

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240006684

APPLICANT REQUESTS: award of the Purple Heart.

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), 30 September 2019
- DA Form 1156 (Casualty Feeder Card)
- DD Form 2697 (Report of Medical Assessment), 5 November 2019
- HRC denial letter, 26 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, due to the criteria and the attached post injury supporting documents, he believes he should rightfully receive the Purple Heart.
3. The applicant enlisted in the New Jersey Army National Guard (NJARNG) on 8 December 2015. He held military occupational specialty 19D (Cavalry Scout).
4. He had a period of active-duty service from 22 June 2016 for active-duty training (ADT). He was honorably released from ADT on 14 September 2017.
5. He was ordered to active duty on 4 February 2019, in support of Operation Enduring Freedom. He served in Somalia from 6 March 2019 – 7 October 2019 and in Djibouti from 8 October 2019 – 22 November 2019.
6. The applicant provides:

a. DA Form 2173 showing he was seen for concussion without the loss of consciousness. He was the driver of a HMMWV (High Mobility Multipurpose Wheeled Vehicle) that was in near proximity to a VBIED (Vehicle Borne Improvised Explosive Devise) blast on 30 September 2019, while deployed to BMA (Baledogle Military Airfield) Somalia causing a concussion.

b. DA Form 1156 showing he was seriously injured as he sustained a head injury from close proximity to second VBIED blast while responding to first VBIED blast. His initial MACE (Military Acute Concussion Evaluation) was 25/30.

c. DD Form 2697 showing he was examined on 5 November 2019. He annotated yes for injuries he sustained in the VBIED blast.

7. He was honorably released from active duty on 3 January 2020, after completion of required active service.

8. He was ordered to active duty on 9 January 2021, in support of Civil Disturbance Operation. He was honorably released from active duty on 12 February 2021, after completion of required active service.

9. He was honorably released from the NJARNG on 7 December 2021, after his expiration of active status commitment in the selected reserve.

10. There is no evidence within his service record that reveals he was awarded the Purple Heart.

11. The applicant provides Human Resources Command denial letter dated 26 December 2023, which states:

a. HRC remains unable to authorize issuance of the Purple Heart at this, time. We must reiterate the medical documentation provided indicates the applicant was seen following exposure to a VBIED in Somalia. The documentation further states he did not experience any loss of consciousness, was alert and oriented, and received two MACE at which point, he was diagnose with a mild traumatic brain injury (MTBI) and was further evaluated by checking for a brain bleed (results not provided).

b. HRC further acknowledge the provided Department of Veterans Affairs rating decision. While helpful, HRC cannot utilize this document as the sole basis for award verification. As such, mild traumatic brain injuries not resulting in mandated restriction from full duty for a period greater than 48 hours due to persistent signs, symptoms, or clinical findings of impairment and the administration of pain medication (such as ibuprofen, acetaminophen, etc.) do not meet the criteria for the Purple Heart.

Additionally, the forwarded documentation does not reflect ongoing neurological testing or treatment following the event.

12. By regulation, (AR 600-8-22), 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.

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 and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board found the medical documentation provided indicates the applicant was seen following exposure to a VBIED in Somalia. The documentation further states he did not experience any loss of consciousness, was alert and oriented, and received two MACE at which point, he was diagnose with a mild traumatic brain injury (MTBI) and was further evaluated by checking for a brain bleed (results not provided).

2. The Board noted, the burden of proof rest on the applicant and the applicant provided insufficient evidence to support his claim for award of the Purple Heart. The Board agreed the record is absent evidence that showed the applicant's name on the casualty listing or notification to his family that he had been wounded. The Board determined the applicant did not meet the regulatory guidance criteria for award of the Purple Heart and denied relief.

3. Per the regulatory guidance on awarding the Purple Heart, the applicant must provide or have in his service records substantiating evidence to verify that he was injured, 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.

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 600-8-22 (Military Awards) states 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.

3. Military Personnel (MILPER) Message Number 11-125, issued by the U.S. Army Human Resources Command, dated 29 April 2011, stated the Secretary of the Army had 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). The U.S. Army Human Resources Command has verified that award of the Purple Heart for a TBI injury is retroactive only to 11 September 2001. Award of the Purple Heart 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.

//NOTHING FOLLOWS//