



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02765

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His Post-Traumatic Stress Disorder (PTSD) with major depressive disorder and severe anxiety disorder be assessed as combat-related in order to qualify for compensation under the Combat-Related Special Compensation (CRSC) Act.

### APPLICANT'S CONTENTIONS

He suffers from PTSD discovered upon treatment through the Department of Veterans Affairs (DVA) and was awarded a 70 percent disability rating. He was medically retired and spent most of his career in multiple combat zones as a C-130 flight engineer. In 2004, he was selected for a classified Special Access Program unit and was deployed to multiple locations which are classified to various combat zones or unwelcoming nations under stressful and hazardous conditions. As a C-130 Mission Flight Engineer his duties took him on multiple combat missions into Afghanistan; almost always at night flying on night vision goggles into hostile airfields. Receiving intelligence briefings prior to and after mission completion, he often fell under ground fire, noting tracer rounds rising from the ground and on more than one occasion the aircraft missile warning system activated and launched countermeasures. Although he was never hit or injured, during aircrew debriefings, numerous Surface-to-Air Fire (SAFIRE) reports were filed. He was awarded both the Air Medal and Aerial Achievement Medals for these missions.

As evidence to support his claim he submitted several letters to support his contentions, DVA documentation, copies of his awards, and other documents from his CRSC submissions.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a medically retired Air Force master sergeant (E-7).

Dated 2 Sep 10, Special Order **Work-Product** indicates the applicant was placed on the Temporary Disability Retired List (TDRL) with a 70 percent compensable rating for his physical disability, effective 21 Oct 10. It is noted disability received in line of duty (ILOD) as a direct result of armed

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conflict or caused by an instrumentality of war and incurred ILOD during a period of war; and disability was the direct result of a combat-related injury as defined in 26 U.S.C. 104 are both marked no.

On 20 Oct 10, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of master sergeant (E-7) after serving 19 years, 3 months, and 5 days of active duty. He was discharged, with a narrative reason for separation of "Temporary Disability."

Dated 6 Jun 12, Special Order **Work-Product** indicates the applicant was removed from the TDRL and permanently retired with a 70 percent disability rating, effective 26 Jun 12.

On 11 Oct 11, DD Form 2860, *Application for Combat-Related Special Compensation (CRSC)*, indicates the applicant applied for CRSC for his PTSD and tinnitus.

On 8 Dec 11, the applicant's request for CRSC was approved for his tinnitus at a 10 percent awarded combat-related disability; however, his request for CRSC for his PTSD was denied. It was noted his claim and documentation contained no evidence to confirm his PTSD was the direct result of armed conflict and this lack of evidence prevented consideration under current CRSC criteria. PTSD can be granted for a variety of reasons, to include loss of parent/child/spouse and other non-combat-related stressors. To be approved for CRSC, a clear and direct relationship to specific combat stressors must be reflected in medical/DVA documentation. He was advised if he had documentation confirming exposure to hostile fire, to submit for reconsideration.

On 18 Apr 12, the applicant's request for reconsideration for CRSC for his PTSD was denied. It is noted his claim did not reference the cause of his PTSD and how it met the guidelines for CRSC. By law, determinations of whether a disability is combat related will be based on the preponderance of available documentary information. 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. His claim and documentation received contained no definitive evidence to confirm his disability was the direct result of a combat-related event. The DVA found his PTSD to be service-connected based on their standards and their process and standards for determinations are governed under different guidance; however, their decision does not automatically qualify his disability as combat related under the CRSC program. CRSC standards are much more rigorous when determining disabilities under current criteria as the board must look at what caused the condition, the activities taking place at the time, and resulting disability. As such, many disabilities are not approvable for compensation under the CRSC program. When making combat-related determinations for PTSD, under the Armed Conflict criteria, the board looks for instances of direct combat exposure, such as direct exposure to gunfire or mortar attack. The documentation provided did not confirm the applicant was directly exposed to gunfire or mortar attacks.

On 9 Jul 12, the applicant's reconsideration request for CRSC was denied. It was noted speculation or opinions on the part of a medical examiner, linking a medical condition to certain factors, are rarely sufficient to support combat-related determination.

