

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03269

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel record be amended to reflect approval of Combat-Related Special Compensation (CRSC) for his Post-Traumatic Stress Disorder (PTSD).

APPLICANT'S CONTENTIONS

He was a fighter pilot for 20 years. He has dealt with PTSD since his first assignment in the F-16. The symptoms progressed and worsened throughout his career and beyond. It was suggested by his physicians to seek counseling. He was also advised to seek therapy and diagnosis by a Department of Veterans Affairs (DVA)-contracted clinical and neuropsychologist who specializes in PTSD. He was diagnosed with moderate to severe PTSD after a four-day evaluation. He was awarded a 70 percent disability rating by the DVA for PTSD but has been denied for CRSC on his initial claim as well as two requests for reconsideration.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve lieutenant colonel (O-5).

On 23 Oct 09, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with degeneration of cervical intervertebral disc and referred to the Physical Evaluation Board (PEB).

On 16 Mar 10, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions Which are Compensable and Ratable:
 1. Degeneration of Cervical Intervertebral Disc; Veterans Affairs Schedule for Rating Disabilities (VASRD) Code 5242; 20 percent disability rating
 2. Low Back Pain; VASRD Code 5242; 10 percent disability rating

The disabilities were incurred while entitled to receive basic pay, were the direct result of armed conflict or was caused by an instrumentality of war and incurred in the line of duty during a period of war and were the direct result of a combat-related injury. The informal PEB (IPEB) recommended a combined compensable rating of 30 percent and permanent retirement.

On 25 Mar 10, according to AF Form 1180, *Action on Informal Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB and waived the right to a formal PEB hearing.

On 2 Apr 10, according to an AFPC/DPSD memorandum, Subject: Physical Evaluation, the Secretary of the Air Force directed the applicant be permanently retired under the provisions of Title 10, United States Code § 1204 (10 USC § 1204).

On 24 May 10, according to Special Order Number XXXXX, dated 19 Apr 10, the applicant was relieved from active duty, organization, and station of assignment. Effective 25 May 10, he was permanently disability retired in the grade of lieutenant colonel with a compensable percentage for physical disability of 30 percent. The disability received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. Disability was the direct result of a combat-related injury as defined in 26 USC 104.

On 29 Oct 22, according to a letter from the applicant's licensed psychologist to the DVA, provided by the applicant, he was diagnosed with adjustment disorder with mixed anxiety and depressed mood (moderate), and PTSD (moderate to severe), chronic.

On 10 Jan 23, according to DVA Rating Decision, provided by the applicant, he was granted service-connection for PTSD with an evaluation of 70 percent, effective 8 Jul 22.

On 8 Mar 23, according to *Air Force CRSC Reconsideration Request*, the applicant requested CRSC reconsideration for PTSD.

On 13 Apr 23, according to AFPC/DPFDC letter, the applicant's request for CRSC for PTSD was disapproved. On that same date, the applicant submitted an *Air Force CRSC Reconsideration Request*, with a written response to the AFPC/DPFDC denial for CRSC, and supporting documentation, requesting CRSC reconsideration for PTSD.

On 9 May 23, according to AFPC/DPFDC letter, the applicant's request reconsideration for CRSC for PTSD was disapproved.

On 20 Jun 23, the applicant submitted an *Air Force CRSC Reconsideration Request*, with a written response to the AFPC/DPFDC denial for CRSC, and supporting documentation, requesting CRSC reconsideration for PTSD.

On 11 Jul 23, according to AFPC/DPFDC letter, the applicant received partial approval for CRSC for the following conditions:

- Epilepsy, focal motor, VASRD Code 8912, 40 percent disability rating effective Sep 22
- Cervical spine strain with degenerative changes, herniated discs, and foraminal stenosis status post discectomy, decompression and disc replacement, VASRD Code 5243, 10 percent disability rating effective Jun 09; 30 percent disability rating effective Mar 10; 100 percent disability rating effective Aug 20; 30 percent disability rating effective Oct 20
- Cervicogenic headaches, VASRD Code 8100, 30 percent disability rating effective Feb 23
- Thoracolumbar spine strain with degenerative changes, herniated disc, and foraminal stenosis, VASRD Code 5243, 10 percent disability rating effect Jun 09; 20 percent disability effective Jun 10
- Tinnitus, VASRD Code 6260, 10 percent disability rating effective
- Scar with disfigurement status post cervical discectomy, VASRD Code 7800, 10 percent disability rating effective Aug 20
- Painful scar status post cervical discectomy, VASRD Code 7804, 10 percent disability rating effective Aug 20.
- CRSC was disapproved for PTSD

On 7 Aug 23, the applicant submitted an *Air Force CRSC Reconsideration Request*, with a written response to the AFPC/DPFDC denial for CRSC, and supporting documentation, requesting CRSC reconsideration for PTSD.

