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ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

OCT 29 1998

IN THE MATTER OF:

DOCKET NUMBER: 96-00137

[REDACTED]
COUNSEL: None

[REDACTED]
HEARING DESIRED: Yes

RESUME OF CASE:

In a application dated 2 January 1996, applicant requested that he be awarded the Purple Heart (PH) for injuries sustained while he was deployed to Saudi Arabia in support of Operations Desert Storm/Shield (DS/S).

On 31 October 1996, the Board considered and denied applicant's request, indicating that applicant's injuries did not meet the criteria for award of the PH. A complete copy of the Record of Proceedings is at Exhibit F.

In a letter to his Senator dated 23 July 1997, the applicant provided a witness' statement from his supervisor at the time and asked that he be awarded the PH. His letter was forwarded to the AFBCMR as a matter coming under its purview on 20 October 1997.

Applicant's complete reconsideration request, with attachment, is at Exhibit G.

THE BOARD CONCLUDES THAT:

After a thorough review of the evidence of record and applicant's submission, a majority of the Board is not persuaded that the applicant has been the victim of either an error or an injustice. The witness supervisor raises comparisons between the applicant's situation and the circumstances pertaining to the Blackhawk shootdown as justification for awarding the PH to the applicant. Presumably the applicant agrees with these contentions since he provided the supporting statement as new evidence. However, the award of the PH in 1995 for the Blackhawk incident was a decision made by the Secretary of Defense and we are not privy to the in-depth rationale surrounding that decision as it was not a matter coming under our purview. In any event, a majority of this Board is not persuaded that the parameters of the PH criteria can be expanded to include the applicant's injury. In this regard, as explained in the original conclusions, at the time of his injury in 1991, the applicant was engaged in detonating cluster bombs jettisoned days earlier by a battle-damaged American F-16. At the

time of his injury, he was not involved in an action against a US enemy or with an American ally and an opposing armed force, and there were no hostilities involving an international peacekeeping force and no terrorist attack. Therefore, a majority of the Board concludes the PH criteria was not met in this case even if applied in a broader sense. We commend and respect the applicant for performing his duty in an outstanding manner and at significant personal cost; however, in view of the above, the majority finds no basis upon which to overturn the original Panel's conclusion that this request should be denied.

The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without legal counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

RECOMMENDATION OF THE BOARD:

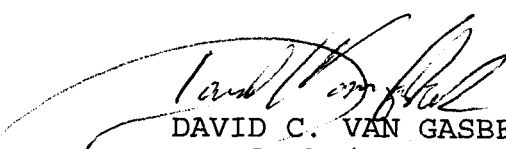
A majority of the panel finds insufficient evidence of error or injustice and recommends the application be denied.

The following members of the Board considered this application in Executive Session on 23 March and 17 September 1998, under the provisions of AFI 36-2603:

Mr. David C. Van Gasbeck, Panel Chair
Mr. Frederick R. Beaman 111, Member
Mr. Michael P. Higgins, Member

By a majority vote, the Board recommended denial of the application. Mr. Beaman voted to grant but he does not wish to submit a Minority Report. The following documentary evidence was considered:

Exhibit F. Record of Proceedings, dated 2 Dec 96, w/atchs.
Exhibit G. Applicant's Letter, dated 23 Jul 97 (received
20 Oct 97), w/atchs.


DAVID C. VAN GASBECK
Panel Chair

DEC 02 1996

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-00137

COUNSEL: None

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

He be awarded the Purple Heart (PH).

APPLICANT CONTENDS THAT:

Inaction by AFMPC prevented proper boarding of the PH nomination. After forcing the AFMPC PH board to review the case, the nomination was denied based on subjective award criteria, i.e., "battle incident," "direct enemy action," by people distant from the situation.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant is currently serving in the Regular Air Force in the grade of master sergeant, with a date of rank of 1 May 1996. During the period in question, applicant was assigned to the 377th Explosive Ordnance Disposal (EOD) Squadron as an EOD technician and was deployed from Ramstein to Saudi Arabia in support of Operations Desert Storm/Shield.

On 27 February 1991, an F-16 returning from Iraq with battle damage declared an in-flight emergency (IFE), requested immediate landing, and jettisoned four CBU 87's (cluster bombs) somewhere near the base. A standoff munitions disruption (SMUD) procedure to destroy the bomblets commenced on 3 March 1991.

On 4 March 1991, while detonating the cluster bombs from the field, applicant was wounded by a high-speed fragment from the exploding ordnance. The fragment hit him in the left wrist and forearm, resulting in an open fracture, and then struck his flack jacket over his heart area. Applicant was attended by the on-scene medic and then evacuated to the 114 Army Hospital. He underwent surgery on 7 March 1991.

By message dated 15 March 1991, applicant's deployed unit, the 4410 OSW, informed AFMPC/DPCM of applicant's casualty status. On 19 March 1991, AFMPC responded to his deployed unit, indicating

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that the wound was not "battle" incident, did not meet the criterion for the PH, and no further action would be taken.

On 20 March 1991, applicant's injury was found to be LOD.

In a 7 July 1992 letter to AFMPC/DPMASA, the 6510 Test Wing (AFMC) commander requested formal reconsideration for the PH. He stated he was personally familiar with the operation that resulted in applicant's wounds and felt the decoration was fully justified. In a combat support role, applicant was wounded as a result of enemy action. The commander added that in the modern, high-tech wars represented by Desert Storm, the lines between combat and combat support are frequently blurred.

By message dated 31 August 1994, applicant's unit at the time queried AFMPC regarding the status of the reconsideration of the award of the PH.

