

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03394

XXXXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

1. He be awarded Combat Related Special Compensation (CRSC) for his surgical scars and hemorrhoids.
2. He be paid active duty pay and allowances during his Integrated Disability Evaluation System (IDES) case processing.

APPLICANT'S CONTENTIONS

According to the United States (U.S.) Court of Federal Claims *Unopposed Motion for a Remand to the AFBCMR and Stay of Proceedings*, dated 4 Jun 24, and the applicant's complaint, dated 5 Feb 24, the applicant, through counsel, contended he sustained injuries while participating in a flight training exercise simulating combat around the Korean Demilitarized Zone (DMZ) while wearing a newly acquired "Joint Helmet Mounted Cueing System" in which he felt a pop and burning sensation in his neck during a high-gravity maneuver. He asserts this training was the initiation of his ankylosing spondylitis and psoriatic arthritis. The F-16 aircraft he piloted was an instrumentality of war, his injuries were incurred under conditions simulating war, and aerial flights qualify as hazardous service for the purposes of CRSC. The CRSC adjudicator initially denied CRSC for his scars on 13 Jul 23, but a decision of the CRSC adjudicator dated 29 Nov 23, superseded this decision which did not address the surgical scars. While the applicant never appealed the 29 Nov 23 decision to the AFBCMR, he filed a complaint with the U.S. Court of Federal Claims requesting the Court remand his case to the AFBCMR for a decision in the first instance with respect to his surgical scars. Additionally, he asserts the Air Force failed to credit him with active duty pay and allowances during his IDES case processing, resulting in the denial of compensation that he is due under the law.

The complete *Unopposed Motion for a Remand to the AFBCMR and Stay of Proceedings* and the *Complaint* are at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) and retired Air Force lieutenant colonel (O-5), retired for permanent disability with a compensable percentage of 80 percent for physical disability.

On 16 Mar 14, the applicant entered active duty as an Air Guard Reserve (AGR) in accordance with Title 32, United States Code, Section 502(f) (32 U.S.C., §502(f)).

On 2 May 16, according to NGB/A1PP, the applicant requested voluntary curtailment to his AGR tour with an effective date of 19 Jun 16.

On 9 Jun 16, the Medical Evaluation Board (MEB) found the applicant's ankylosing spondylitis and cystic kidneys to be in the line of duty and referred the applicant to the Informal Physical Evaluation Board (IPEB)

On 19 Jun 16, the applicant was released from active duty and AGR status after serving and transferred back to his ANG unit.

On 16 Sep 16, the IPEB determined the applicant's ankylosing spondylitis was unfitting (Category I), recommended discharge with severance pay (DWSP) and combined compensable percentage of 10 percent, and determined his cystic kidneys were not currently unfitting (Category II).

On 26 Sep 16, the applicant non-concurred with the IPEB findings and requested a formal hearing before the Formal Physical Evaluation Board (FPEB).

On 6 Jan 17, the FPEB found the applicant's cystic kidneys unfitting with a 30 percent disability rating and his ankylosing spondylitis unfitting with a 10 percent disability rating. The FPEB recommended permanent disability retirement with combined compensable percentage of 40 percent. The unfitting conditions were found not to be combat-related.

On 28 Mar 17, according to Special Order XXXXX, the applicant was honorably discharged from the ANG and placed on the permanent disability retired list effective 29 Mar 17.

On 28 Jun 18, the applicant submitted DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, United States Code, Section 1552*, and requested his final disability rating made by the FPEB be increased from 40 percent to 75 percent and the request was denied (BC-XXXX-XXXXX-X).

On 17 Oct 22, through a U.S. Court of Federal Claims Remand Order, the AFBCMR reconsidered the applicant's request to increase his disability ratings for cystic kidney disease to 40 percent and ankylosing spondylitis to 20 percent, and add psoriatic arthritis as an unfitting condition with a 60 percent disability rating. The AFBCMR found the evidence substantiated the applicant's request and corrected his record to reflect he was permanently retired with an 80 percent combined compensable disability rating. The Board found the conditions were not a direct result of armed conflict or caused by an instrumentality of war and were not combat-related.