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

## **AIR FORCE EVALUATION**

AFPC/DPFDC recommends denying the application finding no evidence of an error or injustice. The purpose of his request is to qualify for benefits authorized under the CRSC program per 10 U.S.C. Section 1413a and DoD Financial Management Regulation, Vol 7B Chapter 6. He submitted four claims (from 2011-2017) for CRSC. He contends his disability was due to being shot at several times; fear of terrorist activity; and thoughts of dying during missions. His claims, and documentation did not contain definitive evidence to confirm his disability was the direct result of a combat-related event. Although the CRSC board is not a fact-finding body, due to the classified nature of his assignment during this period, the CRSC board attempted to obtain documented evidence from the Air Force Personnel Center's Special Programs Assignment Division (both in 2017 and 2023) and from the squadron superintendent who served in the applicant's organization during this period. Although the CRSC board was able to verify the applicant participated in combat operations, there was no confirmation of hostile fire exposure. 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 CRSC purposes. When making combat-related determinations, the board looks for definite, documented, causal relationship between the armed conflict and the resulting disability. The information the applicant provided does not include new evidence to support his claims for CRSC.

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 14 Nov 23 for comment (Exhibit D), and the applicant replied on 6 Jan 24 and provided eyewitness statements detailing the nature of his combat missions.

The applicant's complete response is at Exhibit E.

## **ADDITIONAL AIR FORCE EVALUATION**

AFPC/DPFDC recommends denying the application. The additional letters of support from Chief B----- (previously received and reviewed) and retired Chief B----- the applicant submitted provided no new evidence that supports his claims for CRSC as these letters provide contradictory scenarios as the one provided by the squadron superintendent that served in the organization at the same time as the applicant.

The complete advisory opinion is at Exhibit F.

It was discovered the previous advisory from AFPC/DPFDC did not examine all of the additional evidence the applicant submitted; therefore, an additional advisory was obtained which stated the additional letters of support from Chief B---- (previously received), retired Lieutenant Colonel P-----, retired Chief N--- and B----- the applicant submitted provided no new evidence that supports his claims for CRSC as these letters provided contradictory scenarios as the one provided by the squadron superintendent that served in the organization at the same time as the applicant. Additionally, the Compensation and Pension (C&P) examination the applicant provided has been previously reviewed, and although medical documentation may confirm mental health diseases, 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 the claimed combat-related stressors occurred. Civilian medical provider letters and third-party witness testimonials of the event causing the injury are accepted and taken into consideration regardless of the rank of the individual providing the testimony but is not sufficient proof to establish clear and convincing evidence unless corroborated by objective documentation.

In the attachment to this advisory, an email from the applicant's squadron superintendent at the time indicated he did not recall any combat missions where the applicant and his crew took direct fire but attests the applicant was directly involved in top secret and highly sensitive missions which are not direct combat but believed the impact to the applicant was extremely traumatic.

The complete advisory opinion is at Exhibit H.

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

The Board sent a copy of the advisory opinions to the applicant on 10 Apr 24 and 30 Apr 24 for comment (Exhibits G and I) but has received no response.

#### **FINDINGS AND CONCLUSION**

1. The Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction (DAFI) 36-2603, Air Force Board for Correction of Military Records (AFBCMR). The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.
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 recommendation of AFPC/DPFDC and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant believes his disability was incurred as the direct result of armed conflict and provides

documentation in support of his request, the Board does not find his assertions and evidence, in and by themselves, sufficiently persuasive. The fact the applicant 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 CRSC purposes. The Board considered all of the eye-witness statements submitted by the applicant and received a classified briefing regarding the nature of his missions; however, the Board finds these letters were contradictory to the letter provided by his squadron superintendent and the classified briefing did not provide any detailed knowledge of a specific incident where the applicant was directly engaged with the enemy that caused his PTSD. Furthermore, the letters he did submit attest to the stressful nature of the missions he was engaged in but do not specifically explain what combat mission while engaged with an enemy combatant led to his PTSD. Eyewitness testimonials of the event causing the injury are accepted and taken into consideration; however, they are not sufficient proof to establish clear and convincing evidence unless corroborated by objective documentation. The evidentiary standard for CRSC entitlement is the preponderance of objective evidence, requiring official and corroborated documentation to show combat relation. 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. The Board does not find the evidence submitted by the applicant sufficient to conclude it meets the evidentiary standard for CRSC entitlement. Therefore, the Board recommends against correcting the applicant's records.

## RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-02765 in Executive Session on 18 Jun 24 and 15 Jan 25:

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Panel Chair

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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 Aug 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPFDC, dated 18 Oct 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Nov 23.

Exhibit E: Applicant's Response, w/atchs, dated 6 Jan 24.

Exhibit F: Advisory Opinion, AFPC/DPFDC, dated 9 Apr 24.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Apr 24.

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Exhibit H: Advisory Opinion, AFPC/DPFDC, w/atch, dated 29 Apr 24.

Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Apr 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.

1/17/2025

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Board Operations Manager, AFBCMR

Signed by: USAF

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