On 7 December 1994, the PH Review Board denied his request for the award, stating that the documentation furnished on his behalf, in accordance with established criteria, did not provide conclusive evidence that his injury was a direct result of enemy action. Since his injuries were a result of indirect enemy action, award of the PH was not warranted.

AIR STAFF EVALUATION:

The NCOIC, Special Trophies & Awards, AFPC/DPPPRS, reviewed this appeal and states that the PH is awarded for wounds received as a direct--not indirect--result of enemy actions (i.e., gunshot or shrapnel wounds, hand-to-hand combat wounds, or forced aircraft bailout injuries). It is necessary that the wound require/receive medical treatment. Indirect injuries include, but are not restricted to: disease; exposure; injury incurred as a secondary effect of enemy action; wounds, injuries, diseases or death incurred by and/or resulting from brutalities, negligence or forced labor inflicted by enemy action while in a POW status. Based on the information provided and the PH criteria listed above, DPPPRS recommends denial of applicant's request.

A complete copy of the Air Staff evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR STAFF EVALUATION:

Applicant reviewed the Air Staff evaluation and argues that AFPC officials put forth "criteria" as if it were "Biblical Scripture," failing to explain that it is anything more than their opinion. It should be noted for the record the opinions they espouse aren't based on any substantive reference, i.e., official policy letter, Air Force Instruction, or any other official DOD document, and no references are included in the opinions or decisions they have given him in the past or

forwarded to [the Board] for consideration. Nowhere in AFI 36-2803, or AFR 900-48 at the time of the incident, is the term "direct result of enemy action" used as a determining factor for award of the PH. AFI 36-2803 (DOD Manual 1348.33-M) addresses four broad situations in which an American warfighter might be found in:

- a. Hostilities between the US and one of its enemies.
- b. Hostilities between an ally of the US and one of their enemies.
- c. Hostilities involving US service members who are part of an international peacekeeping force.
- d. As a result of a terrorist attack.

It is loosely written with great intention. Specific instances where award of the PH is warranted are deliberately avoided. To do so would inject a measure of subjectivity into a situation where an on-scene commander's objectivity is required. Subjectivity is the pitfall of DPPRS' position concerning his case. Authoritative references show the intent with which the AFI 36-2803 and its predecessors were written and prove the validity of his claim. The strict, binding rules AFPC "criteria" places on battle situations are, by definition, impossible. AFPC's references to "hand-to-hand combat would" and "forced aircraft bailout injuries" are not applicable to the modern battlefield, are not compatible with Air Force doctrine, and alienate a significant percentage of Air Force specialties from eligibility for the PH. Furthermore, AFPC is inconsistent in applying award criteria. His deployed unit was awarded the Air Force Outstanding Unit Award with "V" device. The "V" device is included if the award is for meritorious service or outstanding achievement in a combat area. Thus, on one hand AFPC states he was attached to a recognized combat area or unit but, on the other hand, he's not eligible for the PH because he wasn't in a combat area or unit. He implores the Board to rely on the objective opinion of his on-scene commander in March 1991 who considered the fact that he was an American warfighter assigned to a designated war zone and was wounded in action while performing his assigned duties during hostilities with another country. He asks for an end to this exercise in semantics and he be allowed to have what is rightfully his.

Applicant's complete response is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed

3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. This Board studied the circumstances surrounding the applicant's injuries for which he claims the PH with a great deal of care. We certainly understand his skepticism regarding the "criteria" for the award put forth by the Air Staff, but trust that he will accept the idea that **some** measure of control must be applied for all decorations. The applicant has called this Board's attention to DOD Manual 1348.33-M, AFI 36-2803, and its forerunner, AFR 900-48. In those publications, one finds the "criteria" for the award of the PH. As the applicant points out, it may be awarded under any action against an enemy of the U.S., or in **any** action with an opposing armed force. He adds to this the language in AFI 36-2803, which discusses the four situations in which American warfighters might find themselves, i.e., **hostilities** between the U.S. and one of its enemies; **hostilities** between an ally of the U.S. and one of their enemies; **hostilities** involving U.S. service members who are part of an international peacekeeping force; and **terrorist attack** (emphasis added). The facts surrounding the applicant's injuries are well established in the "Statement of Facts" section of this Record of Proceedings. The applicant was a member of an Explosive Ordnance Demolition (EOD) team tasked with detonating cluster bombs jettisoned from an American F-16 aircraft nearly a full week previously. He was injured in that operation. At the time of his injury, however, he was **not** involved in an action against an enemy of the United States; he was **not** involved in any action with an American ally and an opposing armed force; there were no **hostilities** involving an international peacekeeping force; and there was **no** terrorist attack. He was engaged in a unilateral bomb detonating detail. The criteria was not met. This Board deeply appreciates the effort made by the applicant in assembling his appeal. Quite obviously, he serves his country with distinction. We acknowledge his injuries and the difficult circumstances under which they occurred. We ask that he understand the position of this Board in attempting to preserve the purpose and purity of the PH, and other decorations, as we deny his request.

4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without legal counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 31 October 1996, under the provisions of AFI 36-2603:

Mr. David C. Van Gasbeck, Panel Chairman
Ms. Sophie A. Clark, Member
Mr. Frederick R. Beaman III, Member
Ms. D. E. Hankey, Examiner (without vote)

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 1 Jan 96, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, HQ AFPC/DPPPRS, dated 29 Jan 96.
Exhibit D. Letter, AFBCMR, dated 12 Feb 96.
Exhibit E. Letter, Applicant, dated 7 Mar 96, w/atchs.



DAVID C. VAN GASBECK
Panel Chairman