

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 January 2025

DOCKET NUMBER: AR20240004868

APPLICANT REQUESTS: retroactive award of the Combat Action Badge (CAB) and a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders: 07-241-0005, Connecticut National Guard, 29 August 2019
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Form 2823 (Sworn Statement), applicant, 20 March 2021
- DA Form 2823, Sergeant (SGT) CE, 20 March 2021
- DA Form 2823, Staff Sergeant (SSG) KFB, 20 March 2021
- Memorandum for Record, Captain (CPT) PME, 25 April 2021
- DA Form 4187 (Personnel Action), 5 April 2023
- Memorandum, U.S. Army Human Resources Command (AHRC), 18 May 2023
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, 14 November 2023
- Order D 345-04, Headquarters, U.S. Army Physical Disability Agency (USAPDA), 11 December 2023
- Order D 321-19, Headquarters, USAPDA, 17 November 2023

FACTS:

1. The applicant states, on 23 December 2019, he was flying the lead in a helicopter formation, 2-3 rotor disc separation, with 5 crew and 40 operators maneuvering in for a landing to the target on an air assault, when the enemy fired two rocket propelled grenades (RPG) at their descending aircraft. The first RPG passed just behind his aft rotor; the second passed over his wingman. Both detonated overhead.
2. The applicant retired due to permanent physical disability effective 17 December 2023, and was placed on the retirement list in the rank/grade of Chief Warrant Officer Two/W-2 on 18 December 2023.
3. The applicant provides, in part, a/an:

a. DA Form 2823, dated 20 March 2021, in which the applicant states, in effect, on the evening of 23 December 2019, under red illumination, after turning release point inbound and continuing their decelerating descent through 500-700 feet and at approximately 80 knots ground speed, he saw the sky light up from the left rear. SSG KFB from the ramp gun position called out "RPG, 0630 low." SSG KFB described the RPG coming up between them and Chalk 2 which exploded above them. They maneuvered, continuing down to make their INFIL, seconds later they saw another flash and SSG KFB called out "another RPG 7 o'clock low" which traveled up and over Chalk 2 exploding above the flight. After the INFIL was complete, they deviated their climb out to avoid overflying the area they took RPG fire from. After landing, the crew conducted a thorough check of the aircraft, no battle damage was found.

b. DA Form 2823, dated 20 March 2021, in which SGT CE provides a statement which essentially mirrors the statement of the applicant.

c. DA Form 2823, dated 20 March 2021, in which SSG KFB provides a statement describing and supporting the applicant's recollection of the events of 23 December 2019. Of note he now believes there was only one RPG. The situation happened very quickly while they were focusing on landing to drop off the ground force.

d. Memorandum for Record from the Commander, Detachment-1, Company B, 2nd Battalion, 104th Aviation Regiment, Connecticut Army National Guard, dated 25 April 2021, detailing the administrative process and challenges as to why the CAB was not awarded in theater.

e. Activation orders in support of Operation Freedom's Sentinel, DD Form 214, DA Form 4187, DA Form 199, retirement orders and amendment.

4. A memorandum from the AHRC, Chief, Awards and Decoration Branch, dated 18 May 2023, disapproved his request for retroactive award of the CAB. The Chief stated the documentation submitted in support of the request did not provide sufficient justification to warrant retroactive approval for the incident in question. In accordance with Army Regulation 600-8-22 (Military Awards), paragraph 8-8, a Soldier must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement. On or after 5 March 2019, a Soldier must also be performing in an offensive or defensive act while participating in combat operations, engaging or being engaged by the enemy. The forwarded documentation did not indicate the applicant met this criteria.

