



(or simulated combat) operations is not sufficient to support a combat-related determination. There must be a definite causal relationship between the armed (or simulated) conflict and the resulting disability. In general, this covers disabilities resulting from simulated combat activity during military training, such as war games, practice alerts, tactical exercises, airborne operations, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses while in full combat gear. Your application package does not establish that specific combat-related events caused your diagnosis.

On 10 October 2018, you requested reconsideration of your request for CRSC. In your request for reconsideration, you provided additional medical documentation showing that you received medical care for your knee at additional points in your career. On 19 November 2018, the CORB denied your request for reconsideration by applying its previous rationale.

In your petition, you seek review of the denial of your CRSC, asserting that the CRSC Board committed clear error and perpetrated an injustice. In support of your request, you assert that your right-knee disabilities are combat-related because the disabilities fall under the plain language of the CRSC statute. You also assert that various legal interpretations, legislative history, and DoD publications support obstacle course training being combat-related.

In order to assist it in reviewing your petition, the Board obtained the 14 December 2020 AO. The AO described the background and application of simulated warfare (SW) within the context of the CRSC, as follows:

Determinations of [simulated warfare] SW may be made for a disability that was incurred in the line of duty as a result of simulating armed conflict. In general, this covers disabilities resulting from simulated combat activity during military training, such as war games, practice alerts, tactical exercises, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses while in full combat gear. Physical training activities such as calisthenics and jogging or formation running and supervised sports activities are not included. There must be a direct, documented, causal relationship between a SW and the resulting disability (injury must be caused by the device itself).

Next, the AO explained, with emphasis added, that “[t]he fact a service member incurred a disability during a period of simulating war or in an area of simulated armed conflict or while participating in simulated combat operations is not sufficient by itself to support a combat-related determination. There must be a *definite, documented, causal relationship between the simulated armed conflict and the resulting disability.*” The AO concluded, “[t]he documents provided did not overcome the burden of proof and were insufficient to support a combat related determination under SW for CRSC purposes. Without more independent and official documentation, I must recommend denial of his request.”

You were provided a copy of the AO and you provided a response to the AO dated 8 July 2021, which the Board carefully reviewed. In your response, you argue that the AO was flawed in several ways, including that it wrongly assumes that a disability for the purpose of CRSC must be career-ending in order to be combat related. You also argue the AO improperly makes conclusory statements. Finally, you asserted that the AO was required to have been prepared by the Director of Compensation, Deputy Under Secretary of Defense (Military Personnel Policy) and was thus deficient. On this latter point, as you may already be aware, that provision is no longer a requirement based on new guidance issued by the Department of Defense.

The Board carefully considered your arguments that you deserve CRSC for your knee injury. In view of the entirety of your CRSC requests and denials as well as your current petition, the AO, and your rebuttal, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion in your case.

Section 1413a of Title 10, United States Code, provides the statutory authority for payment of CRSC. Based on procedures and criteria prescribed by the Secretary of Defense, it allows for payment of CRSC for combat-related disabilities incurred as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, or through an instrumentality of war. In addition, CRSC may be awarded if a disability is attributable to an injury for which a Purple Heart was awarded. The Office of the Under Secretary of Defense issued a Directive Type Memorandum on 27 April 2004 that provided guidance on CRSC.

Additionally, as described in the AO, Department of Defense Regulation 7000.14-R (Financial Management Regulation) also addresses CRSC by stating “Determinations of whether a disability is combat-related for CRSC will be based on the preponderance of available documentary information where quality of information is more important than quantity. All relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation, or conjecture.”

In your case, the Board was unable to find any evidence that your knee injury met the requirement for CRSC as a result of simulated warfare (SW). While your application documents that you informed a medical provider that your knee “gave out” on you while running an “O” course in 1983, the Board agreed with the prior decisions of the CRSC Board and the AO that there is insufficient evidence to support a combat related determination under SW for CRSC purposes. In reaching its decision, the Board determined there was insufficient evidence that your participation in the obstacle course training met the requirements for simulated warfare. Specifically, the Board looked for evidence that would document that your obstacle course training actually simulated warfare and was not simply a physical training activity conducted on an obstacle course. Based on the physical training caveat contained in the CRSC guidance, the Board determined that evidence of participation in the example events listed under “In the Performance of Duty Under Conditions Simulating War” paragraph, by itself, was insufficient to qualify for CRSC under SW in most cases. The guidance, the Board concluded, requires documentation in the record that participation in those events occurred under conditions simulating war. The Board determined that many of the listed examples could involve physical

training activities without any element of simulating war. In other words, unlike events such as airborne operations, some of these example events, including obstacle courses, are not per se combat simulating events and could be construed as simple physical training exercises. In reviewing your record, the Board found that this aspect of your participation in the obstacle course lacking in evidence. Therefore, the Board concluded it needed additional evidence, e.g. wearing of combat gear, simulated gunfire, course traits, etc., to document that it involved a combat simulation. As a result, absent additional supporting evidence, the Board determined the preponderance of the evidence supports the CRSC Board decision in your case. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/7/2022

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Executive Director

Signed by:

A black rectangular redaction box covering the name of the Executive Director.