

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00771

COUNSEL: YES

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider and grant his request for Combat-Related Special Compensation (CRSC), retroactive to 27 Apr 14.

APPLICANT'S CONTENTIONS

Through counsel, the applicant contends his post-traumatic stress disorder (PTSD) qualifies as a disability that was combat-related and incurred both as a result of Instrumentality of War and due to Hazardous Service and he should be awarded CRSC compensation accordingly.

The CRSC Board partially approved his claim for tinnitus but disapproved his PTSD in a reconsideration motion despite the overwhelming evidence he submitted. He provided Department of Veterans Affairs (DVA) records linking his PTSD to frequent rocket and mortar attacks, and small arms fire; an Air Medal that documents his exposure to the specific combat scenarios at issue; military personnel and medical records that confirm that he was exposed to multiple and ongoing mortar attacks; a letter of corroboration the base was subject to multiple and ongoing mortar attacks; and a personal statement describing his combat experiences and PTSD symptoms. Further, his PTSD was determined as in the line of duty (ILOD) with a finding that his condition was related to rocket and mortar attacks he experienced during his deployment to Iraq. At various times during the period roughly corresponding with his deployment to Iraq, he received a variety of hostile/imminent danger and hazardous duty incentive payments, as well as a combat zone tax exclusion further establishing his duties occurred while involved in armed conflict.

While deployed to Iraq from 19 Sep 08 to 11 Jan 09, he served as an aeromedical evacuation technician and sustained frequent mortar and rocket attacks with close calls throughout this deployment. His PTSD manifested through vivid nightmares, being shocked by loud noises, self-isolation, loss of interest in previously enjoyed activities, feeling like he was re-experiencing the deployment experiences and a planned suicide attempt that was stopped by his wife. On 8 May 13, the DVA initially granted service-connected disability compensation for his PTSD with a disability rating of 70 percent and noted the condition as "combat/combat medal."

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

The applicant was issued a DD Form 214, *Certificate of Release or Discharge From Active Duty*, for the period 15 Sep 08 to 25 Feb 09 in support of Operation IRAQI FREEDOM and served in the area of responsibility from 20 Sep 08 to 7 Oct 08, 9 Oct 08 to 25 Nov 08, 27 Nov 08 to 12 Dec 08, 15 Dec 08 to 19 Dec 08, 22 Dec 08 to 27 Dec 08, 29 Dec 08 to 11 Jan 09, 13 Jan 09 to 21 Jan 09, and 24 Jan 09 to 28 Jan 09.

On 13 Apr 09, the applicant was awarded the Air Medal for the period 29 Sep 08 to 11 Jan 09.

On 7 Aug 13, the applicant underwent a Medical Evaluation Board (MEB) for anxiety disorder not otherwise specified (NOS). The board recommended the case be referred to an Informal Physical Evaluation Board (IPEB).

On 31 Jan 04, the DVA provided Disability Evaluation System (DES) proposed disability rating of 50 percent for PTSD (referred to as anxiety disorder, NOS,) decreased from 70 percent and non-combat/fear – easing standard. The DVA also granted service connection for tinnitus and left knee degeneration with disability rating of 10 percent for each.

On 27 Feb 13, the IPEB found the applicant’s anxiety disorder NOS (aggravated in combat zone, not combat-related) unfitting pending receipt of DVA ratings.

On 11 Feb 14, the IPEB found the applicant’s anxiety disorder NOS (aggravated in combat zone, not combat-related); DVA rated as PTSD unfitting with 50 percent compensable disability rating and not “the direct result of armed conflict or caused by an instrumentality of war and incurred ILOD during a period of war,” nor “was the direct result of a combat-related injury.” The IPEB also noted the applicant’s left knee degeneration and tinnitus as Category II – Conditions that can be unfitting but are not currently unfitting and recommended permanent retirement.

On 12 Feb 14, the applicant concurred with the IPEB findings.

