



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 0713-23
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. § 1413a
(c) Directive Type Memorandum (DTM) – Revised Guidance on Combat Related Special Compensation (CRSC), 15 April 2004

- Encl:
- (1) DD Form 149 with attachments
 - (2) BCNR Letter ██████████ Docket No. 3416-21, 8 August 2021
 - (3) Secretary of the Navy Counsel of Review Boards Memo 5819 CORB: 001, subj: Advisory Opinion (AO) ICO [Petitioner], 20 April 2020
 - (4) Complaint, in the case of [Petitioner] v. ██████████, in the United States Court of Federal Claims, Civil Action No. ██████████, filed 8 April 2022
 - (5) Order, in the case of [Petitioner] v. ██████████, in the United States Court of Federal Claims, No. ██████████ filed 13 January 2023
 - (6) Petitioner's Counsel Letter, RE: Docket No. NR20230000713 Remand Submission / [Petitioner] v. ██████████ No. ██████████ 7 (Ct.Cl. Apr. 8, 2022)
 - (7) Secretary of the Navy Counsel of Review Boards Memo 5819 CORB: 002, subj: Advisory Opinion (AO) ICO [Petitioner], 15 March 2023
 - (8) DD Form 214
 - (9) Behavioral Health Addendum to Medical Evaluation Board (MEB) Narrative Summary, 1 February 2017
 - (10) ██████████ Health Letter from ██████████ MD, 9 August 2017
 - (11) Findings of the Physical Evaluation Board Proceedings, 16 October 2017
 - (12) DD Form 2860, Claim for Combat-Related Special Compensation (CRSC), signed 27 June 2019
 - (13) Secretary of the Navy Counsel of Review Boards Memo 1850 CORB: 20, subj: Denial of CRSC ICO [Petitioner], 2 August 2019
 - (14) Secretary of the Navy Counsel of Review Boards Memo 1850 CORB:trh, subj: Findings of the Temporary Disability Retired List (TDRL) Information Physical Evaluation Board, 9 October 2020

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that her naval record be corrected to reflect that she is eligible for Combat-Related Special Compensation (CRSC), retroactive to 28 December 2017.

2. On 5 August 2021, the Board voted to deny this request in Docket No. 3416-21. See enclosure (2). This decision was supported by an advisory opinion (AO) provided by the Director, Secretary of the Navy Counsel of Review Boards (CORB), which recommended the denial of Petitioner's request and asserted that the evidence provided to the Board was insufficient to support a combat-related determination under armed conflict. Specifically, the CORB Director stated that "[t]he fact that [Petitioner's] experiences while deployed to Afghanistan resulted in [post-traumatic stress disorder (PTSD)] and [Major Depressive Disorder (MDD)] does not mean that they were incurred during armed conflict. There must be a documented causal relationship between the armed conflict and the resulting disability." See enclosure (3).

3. On 8 April 2022, Petitioner filed suit in the [REDACTED] Court of Federal Claims (COFC), alleging that the Board's decision in Docket No. 3416-21 was arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence and contrary to law. Specifically, she asserted that the Board's conclusion in Docket No. 3416-21 that armed conflict CRSC compensation requires a member to be "actively engaged in combat with the enemy" is contrary to the regulatory guidance implementing reference (b). Reference (c) provides that a member qualified for armed conflict CRSC if the "disability is a disease or injury incurred in the line of duty as a direct result of armed conflict." "Armed conflict" is defined as "a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which service members are engaged with hostile or belligerent nation, faction, force, or terrorists." Nothing in the guidance reasonably suggests that a member must be "actively engaged in combat" to establish a causal relationship between armed conflict and a resultant disease or injury. Petitioner further asserted that, "in declining to find an error or injustice in [her] record based on the prospect that such a correction in her case might permit other similarly situated applicants to get CRSC benefits, the [Board] abdicated its 'abiding moral sanction to determine, insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief.'"¹ See enclosure (4).

4. On 13 January 2023, the COFC granted the government's motion to remand Petitioner's case to the Board for reconsideration. Specifically, the Court directed the Board to consider Petitioner's application, and any new arguments or evidence she presents on her existing claims, in accordance with the Board's applicable procedures and powers, including the Board's power to seek additional AOs. See enclosure (5).

