

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02590

XXXXXXXXXXXXXXXXXXXX

COUNSEL: XXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel records amended to reflect his disabilities are eligible for Combat-Related Special Compensation (CRSC).

APPLICANT'S CONTENTIONS

Being denied two previous times for CRSC is an injustice. His discharge paperwork clearly states his disabilities are combat-related. The Air Force decision board reported Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) are both conditions related to combat deployments.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 7 Dec 21, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disabilities and was diagnosed with:

- Category I – Unfitting Conditions

- PTSD; Department of Veterans Affairs (DVA) rated as PTSD and TBI with Benign Paroxysmal Positional Vertigo (BPPV) (Combat Zone: Yes; Combat-Related: Yes); Condition is compensable: Yes; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 8045-9411; Disability Rating: 70 percent; Condition is combat-related as defined in Title 26, United States Code § 104 (26 USC 104): "A" – direct result of armed conflict; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): Yes; Condition is permanent and stable: No.

The informal Physical Evaluation Board (IPEB) recommended placement on the Temporary Disability Retirement List (TDRL) with a combined compensable percentage of 70 percent.

On 12 Dec 21, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant did not agree with the findings and recommended disposition of the IPEB and requested a formal hearing of his case.

On 27 Dec 21, according to AF Form 1180, the applicant waived the right to a formal PEB hearing.

On 15 Apr 22, according to Special Order Number XXXXX, dated 6 Jan 22, the applicant was relieved from active duty, organization and station of assignment. Effective 16 Apr 22, he was placed on the TDRL with a compensable percentage for physical disability of 70 percent. Disability received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in line of duty during a period of war: Yes; Disability was the direct result of a combat-related injury as defined in 26 USC § 104: Yes; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): Yes.

On 29 Apr 22, according to a DVA Rating Decision, provided by the applicant, he was granted service-connection for:

- PTSD and TBI with BPPV (claimed as memory loss, anxiety, major depressive disorder, adjustment disorder, insomnia, symptoms and signs with cognitive function and awareness, depressed mood, post concussive syndrome, poor deficit information processing disorder, vertigo, disequilibrium, left inner ear damage, left peripheral vestibular weakness and significant imbalance), with an evaluation of 70 percent, effective 16 Apr 22.

- Visual midline shift syndrome with binocular disorder and generalized contraction of visual field claimed as poor eye tracking bilateral eyes, significant compressed functional visual field bilateral, poor eye focusing, blurred vision, poor vergences in binocular stability, visual snow, double vision with close activities, poor deficit information processing, visual motion sensitivity, visual midline shift, poor vision trauma syndrome), with an evaluation of 70 percent, effective 16 Apr 22.

- Migraine including migraine variants including unspecified headaches, with an evaluation of 30 percent, effective 16 Apr 22.

- Tinnitus, with an evaluation of 10 percent, effective 16 Apr 22.

On 13 May 22, according to DD Form 2860, *Claim for Combat-Related Special Compensation (CRSC)*, the applicant requested CRSC for:

- PTSD; DVA rated as PTSD and TBI with BPPV
- Visual Midline Shift Syndrome with Binocular Disorder and Generalized Contractions of Visual Field
- Migraines including migraine variants (secondary condition to primary disability)
- Tinnitus (secondary condition to primary disability)

On 31 May 22, according to an AFPC/DPFDC letter, the applicant's request for CRSC was not approved.

On 1 Jun 22, according to an *Air Force CRSC Reconsideration Request*, the applicant requested reconsideration for his diagnosis of TBI with BPPV.

On 15 Jun 22, according to an AFPC/DPFD letter, the applicant's request for reconsideration was not approved.

On 19 Apr 23, according to AF Form 356, the applicant was found unfit because of physical disabilities and was diagnosed with:

- Category I – Unfitting Conditions

- PTSD; DVA rated as PTSD and TBI with BPPV; Condition is compensable: Yes; VASRD Code: 8045-9411; Disability Rating: 70 percent; Condition is combat-related as defined in 26 USC 104: "A" – direct result of armed conflict; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): Yes; Condition is permanent and stable: Yes.

The IPEB recommended the applicant be removed from the TDRL and permanently retired with a combined compensable percentage of 70 percent.

On 27 Apr 23, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the IPEB and waived his rights for any further appeal.

On 19 Aug 23, according to Special Order Number XXXXX, dated 30 Jul 23, the applicant was removed from the TDRL and retired with a compensable percentage of 70 percent for physical disability. Disability received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in line of duty during a period of war: Yes; On 24 Sep 75 had service affiliation as defined in 26 USC § 104: No; Disability was the direct result of a combat-related injury as defined in 26 USC § 104: Yes.

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.

Department of Defense (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.

6.3 In the Performance of Duty Under Conditions Simulating War (630603)

In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

6.4 Instrumentality of War (630604)

6.4.1. 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.

6.4.2. 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 circumstances in civilian pursuits.

