 June 2024, 3 pages.

f. His submissions were provided to the Board in their entirety.

9. The applicant's record contains sufficient evidence to administratively correct his DD Form 214, without action by the Board to add Expert Marksmanship Qualification Badge Rifle (M-16), Expert Marksmanship Qualification Badge Hand Grenade, Kuwait

Liberation Medal - Kuwait, and the Kuwait Liberation Medal - Saudi Arabia. The administrative corrections will be further addressed in the Administrative Notes portion of these proceedings.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation failing to show a specific incident, on a specific date, where the applicant was injured as a result of combat with an armed enemy, the Board concluded there was insufficient evidence of an error or injustice warranting awarding the Purple Heart.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

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 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The PH 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.

b. 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 PH 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.

c. When contemplating an award of the PH, 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.

d. Examples of enemy-related injuries that clearly justify award of the PH include concussion injuries caused as a result of enemy-generated explosions resulting in a mild (mTBI) or concussion severe enough to cause either LOC 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.

e. Examples of injuries or wounds that clearly do not justify award of the PH include PTSDs, hearing loss and tinnitus, mTBI or concussions that do not either result in LOC or restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or physical finding of impaired brain function.

f. When recommending and considering award of the PH for a mTBI or concussion, the chain of command will ensure that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

3. Army Directive 2011-07 (Awarding the PH), dated 18 March 2011, provides clarifying guidance to ensure the uniform application of advancements in medical knowledge and treatment protocols when considering recommendations for award of the PH for concussions (including mTBI and concussive injuries that do not result in a LOC). The directive also revised Army Regulation 600-8-22 to reflect the clarifying guidance.

a. Approval of the PH requires the following factors among others outlined in Department of Defense Manual 1348.33 (Manual of Military Decorations and Awards), Volume 3, paragraph 5c: wound, injury or death must have been the result of an enemy or hostile act, international terrorist attack, or friendly fire; and the wound for which the award is made must have required treatment, not merely examination, by a medical officer. Additionally, treatment of the wound shall be documented in the Soldier's medical record.

b. Award of the PH may be made for wounds 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.

c. A medical officer is defined as a physician with officer rank. The following are medical officers: an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer in accordance with Title 10, United States Code, Section 101.

d. A medical professional is defined as a civilian physician or a physician extender. Physician extenders include nurse practitioners, physician assistants and other medical professionals qualified to provide independent treatment (for example, independent duty corpsmen and Special Forces medics). Basic corpsmen and medics (such as combat medics) are not physician extenders.

e. When recommending and considering award of the PH for concussion injuries, the chain of command will ensure that the criteria are met and that both diagnostic and treatment factors are present and documented in the Soldier's medical record by a medical officer.

f. The following nonexclusive 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 PH:

- (1) Diagnosis of concussion or mTBI;
- (2) Any period of loss or a decreased level of consciousness;
- (3) Any loss of memory of events immediately before or after the injury;
- (4) Neurological deficits (weakness, loss of balance, change in vision, praxis (that is, difficulty with coordinating movements), headaches, nausea, difficulty with understanding or expressing words, sensitivity to light, etc.) that may or may not be transient; and
- (5) Intracranial lesion (positive computerized axial tomography) or magnetic resonance imaging scan.

g. The following nonexclusive list provides examples of medical treatment for concussion that meet the standard of treatment necessary for award of the PH:

- (1) Limitation of duty following the incident (limited duty, quarters, etc.);
- (2) Pain medication, such as acetaminophen, aspirin, ibuprofen, etc., to treat the injury;
- (3) Referral to a neurologist or neuropsychologist to treat the injury; and
- (4) Rehabilitation (such as occupational therapy, physical therapy, etc.) to treat the injury.

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

4. Army Regulation 600-8-22 (Military Awards) states the Kuwait Liberation Medal awarded by the Kingdom of Saudi Arabia (KLM-SA) was approved on 3 January 1992 and is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf War between 17 January 1991 and 28 February 1991.

5. Army Regulation 600-8-22 (Military Awards) states the Kuwait Liberation Medal awarded by the Government of Kuwait (KLM-K) was approved on 9 November 1995 and is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf War between 2 August 1990 and 31 August 1993.

6. 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 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//