

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240004821

APPLICANT REQUESTS: reconsideration of his previous request for award of the Purple Heart (PH).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2173 (Statement of Medical Examination and Duty Status), 9 March 2009
- DA Form 2823 (Sworn Statement), 9 March 2009
- Chronological Record of Medical Care, 9 March 2009
- DA Form 4187 (Personnel Action), 25 July 2009
- Memorandum, subject: Final Determination of Line of Duty (LOD) Investigation, 8 September 2009
- Department of Veterans Affairs (VA) Compensation and Pension Exam Report, 2 December 2009
- VA Problem Lists, multiple dates
- Email from sergeant first class (SFC) S_S_, 8 December 2017
- VA Rating Decision, 20 May 2019
- Letter from the U.S. Army Human Resources Command (HRC), Awards and Decorations Branch, 15 August 2019

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190015384 on 30 April 2020.

2. The applicant states, he is requesting that his records be changed, and he be awarded the PH for a concussion that he received while on active duty in Afghanistan. He filed the appropriate paperwork with the ABCMR, but they failed to award him the PH. While on active duty he was in a vehicle that was hit by an improvised explosive device (IED). He was put in for a PH, but it was denied by his command because he did not have a diagnosis of concussion (traumatic brain injury (TBI)). When he returned to the states and was discharged, he went to the VA medical center, and he was

diagnosed with a TBI and received treatment. He filed a claim for compensation, and he is currently rated at 70 percent for the injury. HRC, Awards and Decorations Branch turned down his request for the PH, stating his medical records do not show a diagnosis or treatment for the condition.

3. The applicant provides the following:

a. DA Form 2173, which shows on 9 March 2009, the applicant was the gunner in a high mobility multi-purpose wheeled vehicle (HMMWV) when it was struck by an IED. The blast caused multiple non-suturable abrasions to his arms and face.

b. A sworn statement from the applicant, dated 9 March 2009, describing the details of the IED attack. He stated an IED went off and all of a sudden, he was surrounded by smoke. He dropped down out of the turret then he blacked out. He then found himself out of the vehicle along with specialist (SPC) B_, staff sergeant (SSG) R_, and sergeant (SGT) B_. Upon returning to the forward operating base (FOB), he noticed he had some abrasions on his arms and a bruise on his chin.

c. A chronological record of medical care dated 9 March 2009, which shows the applicant was examined for a headache, bilateral elbow pain, and right calf pain due to the IED blast.

d. A DA Form 4187, dated 25 July 2009, which shows the applicant's commander recommended him for award of the PH. The applicant's intermediate commander recommended disapproval and noted the applicant had head pain, but no diagnosis of a concussion. The brigade commander also recommended disapproval, and on 9 September 2009, the Commanding General disapproved the action.

e. A memorandum dated 8 September 2009, which shows a LOD was reviewed for completeness and determined in the LOD.

f. A VA compensation and pension exam report dated 2 December 2009, which shows the applicant was examined for TBI. He reported the nature of the injury was from an IED blast. He stated he had headaches about 1 to 2 times a month since he returned home. He described the headaches as frontal in nature with related neck pain.

g. VA problem lists, which show the applicant was diagnosed on 22 June 2014 with concussion with loss of consciousness of unspecified duration. It also shows he had a personal history of TBI.

h. An email from SFC S_S_, a member of the applicant's unit at the time of the IED attack, dated 8 December 2017, which states, in effect, he was the Motor Sergeant and Recovery Operator for the 333rd Military Police Company located in Afghanistan. That

day he received a mission to recover an up-armored HMMWV that went down due to an IED attack. When he arrived at the location of the attack, the occupants of the vehicle were already evacuated from the area. The sergeant in charge of securing the area informed him that SPC T_M_ [applicant] was one of the occupants of the vehicle during the attack. SPC T_M_ was the gunner in the turret when the IED exploded. After waiting for the explosive ordnance disposal (EOD) to clear the truck of any unexploded ordnance, he recovered the HMMWV and returned to the FOB. SPC T_M_'s right arm was scraped up, his left arm had some deep cuts, and his lip was split open. Due to his injuries, he was not allowed to go on missions for a couple of weeks, so he helped in the motor pool. While helping his section, there were a couple of days he had headaches and was sore, so he was sent to his bunk to rest.

i. VA rating decision dated 20 May 2019, which shows the applicant's evaluation of TBI with post-traumatic stress disorder (PTSD), and alcohol use disorder, incurred in combat, and is currently 70 percent disabling.

j. HRC, Awards and Decorations Branch response to the U.S. Senator, dated 15 August 2019, in which the Chief, Awards and Decorations Branch stated they remain unable to authorize an award of the PH for issuance. HRC reviewed the applicant's Standard Form 600 (Chronological Record of Medical Care) dated 9 March 2009, which reflect his medical examination following exposure to an IED blast three days prior. However, there was no formal diagnosis of or treatment for a qualifying injury, per Army Regulation 600-8-22 (Military Awards), paragraph 2-8 (Purple Heart). Accordingly, abrasions or lacerations (unless of a severity requiring treatment by a medical officer) and mild TBI 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 do not justify award. Furthermore, they cannot utilize rating decisions by the VA to determine award entitlement. The Chief, Awards and Decorations Branch, explained that if the applicant believed the response was unfair or unjust, he had the right to appeal to the ABCMR, which acts on behalf of the Secretary of the Army and has final authority over matters of this nature.

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

a. He enlisted in the Army National Guard (ARNG) on 13 September 2005.

b. Orders Number 217-048, issued by the Department of Military Affairs, Springfield, IL, on 4 August 2008, ordered the applicant to active duty for the purpose of Operation Enduring Freedom (OEF).

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty on 6 September 2009. His DD Form 214 shows in:

- Item 12f (Foreign Service): 9 months, 23 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): does not list award of the PH. It shows: Afghanistan Campaign Medal with campaign star, North Atlantic Treaty Organization (NATO) Medal, Army Commendation Medal, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Overseas Service Ribbon, Armed Forces Reserve Medal with M device, and the Combat Action Badge.
- Item 18 (Remarks): Service in Afghanistan 1 November 2008 – 22 August 2009

d. The applicant was honorably discharged from the ARNG and reassigned to the U.S. Army Reserve Control Group (Annual Training), on 12 September 2011.

5. The ABCMR considered the applicant's request for award of the PH in ABCMR Docket Number AR20190015384, on 30 April 2020. The Board denied his request and stated the evidence presented did not demonstrate the existence of a probable error or injustice. In events involving TBI and other similar injuries, the applicant's record must show that the brain injury or concussion was severe enough to cause either loss of consciousness or restriction from full duty due to persistent signs, symptoms, or clinical findings, or impaired brain function for a period greater than 48 hours from the time of the concussive incident. The Board found insufficient medical evidence to meet the regulatory standard for 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. 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. Additionally, when based on a TBI, the regulation stipulates the TBI or concussion must have been severe enough to cause a loss of consciousness; or restriction from full duty due to persistent signs, symptoms, or clinical findings; or impaired brain functions for a period greater than 48 hours from the time of the concussive incident. The Board did not find evidence the applicant satisfied this requirement.

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 to amend the decision of the ABCMR set forth in Docket Number AR20190015384 on 30 April 2020.

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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 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.

2. Army Regulation 15-185 (Army Board for Correction of Military Records) 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.

//NOTHING FOLLOWS//