5. By letter dated 28 February 2023, Petitioner, through counsel, submitted additional matters for the Board's consideration on remand. Petitioner again requested that her records be corrected to reflect entitlement to CRSC retroactive to 28 December 2017; all back pay and entitlements that flow from the correction; and any other relief that the Board deems appropriate. Further, she asserted that her PTSD was caused by traumatic events that she experienced while in a combat-zone deployment to Afghanistan, and that the occurrence of this condition under these circumstances meets the standard for CRSC under the armed conflict criteria. Specifically, reference (c) provides that a member qualifies for CRSC under the direct-result-of-armed-conflict category if the "disability is a disease or injury incurred in the line of duty as a direct result of armed conflict," and that there must be "a definite causal relationship between the

¹ Petitioner quoted from the case of *Caddington v. United States*, 147 Ct.Cl 629, 634 (1959).

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armed conflict and the resulting disability.” However, nothing in this criteria suggests that a member must personally be activity engaged in combat with the enemy to establish a causal relationship between “armed conflict” and a resultant disease or injury. Petitioner also cited to Docket No. 6644-16 as precedent for a favorable decision in this case. See enclosure (6).

6. By memorandum dated 15 March 2023, the Director, CORB, provided another AO upon the Board’s request, this time recommending approval of Petitioner’s request. In explaining the reason for the different outcome in this AO, the CORB Director stated that the most recent decision of the Physical Evaluation Board (PEB), dated 16 October 2017, was not included in Petitioner’s original application package.² Upon review of this decision, the CRSC concurred with the PEB’s decision to approve Petitioner’s PTSD condition as combat-related. See enclosure (7).

7. The Board, consisting of [REDACTED] reconsidered Petitioner’s allegations of error or injustice on 30 March 2023 in accordance with the Order of the COFC, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner’s naval record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner’s naval records, and applicable statutes, regulations, and policies.

8. The Board, having reviewed all of the evidence of record pertaining to Petitioner’s allegations of error or injustice, finds as follows:

a. Petitioner was commissioned as an officer and began a period of active duty service in the Navy on 21 April 2004. See enclosure (8).

b. On 7 August 2008, Petitioner was diagnosed with MDD (recurrent, severe). The symptoms of this condition had reportedly been present since at least 22 December 2006. See enclosure (9).

c. On 27 October 2010, Petitioner was diagnosed with Dysthymic Disorder (early onset). The onset on this condition was found to have occurred in Petitioner’s early childhood, and was associated with certain traumatic experiences. See enclosure (9).

d. In February 2012, Petitioner was deployed to [REDACTED] While deployed to Afghanistan, she served as the medical expert for the International Security Assistance Force (ISAF) Joint Incident Assessment Team, tasked to investigate civilian deaths or injuries that may have been caused by coalition military operations. In this capacity, she was exposed to videos and photos of civilians, to include small children in some cases, who suffered deaths and/or injuries, and interacted with the family members of these victims. As a result, she experienced flashbacks and physiological reactions, sleep reduction and guilt. While in theater, she was seen by medical providers eight times for treatment of anxiety and insomnia. See enclosures (9) and (10).

² The Board presumes that this was a reference to Petitioner’s original CRSC claim in 2019.

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e. On 30 January 2015, Petitioner was formally diagnosed with PTSD resulting from the deployment stressors discussed in paragraph 3d above.³ See enclosure (9).

f. On 28 October 2016, Petitioner was assigned to a limited duty status, with restrictions on certain types of duties and mandated rest periods, due to her previous diagnosis for MDD. As a result, she was subsequently referred to a MEB. See enclosure (9).

g. On 1 February 2017, the MEB referred Petitioner to the PEB for a fitness determination.

h. On 14 April 2017, an informal PEB found Petitioner unfit for continued service in the Navy for PTSD (chronic, unstable), with a category 2 diagnosis of MDD (recurrent, severe without psychotic features), with a 50 percent disability rating. Petitioner did not accept these findings, and requested a formal PEB. Specifically, she asserted that the informal PEB erred in finding that Petitioner's PTSD condition "did not result from a combat related injury defined by Title 26 U.S. Code Section 104(b)(3)." See enclosure (1).