On 6 Sep 23, according to AFPC/DPFDC letter, the applicant's request reconsideration for CRSC for PTSD was disapproved.

On 21 Sep 23, the applicant submitted a written response to the AFPC/DPFDC denial for CRSC, provided by the applicant.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

10 USC § 1413a. *Combat-related special compensation.*

(a) *Authority.* The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

(e) *Combat-Related Disability.* In this section, the term "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that:

- (1) is attributable to an injury for which the member was awarded the Purple Heart; or,
- (2) was incurred (as determined under criteria prescribed by the Secretary of Defense)
 - (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.

DoD 7000.14-R, *Financial Management Regulation*, Volume 7B, Chapter 63, dated Nov 19, 6.0 *Determination of Combat-Relatedness* (6306):

6.1 Direct Result of Armed Conflict (630601)

6.1.1. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to only state the fact that a member incurred the disability during a period of war, in an area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

6.1.2. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which servicemembers are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

6.2 While Engaged in Hazardous Service (630602)

Hazardous service is service that includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of hazardous service requires that the injury or disease be the direct result of actions taken in the performance of such service. Travel to and from such service, or actions incidental to a normal duty status not considered hazardous, are not included.

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

The applicant is requesting reconsideration of his disapproved claim for CRSC for PTSD to qualify for benefits authorized under the CRSC program in accordance with Public Law 107-314 and the Office of the Under Secretary of Defense guidance. He submitted four claims for CRSC consideration for his PTSD between Mar 23 – Aug 23. His claims were disapproved as non-combat related. He contends his disability was due to armed conflict caused by over 20 years as a fighter pilot and his combat operations in Iraq and Bosnia between 1991-1994. The documentation provided by the applicant has no evidence confirming direct exposure.

To be approved for CRSC there must be a clear and direct relationship to specific combat stressors. This lack of evidence prevents consideration under current CRSC criteria. Additionally, the information provided by the applicant with his application to the Air Force Board for Correction of Military Records (AFBCMR) has been thoroughly reviewed and provided no new evidence that would support his claim for CRSC. Although the medical documentation provided by the applicant may confirm his PTSD, it does not identify a specific combat-related event (nexus) that attributed to the claimed disability. Medical documentation for such disabilities is often related from a patient's account (point of view) of what happened and not objective documentary evidence that the claimed combat-related stressors occurred.

The fact that a member incurred the disability during a period of war or in 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.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 21 Mar 24 for comment (Exhibit D), and the applicant replied on 27 Mar 24. In his response, the applicant contended he is disappointed and frustrated to have reached this point. He does understand there is a standard that must be met for CRSC. He knows the bar is high, but he believes he not only met that bar, but exceeded it. He spent 24 years flying F-16s in combat operations, the training environment, and military exchanges. It would be an understatement to say his career came with many hazards.

He received several rejection letters and each one cited although there was proof of his time in combat, there was a lack of evidence proving actual time in combat. He understands that, but counters with a few points. He can guarantee no fighter pilot lets his fear be known, especially to his commander. Therefore, he would not have a record of potential PTSD during that combat time. Furthermore, and more importantly, there are three more criteria on which CRSC is based: (1) while engaged in hazardous service; (2) in the performance of duty under conditions simulating war, or (3) through an instrumentality of war. He does not believe these can be denied with his record. They were part of nearly every mission he flew in his 24-year career. He included the official definitions. Each time he questioned this with the CRSC board, he was sent a denial letter with only the criteria for actual armed conflict. He was never told why he did not meet the criteria above. He realized this is his last and final evaluation and hopes the AFBCMR has the opportunity to review his entire file. That said, if the AFBCMR agrees with the previous decisions, he would like to know why he failed to meet each of the four criteria for combat-related disability.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDC and finds a preponderance of the evidence does not substantiate the applicant's contentions. While there is evidence the applicant performed aerial flight and participated in combat operations, this does not sufficiently meet any of the four CRSC criteria without a specific nexus between the activity performed and the disability claimed. The DVA service-connection, granted effective 8 Jul 22, 12 years post-service, was based on DVA standards for injuries or diseases incurred while in service. While service-connection for a disability is required for initial eligibility for CRSC, the CRSC program standards are much more rigorous. Incurring a disability during a period of war, while serving in an area of armed conflict, while participating in combat operations, or actions taken during a normal duty status, is not sufficient by itself to support a combat-related determination. When making combat-related determinations regarding armed conflict, hazardous service, simulation of war, or instrumentality of war, definite, documented, causal relationship with the resulting disability, such as direct combat exposure to gun fire or mortar attack, is required. Unfortunately, there is no documented evidence in the applicant's official military personnel record, or provided by the applicant, to support that nexus. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-03269 in Executive Session on 17 Jul 24:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 1 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDC, w/atchs, dated 11 Mar 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Mar 24.
- Exhibit E: Applicant's Response, w/atch, dated 27 Mar 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR