



**FOR OFFICIAL USE ONLY – PRIVACY ACT OF 1974 APPLIES**

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2019-04741

*Work-Product*

**COUNSEL:**

*Work-Product*

**HEARING REQUESTED:** YES

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**APPLICANT’S REQUEST**

His Post-Traumatic Stress Disorder (PTSD) with Traumatic Brain Injury (TBI), Major Depressive Disorder, and pain disorder be assessed as combat-related in order to qualify for compensation under the Combat-Related Special Compensation (CRSC) Act.

**APPLICANT’S CONTENTIONS**

Through counsel, the applicant contends he deployed to a war zone three times between 2008 and 2011 for two months each as an Intel Surveillance Reconnaissance Operator (ISRO). During his deployment, he was engaged in combat activities and subjected to mortar attacks daily for several weeks at a time. These attacks left him feeling horrified, terrified, and helpless. His request was erroneously denied for CRSC under 10 U.S.C. Section 1413. He satisfies the preliminary requirements for CRSC eligibility criteria, which specifically requires he be medically retired, in a military retirement status, entitled to retirement pay, and entitled to compensation from the Department of Veterans Affairs (DVA) for service-connected PTSD with TBI, along with major depression and pain disorder, resulting in a compensable disability rating of 50 percent.

His PTSD with TBI and major depression was incurred as a direct result of armed conflict as evidenced by his personal account of his combat experience and confirmed by his military and DVA medical records. According to the CRSC Program Guidance, an injury was incurred as a direct result of armed conflict if the disability disease or injury incurred in the line of duty as a direct result of armed conflict. The guidance defines “armed conflict” as war, expedition, occupation of an area, 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. The applicant recounts seeing and hearing the incoming explosives from the mortar attacks and each time the impact would feel like a massive collision which took his breath away. These personal accounts were reinforced by the evidence in his medical records.

The 2014 and 2017, denials were erroneous because the Air Force used an incorrect standard to deny his CRSC claim. The Department of Defense (DoD) CRSC Program Guidance states CRSC determinations are based on a preponderance of evidence by showing more likely than not, their

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issues are combat-related according to the 10 U.S.C. 1413a (e). A denial of his CRSC claim stated he provided no “definitive” evidence to confirm his disability was a result of a combat-related event. By requiring definitive evidence, the Air Force is requiring a higher burden of proof than mandated by the DoD. Additionally, the 2017 denial stated the CRSC Board requires “instances of direct combat exposure” or “exposure to hostile fire” when making determinations regarding PTSD under the armed conflict criteria. However, the DoD guidance does not mention such requirements. Rather, for armed conflict criteria, an injury is approved for CRSC if a preponderance of evidence establishes there is a causal relationship between the armed conflict and the resulting disability. The Physical Evaluation Board’s (PEB) findings demonstrate he should be awarded CRSC based on a preponderance of the evidence. The PEB concluded his PTSD was combat-related and the preponderance of evidence demonstrates he has met the requirements of CRSC.

The applicant’s complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a medically retired Air Force technical sergeant (E-6).

On 3 May 13, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for lumbago, major depression, pain disorder with psychological factors, and PTSD.

On 6 Aug 13, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of PTSD with major depression and pain disorder associated with psychological factors (combat zone, not combat-related) rated at 50 percent and lumbago intervertebral disc syndrome, rated at 10 percent for a combined compensable percentage of 60 percent with a recommendation of temporary retirement-reevaluate in six months.

Dated 16 Sep 13, a letter from the 43<sup>rd</sup> Medical Squadron indicates the applicant’s PTSD should be considered as combat-related.

On 29 Oct 13, AF Form 356, *Formal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of PTSD with major depression and pain disorder associated with psychological factors, rated at 50 percent and his lumbago intervertebral disc syndrome, rated at 10 percent for a combined compensable percentage of 60 percent with a recommendation of temporary retirement-reevaluate in six months. The FPEB found the applicant’s cervical intervertebral disc syndrome; gastroesophageal reflux disease; right upper extremity cervical radiculopathy; dominant, left lower extremity lumbar radiculopathy; and right lower extremity lumbar radiculopathy unfitting but not compensable or ratable at that time. The FPEB also found the applicant’s medical condition of PTSD with major depression and pain disorder associated with psychological factors was found as combat-related as defined in 26 U.S.C. 104 due to a direct result of armed conflict.

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Dated 10 Dec 13, Special Order **Work-Product**, indicates the applicant was placed on the Temporary Disability Retired List (TDRL) with a compensable percentage for physical disability of 60 percent, effective 28 Mar 14. He was credited with 9 years, 11 months and 15 days of total active service.

On 9 Jun 14, a letter from AFPC/DPPFD, provided by the applicant, indicates his application for CRSC was disapproved because no evidence was provided to confirm his PTSD was the direct result of armed conflict, hazardous service, instrumentality of war, or simulating war. Documentation provided did not confirm he was directly exposed to a combat-related event (hostile fire). He stated he incurred PTSD due to coming under heavy attack almost daily for several weeks while deployed to Iraq. He was informed if he had clear documentation to indicate an injury or disability occurred and/or was caused by exposure to hostile fire, or if the DVA awarded new disabilities that may be combat-related, he could resubmit for reconsideration.

On 6 Feb 15, the DVA proposed a disability rating for his Category I unfitting medical conditions of PTSD with major depression and pain disorder associated with psychological factors at 50 percent and lumbago intervertebral disc syndrome (also referred to as lumbago) at 10 percent.

On 4 Nov 15, AF Form 356, indicates the applicant was found unfit due to his medical condition of PTSD with major depression and pain disorder associated with psychological factors (combat-related) rated at 50 percent and lumbago intervertebral disc syndrome, rated at 10 percent for a combined compensable percentage of 60 percent with a recommendation he be removed from the TDRL and permanently retired. His medical condition of PTSD with major depression and pain disorder associated with psychological factors was found as combat-related as defined in 26 U.S.C. 104 due to a direct result of armed conflict.

Dated 2 Mar 16, Special Order **Work-Product**, indicates the applicant was removed from the TDRL and permanently disability retired in the grade of technical sergeant with a compensable percentage for physical disability of 60 percent, effective 22 Mar 16.

On 4 Apr 17, a letter from AFPC/DPPFD, provided by the applicant, indicates his reconsideration for CRSC was disapproved finding no additional information or documentation to warrant approval. It was noted the documentation he provided did not confirm exposure to hostile fire and he was told if he had documentation as in decorations, performance reports, medical records, etc., to confirm exposure to hostile fire, to resubmit for consideration.

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

**AIR FORCE EVALUATION**

AFPC/DPPFD recommends denying the application. On 30 Apr 14 and 24 Feb 17, the applicant submitted CRSC claims for PTSD. On 9 Jun 14 and 4 Apr 17, respectively, the claims were disapproved as non-combat related/insufficient documentation. While the applicant contends his disability was caused by coming under attack daily for several weeks during a deployment in Iraq, submitted documentation does not confirm the disabilities were a direct result of armed conflict,

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hazardous service, simulation of war or an instrumentality of war. The applicant has not applied for CRSC compensation for his TBI.

Simply because a member incurs a disability during a period of war, while serving in an area of armed conflict and/or while participating in combat operations, it is not sufficient by itself to support a combat-related determination in accordance with 10 U.S.C. Section 1413a and DoD Financial Management Regulation, Vol 7B, Chapter 6. When making combat-related determinations, the Board looks for a definite, documented, casual relationship between the armed conflict and the resulting disability.

The combat-related findings and recommended disposition of the applicant's PTSD by the PEB are in accordance with AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, which determines the member's fitness for active duty. The DVA awards service-connected disabilities based on their standards and they resolve any doubt in the interest of the veteran. The CRSC program is designed to provide compensation for combat-related injuries and its standard is much more rigorous when determining whether claimed disabilities are combat-related.

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 19 Feb 20 for comment (Exhibit D), and the applicant replied in an undated response. In his response, through counsel, the applicant contended the advisory opinion was erroneous in its use of the beyond a reasonable doubt standard in denial of his CRSC claim, rather than a preponderance of the evidence standard as required by the DoD CRSC Program Guidance. Additionally, the advisory opinion noted he provided no new evidence such as a decoration citation or performance reports confirming direct exposure, which is a higher burden than mandated by the CRSC Program Guidance. The applicant contends his PTSD was directly caused by his exposure to mortar and rockets while participating in armed conflict. That evidence has not be contradicted. Additionally it is unlawful for the Air Force to require and use the lack of "decoration citations, performance reports, etc.," when this type of evidence was not initially recorded. The PEB concluded after reviewing the evidence, his disability was combat-related. The CRSC Program Guidance states the Board for Correction of Military Records will seek an advisory from the Director of Compensation, Office of the Deputy Under Secretary of Defense (Military Personnel Policy (MPP)) and comply with the requirements of 10 U.S.C. 1556 when considering an application where the issue is whether the disability is combat-related. Based on this guidance, the applicant requests the AFBCMR comply, as the current opinion should not be considered when assessing the applicant's request.

The applicant's complete response is at Exhibit E.

**ADDITIONAL AIR FORCE EVALUATION**

The Military Personnel Policy Division of the Office of the Assistant Secretary of Defense (OASD) recommends denying the application finding insufficient evidence tying his PTSD to a

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specific combat-related scenario. In order to qualify as a disability incurred as a direct result of armed conflict, applicants must show that they were “engaged with a hostile or belligerent nation, faction, force, or with terrorists.” The applicant has not shown he was actively engaged with enemy forces, and as a result does not meet the criteria for disabilities incurred as a direct result of armed conflict. Similarly, there is insufficient evidence tying his PTSD to any direct interaction with an instrumentality of war. The Service CRSC board, which has considerable experience in assessing combat-relatedness claims in many contexts, determined the applicant has not satisfied the burden of proof to show combat-relatedness in this case and OASD finds nothing, which warrants a different result.

Determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where the 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. Specific to the determination of CRSC in the applicant’s case, the definitions for disabilities incurred as a direct result of armed conflict and through an instrumentality of war are as follows:

- a. Direct Result of Armed Conflict: 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 relationship between the armed conflict and the resulting disability. 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 Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists. Armed conflict may also include incidents involving a member while interred as a prisoner of war, while detained against his or her will in the custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.
- b. Instrumentality of War: There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member’s disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service. Such use or occurrence differs from the use or occurrence under similar conditions in civilian pursuits. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosions of military ordnance, vehicles, or materiel. For example, if a member is engaging in a sporting activity while on a field exercise and falls and strikes an armored vehicle, the injury would not be considered the result of an instrumentality of

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war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

The complete advisory opinion is at Exhibit F.

**APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 5 Sep 23 for comment (Exhibit G); and the applicant replied on 15 Sep 23. In his response, the applicant contends, through counsel, the advisory opinion uses an incorrect standard to assess whether his injuries were combat-related. The advisory opinion he did not meet the criteria for CRSC because he did not show he was actively engaged with enemy forces or he had a direct interaction with an instrumentality of war. Neither of these criteria is necessary for CRSC. Regulatory guidance states the direct result of armed conflict means the disability was incurred in the line of duty with a definite causal relationship between the armed conflict or the instrumentality of war and the disability. The CRSC applicant must satisfy these requirements by a preponderance of the evidence to which he has provided. His active combat service in a war zone and the decorations he received for conducting combat operations during his deployment in Iraq demonstrate he indeed actively engaged with enemy forces. Additionally, the advisory opinion provides no alternative explanation for the roughly bi-weekly, improvised rocket-assisted munition (IRAM) attacks on the base. Furthermore, the advisory opinion erroneously found he experienced substance-induced mania due to an adverse reaction to pain medication. His combat experience exacerbated his PTSD when his intel was used to guide soldiers who were sometimes killed downrange. His PTSD with TBI and major depression and pain disorder is a disability which was incurred a a direct result of armed conflict. There is a direct connection between his PTSD and his direct exposure to multiple IRAM attacks and his intel surveillance reconnaissance operator duties while he was deployed to Iraq as evident in his medical records. Additionally, the PEB determined his disabilities as combat-related and the CRSC board has no basis to determine the PEB decision was incorrect and not supported by sufficient evidence. Other similar cases recently approved CRSC benefits for an applicant who was exposed to mental trauma related to indirect rocket/mortar fire from enemy forces, which came within the proximity.

In support of his request, the applicant submitted the following evidence: CRSC guidance, a personal statement, and several other cases that granted CRSC.

The applicant’s complete response is at Exhibit H.

**FINDINGS AND CONCLUSION**



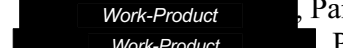

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.

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3. After reviewing all Exhibits, 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 OASD and finds a preponderance of the evidence does not substantiate the applicant’s contentions. In accordance with 10 U.S.C. Section 1413a and DoD Financial Management Regulation, Vol 7B, Chapter 6, the fact a member incurred the disability during a period of war; while serving in an area of armed conflict; and/or while participating in combat operations is not sufficient by itself to support a combat-related determination for award of CRSC. When making combat-related determinations, with regard to Armed Conflict, Hazardous Service, Simulation of War or an Instrumentality of War, the Board looks for definite, documented, causal relationship between the armed conflict and the resulting disability. The DVA awards service-connected disabilities based on their standards and they resolve doubt in the interest of the veteran and grant service connection for injuries or diseases incurred while in service. Furthermore, a combat-related determination by the PEB does not automatically qualify an applicant for CRSC. While service connection for disabilities is required for initial eligibility for CRSC consideration, the CRSC program is designed to provide compensation for combat-related injuries and its standards are much more rigorous when determining if claimed disabilities qualify as combat-related. There needs to be evidence that confirms both the injuries and how they occurred (combat-related event) to confirm the disabilities were a direct result of Armed Conflict, Hazardous Service, Simulation of War or an Instrumentality of War. The applicant has not shown he was actively engaged with enemy forces; therefore, does not meet the criteria for disabilities incurred as a direct result of armed conflict for CRSC purposes. Therefore, the Board recommends against correcting the applicant’s records.

**CERTIFICATION**

The following quorum of the Board, as defined in the 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-2019-04741 in Executive Session on 2 Sep 20 and 25 Oct 23:

 , Panel Chair  
 , Panel Member  
 , 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 13 Sep 18.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFDC, dated 7 Feb 20.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 19 Feb 20.
- Exhibit E: Applicant’s response, undated.
- Exhibit F: Advisory opinion, OASD, dated 5 Sep 23.
- Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 5 Sep 23.
- Exhibit H: Applicant’s Response, w/atchs, dated 15 Sep 23.

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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.

12/20/2023

*Work-Product*

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Board Operations Manager, AFBCMR  
Signed by: *Work-Product*