

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240009670

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)
- Aeromedical Evacuation Patient Record, 6 April 2004, showing a diagnosis of acute cervical injury and paresthesia R>L Upper extremity in support of claim
- Chronological Record of Medical Care, 15 June 2004 (3 pages), in support of claim disposition was release with work duty limitations (given profile)
- DA Form 3349 (Physical Profile), issued 15 September 2004, for varicose veins/cervical spine injury
- Chronological Record of Medical Care, 2 November 2004 (3 pages) in support of claim disposition was released without limitations
- HealthNet letter (Neurological), 4 November 2004, for neurological specialty referral
- Chronological Record of Medical Care, 2 December 2004 – 25 January 2005, in support of claim
- Line of Duty (LOD) determination, issued 23 March 2005, showing two separate injuries being in the line of duty on 30 October 2003 and 15 April 2004
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 May 2005
- Rating Decision, 8 January 2008, showing
 - Posttraumatic stress disorder rated at 30%, effective 2 May 2005
 - Degenerative disc disease of the cervical spine, status post-surgical fusion of C5-C6 rated at 20%, effective 2 May 2005
 - Degenerative disc disease of the lumbar spine rated at 10%, effective 2 May 2005
 - Left leg varicose veins, status post vein stripping rated at 10%, effective 27 February 2007
 - Hearing loss rated at 0%, effective 2 May 2005
 - Hypertension rated at 0%, effective 2 May 2005
 - Combined evaluation for compensation 60% effective 27 February 2007
- Certificate of Marriage proving marriage
- Certificate of Death proving death

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 requests award of the Purple Heart for cervical disc injury suffered 17 April 2004 in Forward Observation Base Anaconda (Iraq). Vehicle accident as a result of an explosion. Soldier suffered a traumatic brain injury as a result of head hitting vehicle roof.
3. A review of the applicant's service record shows:
 - a. Having had prior honorable service from 21 January 1982 – 20 January 1988, he enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) on 29 January 1999.
 - b. He entered a period of active duty service on 1 October 2003, in support of Operation Iraqi Freedom. He served in Iraq from 15 March 2004 – 15 June 2004. He was honorably released on 1 May 2005. His DD Form 214 shows he was awarded or authorized the following awards:
 - Army Commendation Medal (2d Award)
 - Army Achievement Medal
 - Army Reserve Components Achievement Medal (3d Award)
 - National Defense Service Medal (2d Award)
 - Iraqi Campaign Medal
 - Global War on Terrorism Service Medal
 - Humanitarian Service Medal
 - Armed Forces Reserve Medal with Ten Year Device – Bronze
 - Armed Forces Reserve Medal and Mobilization
 - Noncommissioned Officer's Professional Development Ribbon
 - Army Service Ribbon
 - c. Permanent Order 03-04, issued on 22 March 2007, awarded the Army Good Conduct Medal for service between 1 October 2003 and 1 May 2005. (This will be administratively added to his DD Form 214).
 - d. Orders 007-820, issued on 7 January 2011, shows he was discharged from the Army National Guard and assigned to the Retired Reserves effective 31 January 2011.
 - e. NGB Form 22 (Report of Separation and Record of Service) shows he was honorably discharged from the [REDACTED] ARNG on 31 January 2011, under the provisions of

National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35I (8) due to medically unfit for retention per Army Regulation 40-501 (Standards of Medical Fitness).

f. Orders C01-990149, issued 6 January 2019, shows he was retired and placed on the retired list effective 26 November 2018.

g. His available records are void of orders awarding the Purple Heart. There is no evidence that shows he was injured as a result of enemy action or as a result of hostile action.

4. On 26 December 2003, an advisory opinion was received from U.S. Army Human Resources Command, Fort Knox, KY for the processing of this case. It states:

While we would like to take favorable action, we are unable to facilitate this request. Based upon review of the forwarded documentation, there is no evidence of history, evaluation, or treatment for a mild Traumatic Brain Injury sustained by the service member from the approximate deployment period (up to April 2005), nor can we conclusively determine the circumstances of his neck injury (i.e., whether it was directly caused by enemy action on a specific date). Accordingly, we are unable to verify the service member meets the regulatory criteria for award of the Purple Heart.

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 determined 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.

2. In events involving TBI and other similar injuries, the applicant's record must show that the brain injury 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. After reviewing the application and all supporting documents, the

Board found insufficient medical evidence to meet the regulatory standard for the Purple Heart and thus recommended denying the request.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

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.

ADMINISTRATIVE NOTE(S):

The applicant's records contain sufficient evidence to support additional awards not shown on his DD Form 214. His DD Form 214 for the period ending 1 May 2005, will be administratively corrected without Board action to show award of the Army Good Conduct Medal.

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 (AR) 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//