On 23 Jun 23, the applicant submitted an application for CRSC to the Air Force CRSC Board, and on 13 Jul 23, the CRSC Adjudicator approved CRSC for the applicant's tinnitus with 10 percent total combat-related disability and disapproved CRSC for the following conditions: 1) cervical spine inflammatory arthritis, degenerative arthritis and cervical stenosis status post cervical fusion; 2) painful/tender scars; 3) scars, posterior and right anterior neck; 4) ankylosing spondylitis, lumbar spine; 5) scars, lumbar back; 6) right lower extremity radiculopathy; and 7) psoriasis.

On 7 Aug 23, the applicant appealed the decision of the CRSC Board, and the request was denied on 12 Sep 23 finding no additional information or documentation to warrant an approval of the applicant's right lower extremity radiculopathy, hemorrhoids, cervical spine, and lumbar spine conditions for CRSC. The CRSC Section Chief noted, "When making combat-related determinations for injuries, the Board looks for in-service documents from the time of the injury, confirming medical treatment was sought at the time of the injury, and confirming the injury scenario (such as a medical record from the time of the event stating "member complains of neck pain after pulling G's yesterday"). Speculation or opinions linking a medical condition to certain factors, are rarely sufficient to support a combat-related determination.

On 29 Nov 23, the CRSC Board provided a revised decision, which superseded their initial decision made on 13 Jul 23 and granted CRSC with 40 percent combined total combat-related disability for: 1) cervical spine inflammatory arthritis, degenerative arthritis and cervical stenosis status post cervical fusion; 2) ankylosing spondylitis, lumbar spine; and 3) tinnitus. CRSC was disapproved for: 1) right lower extremity radiculopathy; and 2) hemorrhoids.

On 5 Feb 24, on behalf of the applicant, his counsel filed a complaint with the U.S. Court of Federal Claims against the Air Force alleging the Air Force CRSC Board and reviewing authority's denial of his claim for CRSC was wrongful, erroneous, arbitrary, capricious, contrary to law, and was not supported by substantial evidence. Counsel further alleged the applicant was wrongfully and erroneously removed from active duty orders during his IDIS processing. On 4 Jun 24, the Air Force submitted an Unopposed Motion for a Remand to the Air Force Board for Correction of Military Records (AFBCMR) and Stay of Proceedings to make a decision in the first instance on the applicant's request to the Air Force CRSC Board requesting his surgical scars be considered combat-related and he qualify for CRSC compensation. This request has not been previously considered by the AFBCMR nor was it requested by the applicant in his previous AFBCMR cases (BC-XXXX-XXXXX-X and BC-XXXX-XXXXX-X). On 5 Jun 24, the U.S. Court of Federal Claims approved the Air Force's motion and remanded the case to the AFBCMR to address all issues within its authority, including but not limited to the issues listed below, and any other pertinent issues raised to the AFBCMR by the parties in writing within 30 days of the Order:

- a. Reconsider the Air Force's determination for entitlement to CRSC for scars and provide an explanation if he is not entitled.
- b. Consider any issues, argument, or additional evidence submitted by the applicant, including request for advisory opinions.
- c. Consider any other relief the AFBCMR deems appropriate.

The U.S. Court of Federal Claims Remand Order, Unopposed Motion for a Remand to the AFBCMR and Stay of Proceedings, and the Complaint are at Exhibit A.

On 24 Apr 25, the Board staff requested the applicant sign and return VA Form 10-5345, *Request for and Authorization to Release Health Information*, indicating his consent to release his DVA medical records in order for the Board to conduct a thorough and informed review of his request. On 6 May 25, the applicant provided the signed release form.

