



**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-2021-00191

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His service-connected major spinal damage/injury, spinal fusion, lower and upper extremity nerve damage, Post-Traumatic Stress Disorder (PTSD), and Depressive Disorder with Mixed Anxiety and Adjustment Disorder be assessed as combat-related in order to qualify for compensation under the Combat-Related Special Compensation (CRSC) Act.

**APPLICANT'S CONTENTIONS**

His claim submitted for CRSC was denied on 24 Aug 20 and again on 22 Oct 20. During his deployment to Iraq in 2007, he was part of a convoy relocating troops that was hit by enemy fire and they were ordered to dismount carrying upwards of 300 pounds of gear. When he dismounted from 10 feet he collapsed and could not stand up. He was dragged to safety, returning fire. This is one of many events that affected him and the following conditions were caused by this event: major spinal damage/injury, spinal fusion, lower and upper extremity nerve damage, PTSD (depressed disorder/mixed anxiety/adjustment disorder).

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a medically retired Air National Guard (ANG) technical sergeant (E-6).

On 16 Dec 16, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of staff sergeant (E-5) after serving 10 years, 6 months, and 17 days of active duty. He was discharged, with a narrative reason for separation of "Miscellaneous/General Reasons."

On 17 Dec 19, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for lower back pain, Status/Post Trans-laminar Lumbar Body Fusion at L5-S1 and bilateral hip pain with an approximate date of origination of May 10.

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On 23 Jan 20, the Department of Veterans Affairs (DVA) proposed a disability rating for his Category I unfitting medical conditions of Degenerative Arthritis of the Lumbosacral Spine with Fusion at 20 percent; right and left Lower Extremity Radiculopathy at 10 percent each; and Radiculopathy, left and right Lower Extremity, Femoral Nerve associated with Degenerative Arthritis Lumbar Spine, status post Spinal Fusion Surgery at 10 percent each.

On 30 Jan 20, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical conditions of Degenerative Arthritis of the Lumbosacral Spine with Fusion; right and left Lower Extremity Radiculopathy; and Radiculopathy, left and right Lower Extremity, Femoral Nerve associated with Degenerative Arthritis Lumbar Spine, status post Spinal Fusion Surgery with a combined disability compensation rating of 50 percent with a recommendation of “Permanent Retirement.” A combat related determination as defined in 26 USC 104 indicated the injuries were found as a direct result of armed conflict.

On 7 Feb 20, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings of the IPEB, and waived his rights for any further appeal, and did not request a one-time reconsideration of the DVA disability ratings for the conditions found unfitting by the IPEB.

Dated 26 Feb 20, Special Order Work-Product, indicates the applicant was permanently disability retired in the grade of technical sergeant with a compensable percentage for physical disability of 50 percent, effective 16 Mar 20.

According to an AFPC/DPFDC letter, dated 24 Aug 20, provided by the applicant, reflects his application was disapproved because no evidence was provided to confirm his disabilities were the direct result of armed conflict, hazardous service, instrumentality of war, or simulating war. He was informed if he had additional documentation such as in-service medical records from the time of the injuries that confirms both the injuries and how they occurred (combat-related event), he could submit for reconsideration.

According to an AFPC/DPFDC letter, dated 22 Oct 20, provided by the applicant, reflects his application was reconsidered and disapproved because no additional information or documentation was found to warrant an approval of his disabilities for CRSC.

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisories at Exhibit C, D, E, and G.

**AIR FORCE EVALUATION**

The AFBCMR Psychological Advisor completed a review of all available records and finds insufficient evidence to support a request for CRSC based on his mental health contention. The applicant initially sought mental health treatment due to experiencing anxiety and depression caused by his back condition. He was given a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood and this condition/disorder was considered to be secondary to his back injury. The applicant had requested an evaluation for PTSD during service, but there was no

