



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
ARMY REVIEW BOARDS AGENCY  
251 18<sup>TH</sup> STREET SOUTH, SUITE 301  
ARLINGTON, VA 22202-3531

DEC 19 2018

AR20180011836 SSG Joshua Berry

United States District Court  
for the District of Columbia  
510 4th Street, NW, Third Floor  
Washington, DC 20001

For the Honorable Court:

In accordance with an order from the U.S. District Court for the District of Columbia, dated August 22, 2018, I hereby provide for the Court an explanation of my October 26, 2016 decision regarding Mr. Howard Berry's application to the Army Board for Correction of Military Records (ABCMR) to have the Army award the Purple Heart to his son, Staff Sergeant (SSG) Joshua Berry.

The reason I denied the application, which I explain more fully below, is that the criteria for the Purple Heart award do not match the circumstances of SSG Berry's injury.

The Purple Heart was established by George Washington during the Revolutionary War and is bestowed upon members of the United States Armed Forces who have been wounded as a result of enemy action against the United States. In general terms, each approved award of the Purple Heart must meet each of the following criteria: (1) the wound must result from enemy or hostile action, international terrorist attack, or friendly fire; (2) the wound must have required treatment by a medical officer; and (3) the records of medical treatment must have been made part of the wounded Soldier's medical record.<sup>1</sup>

A review of SSG Berry's records indicates he injured his shoulder during the November 5, 2009 terrorist attack at Fort Hood, Texas. The injury required medical treatment and SSG Berry's treatment records were made part of his official Army records. Consequently, two of the three criteria (terrorist incident and medical treatment documentation) appear to have been met.

The key issue in SSG Berry's case, however, is whether the injury itself qualifies as a "wound" for purposes of the Purple Heart award. The Army's Military Awards regulation defines a wound as an injury to any part of the body from an outside force or

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<sup>1</sup> Army Regulation (AR) 600-8-22, *Military Awards*, paras. 2-8(a) – (e), (June 25, 2015).

agent.<sup>2</sup> When contemplating the merits of a Purple Heart case, the key issue to consider is the degree to which the enemy caused the injury.<sup>3</sup>

The facts in SSG Berry's case indicate that he was injured when he leapt over a desk to take cover and, in doing so, dislocated his shoulder. Consequently, the specific issue presented is whether these particular circumstances indicate an injury resulting from an outside force or agent and whether there is a sufficient degree of enemy (in this case, terrorist) causation relative to the injury.<sup>4</sup> The applicable regulatory framework implies a requirement that the wound result from an affirmative offensive action initiated by an opposing military actor.

As examples for qualifying injuries, the regulation cites injuries caused by "enemy bullet, shrapnel, or other projectile created by enemy action"; caused by "enemy-placed trap or mine"; or caused by "enemy-released chemical, biological or nuclear agent."<sup>5</sup> These examples all contemplate a force or energy initiated by the enemy or, more broadly, someone other than the injured Soldier himself.

Specifically excluded from the regulation's qualifying injury criterion are "frostbite"; "trench foot or immersion foot"; "heat stroke"; "food poisoning not caused by enemy agents"; "chemical, biological, or nuclear agents not released by the enemy"; "battle fatigue"; and "disease not directly caused by enemy agents."<sup>6</sup> Thus, the regulation excludes injuries not directly caused by the enemy even though the injuries might be severe and might have been sustained in a kinetic combat environment.

When applied to the facts and circumstances of this case, these provisions do not immediately suggest that SSG Berry's injury satisfies the criteria for a qualifying wound. The force or agent that separated SSG Berry's shoulder was the force he himself exerted in order to leap or dive to the floor to take cover. Although SSG Berry would not have dived to the floor but for the terrorist's attack, the greater weight of the evidence indicates that SSG Berry's injury resulted from his effort to take cover in reaction to the gunfire he heard emanating from outside the building and outside the office that he and others were occupying. Consequently, with regard to SSG Berry's separated shoulder, it is difficult to conclude that there existed a high degree of enemy causation or that the injury was inflicted by an outside force.

The regulation specifically excludes "self-inflicted wounds" from consideration for the Purple Heart, but it does make an allowance if such wounds are sustained "in the

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<sup>2</sup> AR 600-8-22, para. 2-8(e).

<sup>3</sup> AR 200-8-22, para. 2-8(f).

<sup>4</sup> See generally, AR 200-8-22, paras. 2-8(e), (f).

<sup>5</sup> AR 200-8-22, para. 2-8(g).

<sup>6</sup> AR 200-8-22, para. 2-8(h).

heat of battle and not involving gross negligence.”<sup>7</sup> Although this provision might appear to cover SSG Berry’s injury, the phrase “self-inflicted wound” implies an accidental discharge of one’s own weapon. In this regard, a separated shoulder from a tactical dive to the ground could not plausibly be deemed as “self-inflicted” any more than could a broken leg suffered during a tactical leap into a foxhole. Furthermore, at the time he was injured, SSG Berry had not yet entered the heat of battle. Consequently, it is my determination that SSG Berry’s injury does not fit within this particular exception.

Based on the foregoing, I find that SSG Berry’s injury was not the result of an outside force or agent and that there is an insufficient causal connection between the injury and the terrorist’s attack.

Buttressing my overall assessment in this regard is the Navy’s policy regarding the categories of injuries that qualify, and do not qualify, as Purple Heart wounds. Like the Army’s policy, the Navy policy emphasizes the degree to which the enemy caused the injury. The applicable Navy regulation provides:

Injuries suffered due to an accident that is neither directly nor indirectly caused by the effects of enemy weapons do not meet the eligibility requirements for the [Purple Heart], even if the accident occurs in a combat zone or during an engagement with the enemy. Examples of such accidental wounds / injuries that would not qualify for the [Purple Heart] are: ... Injuries sustained while seeking shelter, escaping, or evading.”<sup>8</sup>

This language seems to specifically exclude injuries sustained under circumstances similar to those in this case. Although not controlling on Army Purple Heart decisions, the Navy regulation indicates that my finding with regard to SSG Berry’s case is not inconsistent with how the other armed services assess Purple Heart cases.

In summation, I regretfully must find that a preponderance of evidence in this case does not demonstrate an error or an injustice. I therefore deny the relief requested by Mr. Howard Berry on behalf of his son, SSG Joshua Berry.



Francine C. Blackmon  
Deputy Assistant Secretary of the Army  
(Review Boards)

<sup>7</sup> AR 200-8-22, para. 2-8(h)(9).

<sup>8</sup> See All Navy (ALNAV) Message 079/11, SUBJECT: Department of the Navy Standards for Award of the Purple Heart, para. 3(d), (December 9, 2011).