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

APPLICABLE AUTHORITY/GUIDANCE

The primary authority for the CRSC program is Title 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, enclosures 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. DoDR 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." DoDR 7000.14-R, Volume 7B, chapter 63, paragraphs 630601 & 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 determination of whether a disability is combat-related is based on the preponderance of available documentary information where the quality of the information is more important than the quantity. Relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations are to be made on the basis of credible, objective documentary evidence in available records as distinguished from documents asserting personal opinion, speculation, or conjecture. The burden of proof that a disability is combat-related rests with the claimant, who must provide any and all supporting documents to the best of his or her ability.

AFI 36-101, *AGR Program*, para. 12.4.2., AGR members are not authorized Incapacitation (INCAP) Pay, pre-Medical Continuation (MEDCON), or MEDCON orders.

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying CRSC for scars of the posterior and right anterior neck, and scars of the lumbar spine. The applicant was approved for CRSC at an overall rating of 40 percent for his tinnitus (10 percent), cervical spine (20 percent) and ankylosing spondylitis of the lumbar spine (20 percent) disabilities. The applicant contends his scars are a result of several surgeries related to his cervical and lumbar spine disabilities. The DVA has not rated his scars as associated/secondary to his cervical and lumbar disabilities. As such they are unable to be considered as combat-related. Should the DVA approve his scars secondary, to a previously approved CRSC disability, AFPC/DPFDC will be able to approve CRSC under the criteria. DVA ratings/determination are the sole discretion of the DVA and not subject to challenge through the CRSC program. If a retiree disagrees with the evaluation assigned by the DVA, the retiree must seek a re-evaluation through the DVA. Additionally, the applicant provided no in-service medical documentation addressing his scars.

There must be a definite, documented, causal relationship between the hazardous service and the resulting disability. There are no presumptive injuries linked to any type of hazardous service. CRSC weighs all relevant documentary information in relation to known facts and circumstances and makes determinations based on credible, objective documentary information in the records as distinguished from opinion, speculation, or conjecture. Additionally, 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 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 17 Oct 24 for comment (Exhibit D), and the applicant's response was received on 22 Nov 24. On behalf of the applicant, counsel disagrees with AFPC/DPFDC and their recommendation to deny award of a combat-related finding and insists the AFBCMR grant the applicant with CRSC for his surgical scars and hemorrhoids. Counsel reiterates the contention that the applicant's Air Force service piloting the F-16 qualifies for combat-related findings under multiple bases and the F-16 is an instrumentality of war and any directly incurred disabilities arising from piloting the jet is combat-related and eligible for combat-related findings as incurred under conditions simulating war. The definition of hazardous service includes pilot duties and his service as a pilot that directly resulted in his claimed disabilities qualifies for combat-related findings as a result of being engaged in hazardous duties. Given there are multiple bases for award of combat-related findings, counsel argues each must be considered as a basis for combat-related findings.

Regarding his painful/tender scars and neck scars, counsel contends the advisor did not review evidence that was either part of the original CRSC application or submitted in support of his request for reconsideration. Specifically, comments pertaining to his cervical and lumbar conditions, causes, procedures, surgeries, and DVA service-connection and compensation found within the Review in Lieu Of (RILO) Narrative Summary, treatment notes, and DVA Rating Decisions. In the applicant's second (superseding) finding of the CRSC board on reconsideration, dated 29 Nov 23, the board found his cervical spine inflammatory arthritis, degenerative arthritis and cervical stenosis status post cervical fusion were combat-related. His record document that his claimed scars are the result of his in-service surgical treatments and there is no other cause of the scars in the record. All of the record evidence shows that his scars (both the painful/tender scars and the neck scars) were incurred while he was on active duty and were the result of treatment for the condition that the CRSC board has already found to be combat-related and compels a finding that his painful/tender scars and neck scars are combat-related. Additionally, because the CRSC board found that this combat-related condition was "status post cervical fusion," the CRSC board has already found that the surgical results are part and parcel of this condition and his claim for combat-related finding is based on the same set of transactional facts as the first claim for CRSC. Additionally, counsel addresses the applicant's issues considered in his earlier case (BC-XXXX-XXXX) and found by the medical advisor's opinion show that the board has already found that the applicant's scars are combat-related. The advisory opinion states, "Somewhat unrelated to the final outcome of the applicants case, but relevant to his overall clinical history, the applicant, a former pilot and instructor pilot in the F-16 and other contemporaneous aircraft, to include unmanned aviation, initially suffered from cervical spine pain secondary to cervical degenerative disc disease; requiring two surgical interventions, with causation the likely consequence of G-forces experienced and the helmet he wore, while flying his Instrumentality of War. The preponderance of evidence to follow focuses upon the applicant's spondyloarthropathy, the specific nomenclature assigned at a given time, and the ultimate change in diagnosis." In granting his request for an 80 percent disability rating, the AFBCMR considered this advisory opinion and stated, "As for the author's third take away, the Board considered the nature, relationship, and significance of the applicant's diagnoses and finds the applicant provided sufficient evidence to support his contentions and to grant his request in full." Counsel argues the advisory opinion author does not address the evidence, or the issues raised and therefore renders the opinion, and any decision based on it, as "arbitrary and capricious, contrary to law and regulations, and not based on substantial evidence."