i. On 16 October 2017, the formal PEB agreed with Petitioner's contention, finding that Petitioner's disability was, in fact, "the direct result of a combat related injury as defined by Title 26 U.S. Code Section 104(b)(3)" and that her disability "was incurred in the line of duty as a direct result of armed conflict." The formal PEB assigned Petitioner a 70 percent disability rating, and recommended Petitioner's placement on the Temporary Disability Retired List (TDRL). See enclosure (11).

j. On 28 December 2017, Petitioner was medically retired and placed on the TDRL. See enclosure (8).

k. On 27 June 2019, Petitioner made a claim for CRSC based upon the PTSD that she developed as a result of her experiences in [REDACTED] See enclosure (12).

l. By memorandum dated 2 August 2019, the CORB CRSC Board denied Petitioner's claim for CRSC, finding that her PTSD condition (with MDD) was not combat related. Specifically, the CRSC Board found that Petitioner's claim did not establish that specific combat-related events caused her PTSD diagnosis. See enclosure (13).

m. By memorandum dated 9 October 2020, the PEB President informed Petitioner that she would be transferred to the Permanent Disability Retired List as a result of a thorough review of her case by the PEB. See enclosure (14).

n. Per reference (c), a retired member of the Uniformed Services who meets each of the following four conditions will be considered to meet the Preliminary CRSC Criteria:

³ Petitioner may have been predisposed to the development of PTSD due to traumatic events of her childhood, but according to the Medical Evaluation Board (MEB) it was the exposure to the stressors in Afghanistan, and not those previous traumatic childhood experiences, which triggered this condition. See enclosure (9).

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(1) The member has 20 or more years of service in the Uniformed Services for purposes of computing the amount of retired pay or is entitled to retired pay under 10 U.S.C. § 12731, unless such retirement is under 10 U.S.C. § 12731(b) of that same title;

(2) The member is in a retired status;

(3) The member is entitle to retired pay, notwithstanding that such retired pay may be reduced due to receipt of Department of Veterans Affairs (VA) disability compensation; and

(4) The member has qualifying disability ratings (percentages).

In the evaluation of CRSC claims, if the applicant meets each of these preliminary criteria, the final criteria is whether the member has “combat-related disabilities” that are compensated by the VA. A combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule for Rating Disabilities that was incurred: (a) as a direct result of armed conflict; (b) while engaged in hazardous service; (c) in the performance of duty under conditions simulating war; or (d) through an instrumentality of war. With regard to disabilities incurred as a direct result of armed conflict, reference (c) provides that “[t]he fact that a member incurred the disability during a period of war or an area of armed conflict or while participating in combat operations is not sufficient to support a combat-related determination. There must be a definite causal relationship between the armed conflict and the resulting disability.”

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting relief.

The evidence clearly establishes a causal relationship between the armed conflict in Afghanistan and Petitioner’s PTSD condition. Further, after review of the PEB’s October 2017 findings, the CRSC Board indicated its concurrence with the PEB’s October 2017 finding that Petitioner’s PTSD condition was combat related.⁴

The Board’s previous decision in Docket No. 3416-21 was based primarily upon the AO provided at enclosure (3). Those findings, in turn, were based primarily upon the CRSC Board’s rationale for denying Petitioner’s claim in 2019. It is not clear from the record whether Petitioner provided the CRSC Board with evidence of the October 2017 formal PEB findings when she made her original CRSC claim; it does not appear that she did, but rather relied upon her own narrative regarding the source of her condition. Regardless, she has established the causal connection between her condition and armed conflict with her present application.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner’s naval record:

⁴ It is not clear from the record why the October 2017 formal PEB findings were not considered in the CORB’s AO at enclosure (3).

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[REDACTED]

That Petitioner's naval record be corrected to reflect that her claim for CRSC, dated 27 June 2019, was approved by the CRSC Board, and that she is entitled to CRSC retroactive to 28 December 2017 for PTSD incurred as a direct result of armed conflict.

That this decision be referred to the Defense Finance and Accounting Service (DFAS) to conduct an audit of Petitioner's finance records to determine what, if any, pay and allowances may be due Petitioner as a result of this decision, and that DFAS make payments to Petitioner as appropriate.

That no further corrective action be taken on Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

5. Pursuant to the authority delegated in SECNAVINST 5420.193, and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved on behalf of the Secretary of the Navy.

5/8/2023

[REDACTED]
Executive Director
[REDACTED]