6.4.3. 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 explosion of military ordnance, vehicles, or materiel.

6.4.4. 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 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.

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 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 in accordance with Public Law 107-314, Office of the Under Secretary of Defense guidance, 10 USC § 1413a, and DoD Financial Management

Regulation, Vol 7B Chapter 6¹. When making combat-related determinations, with regard to Armed Conflict, Hazardous Service, Simulation of War, or an Instrument of War, the CRSC board looks for definite, documented, causal relationship between the combat-related event and the resulting disability.

The applicant submitted two claims for CRSC and one congressional inquiry request for his disabilities. His claims were disapproved as non-combat related. The applicant contends his disabilities were incurred while deployed in 2010, when a shipping container tie down, known as a “steel pineapple,” struck his head during a convoy, resulting in loss of consciousness. The documents the applicant provided (DVA and civilian providers, dated between 2020-2022) contained no evidence confirming his disabilities were incurred by the scenario he described. This lack of evidence prevents consideration under current CRSC criteria.

The applicant also provided the AF Form 356 as evidence to support his claim. Military PEBs are required to make determinations regarding whether a retired member’s disability retired pay may be excluded from federal gross income in accordance with 26 USC § 104. Their process and standards for PEB determinations are governed under guidance which determines a member’s ability to remain fit for active duty. The PEB’s decisions (which pertain to taxability under 26 USC § 104), do not automatically qualify a disability as combat-related under the CRSC program found at 10 USC § 1413a. CRSC boards 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 this program. However, PEB combat-related determinations may be used to assist in combat-related determinations. It is also important to note the fact that an injury or disability is service-connected does not necessarily mean it is combat-related.

The information the applicant provided in his application to the Air Force Board for Correction of Military Records has been thoroughly reviewed and provides no new evidence that supports his claim 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 20 Dec 24 for comment (Exhibit D), and the applicant replied on 16 Jan 25. Applicant’s counsel, in response, contended the Board should not follow the advisory opinion’s recommendation as additional, clarifying evidence that leads to a different conclusion is submitted. Per counsel, the existing record and additional information make clear the advisory opinion mischaracterizes the documented cause of the applicant’s PTSD and incorrectly determines he has not satisfied the eligibility requirements for CRSC. The enlarged record demonstrates the applicant’s disabilities meet the definition of combat-related because they were the direct result of armed conflict and/or incurred through an instrumentality of war. During his service, the applicant was deployed to Kuwait and was involved in convoy missions with the United States Army, transporting war-related materials to Iraq, including but not limited to ammunition, artillery, artillery shells, base supplies, and military vehicles.

The applicant was medically retired for PTSD, which the PEB twice found was combat-related under the “direct result of armed conflict” category. The PEB concluded he experienced PTSD-related symptoms “after returning from deployment in 2010 during which he was on convoy missions with the US Army traveling to Iraq and was subjected to small arms fire, indirect fire

¹ Typographical error; correct reference is Department of Defense Financial Management Regulation, Volume 7B, Chapter 63.

(IDF) and explosively formed penetrator (EFP) attacks.” The applicant was then awarded service-connected disability benefits from the DVA for, among other disabilities, his PTSD and TBI with BPPV, which the DVA determined was currently 70 percent disabling. The applicant’s permanent retirement order states his disability was “received in line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in line of duty during a period of war” and the “disability was the direct result of a combat-related injury as defined in 26 USC 104.”

The applicant applied for CRSC for the following conditions: (1) PTSD and TBI with BPPV; (2) Visual Midline Shift Syndrome with Binocular Disorder and Generalized Contraction of Visual Field; (3) Migraines; and (4) Tinnitus. On 31 May 22, the CRSC board denied his request. The applicant applied for reconsideration, which was denied on 15 Jun 22. Both decision letters state the applicant included insufficient documentation of the combat-related cause of his disabilities.

According to counsel, the advisory opinion recommended the Board deny the application stating the applicant contended his disabilities were incurred while deployed in 2010, when a shipping container tie down, known as a “steel pineapple” struck his head during a convoy, resulting in loss of consciousness; however, the documents the applicant provided contained no evidence confirming his disabilities were incurred by the scenario he described, and this lack of evidence prevents consideration under current CRSC criteria. The advisory opinion further supported its analysis on the basis that the process and standards for PEB determinations are governed under guidance which determines a member’s ability to remain fit for active duty, and their decisions do not automatically qualify a disability as combat-related under the CRSC program found at 10 USC 1413a. Further, the advisory opinion does not dispute the applicant meets all four preliminary requirements for CRSC: he is (1) medically retired; (2) in military retired status; (3) entitled to military retired pay; and (4) was awarded DVA service-connected disability compensation with a rating of at least 10 percent for multiple disabilities. What the advisory opinion disputes is whether the applicant has provided sufficient documentation to meet the final eligibility requirement, i.e., that his disability is combat-related.