Regarding the applicant's hemorrhoids, counsel contends the advisory opinion fails to address the applicant's claim for combat-related and this condition was caused by the applicant's employment of the anti-G strain maneuver while flying the F-16 fighter jet. In the applicant's request for reconsideration to the CRSC Board, made on 7 Aug 23, he provided a medical treatment note which included doctors' statements they were most likely caused by an anti-G straining maneuver while flying the F-16 jet, yet the CRSC Board denied this condition.

Regarding the advisor's erroneous legal standards and factual errors, counsel claims there is no requirement for the DVA to make a secondary service-connection finding of a disability as a condition precedent to awarding CRSC. The advisor does not cite any regulation showing such a requirement. Counsel requests a citation to law or regulation, or any basis for such a requirement. Additionally, the advisor erred when stating the applicant has not provided any in-service medical documentation regarding his scars. He provided a copy of the RILO Narrative Summary and his doctor's treatment notes.

Counsel requests the Board reject the advisory opinion and provide relief in the form of correction of the applicant's military records to show his scars, respectively rated at 30 percent and 10 percent for painful scars and neck scars, and his hemorrhoids, rated at 10 percent to be combat-related disabilities. If the Board should deny his application, counsel requests the decision address each

of the arguments raised in his initial CRSC application, request for reconsideration, and in this response.

In support of the applicant's request, counsel provided a copy of the CRSC application and reconsideration request, and the medical advisory opinion from the applicant's 2018 AFBCMR case (BC-XXXX-XXXXX-X).

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATIONS

AFPC/DPFDC provided an additional advisory opinion and again, recommends denying the applicant's request for CRSC for his scars and hemorrhoids. Per Public Law 107-314, *Office of the Under Secretary of Defense guidance*, 110 U.S.C., §1413a, and DoD Financial Management Regulation, Vol 7B, paragraph 6 [sic], determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where 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. The applicant provided no objective in-service medical documentation that provided evidence his scars/hemorrhoids were due to his surgical treatment(s)/flying G's. The scars were considered regardless of their association with any other claimed disability. There was no documentation confirming they were due to other treatments. While the medical documentation, provided by the applicant, contends his hemorrhoids are more than likely due to his years of flying, speculation or opinions linking a medical condition to certain factors, are rarely sufficient to support a combat-related determination. There are no presumptive injuries linked to any type of hazardous service. Additionally, performing official duties (regardless of Air Force Specialty Code and locations) is not an evidentiary reason for the approval of any requested entitlement nor is it a guarantee of approval of any entitlement covered under CRSC.

The inability to provide objective documentary evidence from the time of the claimed disabilities/injuries is not uncommon, however, it is not factored in when making CRSC determinations. Evidence documenting treatment for a medical condition during military service is not sufficient for a combat relation determination. There must be evidence clearly showing combat-related events surrounding the injury or illness and the cause of the condition.