5. The CAB is intended to serve as a companion to the Combat Infantryman Badge (CIB) and Combat Medical Badge (CMB) to recognize the greatly expanded role of non-infantry Soldiers in active, ground combat. The CAB is not intended to recognize Soldiers who simply serve in a combat zone or imminent danger area. Battle

participation credit alone is not sufficient; the unit must have engaged or been engaged by the enemy. In order to qualify for the CAB, a member must be performing assigned duties in an area where hostile fire pay, or imminent danger pay is authorized; they must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement; and they must not be assigned or attached to a unit that would qualify the Soldier for the CIB or CMB. On or after 5 March 2019, a Soldier must also be performing an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy.

6. Army Regulation 15-185 (ABCMR) states 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.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to deny relief based on the advisory official recommendation for disapproval. However, upon review of the applicant's petition, available military record and the AHRC, Chief, Awards and Decoration Branch advisory opinion, the Board notwithstanding the advising official recommendation for disapproval. The Board found the totality of the evidence submitted by the applicant provided sufficient justification to warrant granting relief.

2. The Board noted, the applicant, along with two fellow Soldiers, who submitted sworn DA Forms 2823 detailing a hostile engagement on 23 December 2019 during an aerial infiltration mission under red illumination. The Board found the statements consistently describe the sighting and evasion of rocket-propelled grenade (RPG) fire directed at their aircraft, with explosions occurring in close proximity to their flight path. Although no battle damage was found upon post-mission inspection, the credible eyewitness accounts clearly indicate the aircraft was engaged by enemy fire while the applicant was performing his assigned duties. Furthermore, the Board recognized a memorandum from the applicant's commander that outlined the administrative challenges that prevented the CAB from being awarded in theater, further supporting the legitimacy of the incident.

3. While the HRC advisory opinion determined the documentation did not meet the regulatory criteria, the Board determined that the applicant was personally present, under hostile fire, and performing satisfactorily in accordance with the prescribed rules

of engagement. The incident occurred after 5 March 2019, and the applicant was actively participating in a combat operation during the engagement. Therefore, the Board agreed the applicant met the criteria outlined in Army Regulation 600-8-22, paragraph 8-8, and granted relief for award of the Combat Action Badge.

4. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for 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 to award him the Combat Action Badge.

X //SIGNED//

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. Army Regulation 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. Instructions state the requirements for award of the CAB are branch and military occupational specialty immaterial. Assignment to a combat arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations, is not required to qualify for the CAB. However, it is not intended to award the CAB to all Soldiers who serve in a combat zone or imminent danger area. Award of the CAB is not automatic and will not be awarded solely based on award of the Purple Heart. The CAB may be awarded to any Soldier. Paragraph 8-8 states specific eligibility requirements which include:

a. Soldier must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement, in an area where hostile fire pay, or imminent danger pay is authorized. For all named conflicts beginning after 5 March 2019, a Soldier must also be performing in an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy. A Soldier must be performing their assigned duties associated with the unit's combat mission in an area where hostile fire pay, or imminent danger pay is authorized.

b. Soldier must be performing assigned duties in an area where hostile fire pay, or imminent danger pay is authorized. The requirement for hostile fire pay or imminent danger pay does not apply to cases determined to be eligible under the conditions described in paragraph 3-8c.

c. Soldier must not be assigned or attached to a unit that would qualify the Soldier for the CIB/CMB. For example, an 11B (Infantryman) assigned to Corps staff is eligible for award of the CAB. However, an 11B assigned to an infantry battalion is not eligible for award of the CAB.

d. In addition to Army Soldiers, the CAB may also be awarded to members of other U.S. Armed Forces and foreign military personnel assigned to a U.S. Army unit, provided they meet the above criteria.

e. Award of the CAB is authorized from 18 September 2001 to a date to be determined. Award for qualifying service in any previous conflict is not authorized.

f. Second and subsequent awards of the CAB are as follows:

(1) Only one CAB may be awarded during a qualifying period.

(2) Second and subsequent award of the CAB will be indicated by super-imposing one and two stars respectively, centered at the top of the badge between the points of the oak wreath.

g. Retroactive awards of the CAB are not authorized prior to 18 September 2001.

2. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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. 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//