Per counsel, the applicant’s PTSD and TBI with BPPV is combat-related because it is a result of armed conflict. The PEB concluded the applicant’s PTSD is a direct result of armed conflict. The advisory opinion acknowledged the PEB’s conclusion the applicant’s injuries were combat-related under 26 USC § 104 but declined to give the PEB’s conclusions any weight for the stated reason that the CRSC program evaluates whether a disability qualifies as combat-related under 10 USC § 1413a. While 10 USC § 1413a is a different section of the United States Code than 26 USC § 104, this is a distinction without a difference because the two statutes use identical language in defining combat-related disability. Moreover, both the PEB (in applying 26 USC § 104) and the CRSC board (in applying 10 USC § 1413a) are required to apply the same preponderance burden of proof in making a determination. Making this disconnect even more glaring, the applicant’s retirement orders and the denial of his request for reconsideration of his CRSC application were signed by the same individual.

Moreover, the advisory opinion’s rejection of the PEB as persuasive ignores that the PEB provides a narrative, not just a bald conclusion. Further, the advisory opinion omitted discussion of convoy missions when discussing the applicant’s PTSD, and stated it was based on another incident. The advisory opinion should have grappled with this as it is objective evidence the applicant engaged in armed conflict. Counsel references the applicant’s nomination and award of the Army Achievement Medal in support. Counsel also references awards annotated on the applicant’s DD Form 214, *Certificate of Release or Discharge from Active Duty*, as objective evidence he was engaged in armed conflict.

Counsel provided excerpts from the AF Form 1185 and applicant’s medical provider’s notes as clear evidence of a direct causal relationship between the applicant’s experience of armed

conflict and PTSD, stating this evidence directly refutes the advisory opinion's assertion the applicant's PTSD is from getting hit in the head, and demonstrates instead his PTSD is from his experiences on numerous combat convoys.

In addition to PTSD, the applicant's records demonstrate his TBI with BPPV was directly caused by armed conflict. His records demonstrate the applicant was exposed to blasts, loud sounds, including gun fire; and blows to the head, which have resulted in his TBI and/or PTSD symptoms. Counsel provided excerpts from the applicant's DVA medical records in support, stating the burden of proof is only preponderance of the evidence. Counsel also offered a recent decision from a separate Army Board for Correction of Military Records case which found, "but for the applicant's time in combat, it was more likely than not that the applicant would not have been diagnosed with PTSD" as supporting.

Finally, counsel contended the evidence also demonstrates the applicant's physical disabilities were incurred through an instrumentality of war, which the advisory opinion does not address. The applicant was struck in the head by a shipping container tie down while deployed as a vehicle operator and dispatcher, where he drove an M915 vehicle. The tie downs are mounted on the floors of military ISO M872 flatbed semi-trailers pulled by armored military vehicles during convoys, and secure shipping containers to the trailers. Accordingly, a tie down is a device that is part of a vehicle designed primarily for military service and was being used for military service at a time of the applicant's injury, making it an instrumentality of war.

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. 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 for CRSC eligibility. There must be a definite, documented, causal relationship between the armed conflict and the resulting disability. There was no evidence presented which confirms both the injuries and how they occurred to confirm they were the direct result of a combat-related event in accordance with 10 USC § 1413a and DoD Financial Management Regulation, Volume 7B, Chapter 63.

Third-party statements, to include those made by the applicant's medical providers, only reiterate the circumstances surrounding the injuries as provided by the applicant. As these statements are not first-hand accounts, they can only speculate on the cause of the applicant's disabilities. Further, these statements are not corroborated by objective evidence, such as medical records from the time of the event, or accident/investigative reports, which could produce a definite, documented, causal relationship between the combat-related event and the resulting disability. The medical documentation provided by the applicant, dated several years after the time of the applicant's claimed injury, is insufficient to create this nexus.

Further, PEBs make determinations regarding fitness for continued military service and combat-related determinations under 26 USC § 104 for the purpose of tax exclusion, and do not automatically qualify a disability as combat-related under the CRSC program pursuant to 10

USC 1413a. They are two separate, distinct programs. The CRSC board must look at what caused the condition, the activities taking place at the time, and the resulting disability. Additionally, while DVA service-connection for a disability is required for initial eligibility for CRSC, it does not necessarily mean the disability is combat-related.

Finally, the Board acknowledges the applicant's reference to a previously adjudicated Army Board for Correction of Military Record (ABCMR) case; however, while the Board considers similarly situated applicant's similarly, each case is adjudicated on its own specific, individual merits. Although award of CRSC is addressed in the ABCMR case, there may be significant differences in circumstances, timing, and evidence provided which do not contribute to a like outcome in the applicant's case. Therefore, the Board recommends against correcting the applicant's record.

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-2024-02590 in Executive Session on 16 Apr 25:

, 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 22 Jul 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFDC, dated 19 Dec 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Dec 24.
Exhibit E: Counsel's Response, w/atchs, dated 16 Jan 25.

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