The most common reason for denial of CRSC is because the documentation lacks evidence indicating how the injury occurred from a combat-related event or training-related accident. *Establishing a link between the disability and the specific event or accident at the time that it happened is the requirement when it comes to awarding CRSC.* For a condition to be awarded under CRSC there must be clear evidence in the supporting documentation at the time of the disability which shows *how, what, when and where your injuries occurred* as related to combat or training.

While there is no legal requirement for the DVA to make a secondary service-connection finding of a disability as a condition precedent to awarding CRSC there is also no legal requirement in the above guidance that would require the DoD to adopt DVA standards of service connectedness when evaluating CRSC claims without the required objective documentation.

The complete advisory opinion is at Exhibit F.

NGB/A1PP finds the applicant was not improperly released from active duty as an Active Reserve Guardsman (AGR) on 19 Jun 16 as he alleges. According to the documentation provided by the

[state] ANG, the applicant submitted a request to voluntarily terminate his orders on 2 May 16. The requested end date for his orders is 19 Jun 16, which aligns with his end date for his AGR orders. All documentation confirms the applicant was not mistakenly removed from active-duty orders; rather, he voluntarily requested to terminate them.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 30 Jan 25 for comment (Exhibit H), and the applicant's response was received on 4 and 5 Mar 25. On behalf of the applicant, counsel disagrees with the AFPC/DPFDC additional advisory opinion and their recommendation to deny the applicant's scars and hemorrhoids as combat-related and that he be granted CRSC for these conditions. Counsel points out in the initial advisory opinion, dated 16 Oct 24, the advisor states the DVA had not rated the scars as associated or secondary and could not consider them combat-related. However, the revised opinion, dated 3 Dec 24 acknowledges that DVA precedent is not required to award CRSC and concedes this requirement does not exist. Counsel believes that any board's decision relying on the initial opinion would not withstand judicial review.

Furthermore, counsel contends the advisory is erroneous in its analysis as it cites an incorrect chapter of the DoD Financial Management Regulation and incorrectly states the applicant provided no objective in-service medical documentation evidencing his scars/hemorrhoids were due to his surgical treatment(s)/flying G's, yet he provided 50 pages of documents, including medical documentation and RILO Narrative Summary addressing the scars and hemorrhoids. Given that the contemporaneous medical notes submitted preceded the applicant's retirement and award of DVA ratings, conditions precedent to being able to qualify for CRSC, there would be no reason for any of the physicians or Initial RILO (IRILO) authors to discuss any other condition that would cause a scar when the purpose of the notes are for medical treatment and not for establishing an entitlement. The notes show that the only surgeries on the applicant's claimed scar anatomy- his back and neck- are the result of the same conditions that the AFBCMR had already determined were combat-related. Additionally, the advisory opinion ignores the evidence provided and contradicts the regulatory language about the consideration of evidence per the DoD Financial Management Regulation. Finally, the advisory opinion does not contain any discussion or analysis of the issue of causation in the context of CRSC award. Counsel asserts the advisory opinion's recommendation is arbitrary, capricious, contrary to law, and unsupported by substantial evidence. It does not address the evidence submitted and imposes a standard for evidence that is contrary to regulation, and it should be rejected for these reasons.

Counsel disagrees with the NGB/A1PP advisory opinion and argues the applicant's separation while undergoing a PEB was improper and contrary to law. He should have received MEDCON orders under authority of 10 U.S.C. §12301(h). The separation was not voluntary but he was pressured by his superiors citing his inability to perform his duties and their refusal to approve follow-on orders. Under Air Force regulations, he was not permitted to separate until the final disposition of his case. Counsel refers to the following AFBCMR cases where relief was granted for similar situated applicants: *Work-Product* However, in the applicant's case he was an ANG member activated pursuant to Title 32 orders effective 16 Mar 14. The three cases cited by Counsel are distinguished from the applicant's situation as the three cases reference either members of the Air Force Reserve Component on active-duty orders – Title 10 or a member of the Air National Guard on Title 10 orders. The applicant was not authorized MEDCON orders as an AGR in a Title 32 status. The applicant voluntarily elected to curtail his Title 32 tour with the "Request for Voluntary Curtailment to AGR Tour" form digitally signed by the applicant on 2 May 16 to be effective 19 Jun 16. The Line of Duty Determination was completed on 9 Jun 16 and in advance of the 19 Jun 16 requested tour curtailment. The applicant's case is further distinguished from the three cases cited by Counsel as Air National