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records reporting he received the evaluation and no evidence he was given a diagnosis of PTSD during or post-service. There was no evidence he was placed on a duty limiting conditions profile for his mental health condition, he was never deemed not worldwide qualified due to his mental health condition, and no statements from his leadership reporting his mental health condition had interfered with his ability to reasonably perform his duties in accordance to his office, grade, rank or rating. Furthermore, there is no evidence his mental health condition was incurred in the Line of Duty (LOD) especially since he was a member of the ANG. The applicant was referred to the MEB by his Primary Care Manager (PCM) for his physical conditions and no mental health conditions were referred. The applicant's anxiety and depressive symptoms appeared to have exacerbated and worsened post-service according to his records, but these symptoms/conditions never elevated to a potentially unfitting condition during service that would meet criteria for a referral to the MEB. The IPEB found his physical not mental health conditions as unfitting. Since his mental health condition was never found unfitting by the IPEB, he is not eligible for CRSC for his mental health condition as this is one of the requirements for CRSC.

The complete advisory opinion is at Exhibit C.

The AFBCMR Medical Advisor recommends denying the applicant's request finding insufficient evidence to support a request for CRSC based on his injuries. The first time the applicant refers to this injury is in Sep 13. Prior to this date, there is no mention in his record of such an occurrence. Furthermore, there is no objective evidence or corroborating testimony of such an occurrence in 2007. In fact, in his post deployment health re-assessment dated Sep 08, he specifically answered "no" when asked about being injured during his deployment and stated his health was essentially unchanged from before the deployment. Additionally, his medical record contains no visits for a back or nerve condition during his 2007 deployment nor in the years following his deployment until May 10 when he first complained of two days of back pain. At the time he was not sure exactly what the mechanism of the injury was but felt it may have been when someone jumped on his back from behind during "combative training." The nature of this training is not clear. According to AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, paragraph 3.16, "determinations should be based on objective evidence and/or third-party testimony of the circumstances of the injury or illness, not solely on the service member's report." Furthermore, while the IPEB found his back condition to be a direct result of armed conflict, the IPEB's decision does not automatically qualify a disability as combat-related for special compensation. The standards for CRSC are more rigorous. In accordance with DoDI 1332.18, *Disability Evaluation System (DES)*, Appendix 5 to Enclosure 3, for an injury to be considered a direct result of armed conflict there must be a definite causal relationship between the armed conflict and the resulting unfitting disability. If a decision is based solely on the service member's testimony, then that testimony must be reasonable and not contradicted by other evidence. The applicant's case simply does not meet the required evidentiary standards required to amend his military record to reflect he sustained his injuries in combat. His request is based solely on his personal testimony and lacks third party or objective evidence. Furthermore, the applicant's report in 2013 of an injury in 2007 is contradicted by his own reports in earlier and more contemporaneous medical documentation.

The complete advisory opinion is at Exhibit D.

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AFPC/DPFDC recommends denying the applicant's request for CRSC finding no evidence his injuries were a direct result of armed conflict, hazardous service, simulation of war or an instrument of war. The fact that 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 per 10 U.S.C. Section 1413a and DoD Financial Management Regulation, Vol 7B Chapter 6. When making combat-related determinations, with regard to armed conflict, hazardous service, simulation of war or an instrument of war, the board looks for definite, documented, causal relationship between the armed conflict and the resulting disability. The Findings and Recommended Disposition of the PEB found some of the applicant's disabilities to be combat-related or occurred in the combat zone in accordance with AFI 36-3212. Their process and standards for determinations are governed under a guidance which determines a member's ability to remain fit for active duty. However, the IPEB's decision does not automatically qualify the applicant's disabilities as combat-related under the CRSC program. The CRSC program is designed to provide compensation for combat-related injuries. Consequently, CRSC standards are much more rigorous when determining disabilities under current criteria. The DVA awards service-connected disabilities based on their standards. They resolve doubt in the interest of the Veteran and grant service connection for injuries or diseases incurred while in service. 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.

The complete advisory opinion is at Exhibit E.

**APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 27 Sep 21 for comment (Exhibit F) but has received no response.