Per Special Order Number **Work-Product**, dated 3 Mar 14, the applicant was relieved from active duty on 27 Apr 14 and permanently disability retired, effective 28 Apr 14, with compensable percentage for physical disability of 50 percent and not “the direct result of armed conflict or caused by an instrumentality of war and incurred ILOD during a period of war,” nor “was the direct result of a combat-related injury.” He was credited with 10 years, 4 months and 11 days of active service.

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

APPLICABLE AUTHORITY/GUIDANCE

The primary authority for the CRSC program is 10 U.S.C. 1413a, which provides additional compensation, above and beyond that for normal service related injuries, to veterans with a “combat-related disability.” The term “combat-related disability” is defined, in relevant parts, to include injuries that were “incurred (A) as a direct result of armed conflict, [or] (D) through an instrumentality of war.” DoDI 1332.18, *Disability Evaluation System*, enclosure 3, appendix 5, paragraphs 1.b.(2) and 2.b., further elaborates that “direct result of an armed conflict” requires a definite causal relationship between armed conflict and the disability. Moreover, “that the injury was incurred during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding.” For an instrumentality of war, again, there must exist a direct causal relationship between the instrumentality and the injury – just because an instrumentality of war was involved in the events leading to the injury is not enough, that instrumentality must have caused the injury. DoD 7000.14-R, *Financial Management Regulation*, volume 7B, chapter 63, paragraph 630502 elaborates that “[a]n uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein.” DoD 7000.14-R, volume 7B, chapter 63, paragraph 630601 and 630604 and a 2004 Directive Type Memorandum (DTM) on CRSC both mirror the above definition language. In addition, the 2004 DTM also charges the Military Departments with independently determining the relationship between a

member's injury and the qualifying CRSC criteria. A preponderance of evidence standard is used in making these determinations. Further, the burden of proof rests with the CRSC applicant.

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the application. 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 IAW 10 U.S. C. Section 1413a and DoD Financial Management Regulation, volume 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 applicant submitted claims for CRSC compensation on 22 May 19 and 13 Aug 20. His claims were disapproved on 24 July 19 and 10 Sep 20 respectively as non-combat related. The applicant contends that his disability was caused by multiple incoming mortar attacks and being in flights that performed evasive maneuvers to avoid rocket and small arms fire while deployed to Balad, Iraq. The applicant has provided no evidentiary documents (decorations, performance reports, etc.) confirming *direct* exposure. This lack of evidence prevents consideration under current CRSC criteria. Additionally, the information provided in his Application for Correction of Military Record, has been thoroughly reviewed and provides no new evidence that supports 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 are 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 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 11 Apr 22 for comment (Exhibit D), and the applicant replied on 10 Sep 22. In his response, and through counsel, the applicant reiterates his contention that the evidence he provided confirms direct exposure and a combat-related event. The advisory perpetuates the same error made by the CRSC board and fails to respond to his request he be granted CRSC under the Instrument of War and/or Hazardous Service theories of relief. The applicant recommends the advisory opinion's recommendation be disregarded and he be awarded CRSC for his PTSD.

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 response to the advisory opinion, the Board concludes the applicant is not the victim of an error or injustice. After a thorough review of the available evidence of record, it is the Board's opinion that the applicant's PTSD disability, he believes to be combat-related was not incurred as a direct result of Armed Conflict, an Instrumentality of War, and/or Hazardous Service, and therefore does not qualify for compensation under the CRSC program. Specifically, the Board does not find sufficient evidence for definite, documented, causal relationship between the frequent rocket and mortar attacks, and small arms

fire and his PTSD disability. The evidence provided serves to establish only that the applicant was present in an area of armed conflict during a period of war, nothing more. Therefore, we agree with the opinion and recommendation of AFPC/DPFDC and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice.

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-2022-00771 in Executive Session on 30 Nov 22:

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 25 Feb 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFDC, dated 11 Apr 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Apr 22.
Exhibit E: Applicant's Response, w/atchs, dated 10 Sep 22.

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.