**ADDITIONAL AIR FORCE EVALUATION**

The Military Personnel Policy Division of the Office of the Assistant Secretary of Defense (OASD) recommends denying the applicant's request for CRSC finding his disabilities do not meet the qualifying criteria required to establish they are combat-related<sup>61</sup> for purposes of entitlement to CRSC and concurs with the decision of the lower CRSC boards in their denial of CRSC for the applicant. The record does not paint a clear picture as to what is the actual underlying cause of the CRSC disabilities. The applicant provides different causes at different times in his medical records. Furthermore, these causes are occasionally directly contradicted in other records provided by the applicant. Absent clarifying evidence of these discrepancies, the applicant has failed to demonstrate his CRSC disabilities are combat-related, and thus, he has not met the burden of proof his disabilities were incurred: 1) as a direct result of armed conflict; 2) while engaged in hazardous service; 3) in the performance of duty under conditions simulating war; or 4) through an instrumentality of war.

The applicant deployed to Attom... arriving in theater on 21 Nov 07 and returned on 13 Mar 08. Upon his return, he completed a post-deployment health assessment where he stated his health was good

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and he was seen zero times in sick call during the deployment. He did report experiencing swollen, stiff, or painful joints; back pain; and muscle aches during deployment; however, the health care provider's post-deployment review, interview and assessment did not result in an orthopedic or neurological referral for further evaluation of these reported symptoms. On 3 Sep 08, he completed a post-deployment health re-assessment, where he stated his health was "very good" and answered "no" when asked if he was "wounded, injured, assaulted or otherwise physically hurt" during his deployment. He did not report back pain or back issues during any other health checks in 2008. In May 10, he went to the doctor twice for back pain. During his appointment he claimed he had back pain for the past year and was injured while performing combative training, and he was not sure of the exact mechanism of injury, but he believed another airman jumped on his back from behind. He again went to the doctor reporting back pain in Sep 13, this time claiming his back pain was caused by an injury while deployed to [Attom...] in 2007. He further claimed this 2007 deployment injury was the cause of his back pain in May 15, Jun 15, Oct 16, and Jun 17. In Oct 16, he stated in 2007 he was transported to medical via vehicle and was told by medical he had injured his lower back and was given ibuprofen as needed for pain along with steroid injections to lower back approximately every month for eight months during deployment [sic]. No x-ray was done due to no x-ray equipment. He separated from active duty and transitioned to the [Attorney-C.] ANG in Dec 16. In Mar 18, he underwent surgery on his lower back. Regarding his depressive disorder, he presented as a walk-in patient reporting increased anxiety, depression, and irritability since receiving his lower back surgery in Nov 18. He was given a diagnosis of adjustment disorder with mixed anxiety and depressed mood that was considered to be secondary to his back injury. His MEB Narrative Summary (NARSUM) was released in 2019 and found no direct documentation reporting the original back injury in 2007 or the injury during combat exercises.

The complete advisory opinion is at Exhibit G.

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

The Board sent a copy of the advisory opinion to the applicant on 13 Jun 23 for comment (Exhibit H) but has received no response.

## **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, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendations of the offices of primary responsibility 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 that 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. The Board finds the applicant did not meet the burden of proof finding inconsistent evidence as to the underlying cause of his disabilities to qualify for CRSC. When making combat-related determinations, with regard to Armed Conflict, Hazardous Service, Simulation of War or an Instrument of War, the Board looks for definite, documented, causal relationship between the armed conflict and the resulting disability. The Board noted the PEB found some of the applicant's disabilities to be combat-related or occurred in the combat zone; however, this does not determine automatic approval for CRSC. 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 Instrument of War. Therefore, the Board recommends against correcting the applicant's records.

## **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 the Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2021-00191 in Executive Session on 23 Nov 21:

*Work-Product*, Panel Chair  
*Work-Product*, Panel Member  
*Work-Product*, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 10 Jan 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Mental Health Advisor, dated 27 May 21.

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- Exhibit D: Advisory Opinion, AFBCMR Medical Advisor, dated 27 Jul 21.
- Exhibit E: Advisory Opinion, AFPC/DPFDC, dated 2 Aug 21.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Sep 21.
- Exhibit G: Advisory Opinion, OASD Personnel Division, dated 25 May 23.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Jun 23.

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.

12/1/2023

*Work-Product*

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