Guard Instruction 36-101, *Air National Guard Active Guard and Reserve (AGR) Program*, applies to ANG Airmen serving in AGR status under Title 32 United States Code (USC) Section 502(f), Required Drills and Field Exercises and does not authorize MEDCON orders for Activated Guard Reserve members. As the applicant was serving as an AGR member under Title 32 status at the time of his activation and release from orders, MEDCON orders were not authorized.

The applicant's complete response is at Exhibit I.

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 report provided by the Court remand order, the applicant's Air Force CRSC Board application, the offices of primary responsibility's advisory opinions, and counsel's responses to the opinions, the Board concludes the applicant is the victim of an error or injustice in part. While the Board notes the recommendation of AFPC/DPFDC to deny CRSC, the Board finds sufficient evidence to provide partial relief. Specifically, the applicant's DVA medical records contain sufficient evidence that his surgical scars are combat-related and qualify for compensation under the CRSC program. In our review, the Board explicitly followed the Court remand order to:
 1. Reconsider the Air Force's determination for entitlement to CRSC for scars and provide an explanation if he is not entitled.
 2. Consider all issues, arguments, and additional evidence submitted by the applicant, including advisory opinions.
 3. Review any other relief deemed appropriate by the AFBCMR.

Regarding the first point, the Board reviewed the applicant's CRSC application to the Air Force CRSC Board and found the applicant provided sufficient evidence to grant CRSC for his surgical scars. While the Board is not an investigative body as outlined in DAFI 36-2603, *Air Force Board for Correction of Military Records*, the Board sought copies of the applicant's complete DVA medical record for consideration. The Board finds the applicant's Disability Benefits Questionnaires, dated 10 May 16 and 9 Aug 17 contain sufficient evidence that his neck and back scars are secondary to his previously approved CRSC neck and back disabilities establishing a direct, documented causal link between his military flying experiences and his surgical scars. Specifically, the DVA examiner noted the applicant's scars are the result of surgical intervention for his previously approved neck and back conditions.

Regarding the second point, the Board also considered the applicant's argument that his employment of the anti-G strain maneuver while flying the F-16 fighter jet resulted with his hemorrhoid condition. The applicant believes a medical treatment note he provided to the CRSC Board in his 7 Aug 23 request for reconsideration, which included doctors' statements that his hemorrhoids were most likely caused by an anti-G straining maneuver while flying the F-16 jet is sufficient evidence for the Board to grant CRSC for this condition. The Board disagrees. Speculation or opinions alone are insufficient to substantiate a combat-related determination under CRSC. A definitive, documented causal relationship between military service and the claimed condition is required. The mere performance of official duties—regardless of Air Force Specialty Code (AFSC) or location—does not, in itself, establish entitlement to CRSC. There must be clear and convincing evidence linking the injury or illness to a combat-related event or a preponderance of available documentary information to qualify for the CRSC program. Therefore, the Board

agrees with AFPC/DPFDC the evidence presented and the evidence found within the applicant's DVA medical records are insufficient to conclude his hemorrhoids are combat-related and the Board therefore finds no basis to recommend granting this portion of the applicant's request.

Additionally, in counsel's complaint to the U.S. Court of Federal Claims, he alleged that the Air Force failed to credit the applicant with active duty pay and allowances during his IDIS processing and he was improperly released from active duty as an AGR member on 19 Jun 16. The Board requested an advisory opinion from NGB/A1PP. NGB/A1PP provided documentation from the [state] ANG confirming that the applicant voluntarily requested to terminate his AGR orders on 2 May 16. In counsel's response, he argued policy prevents members from being released from active duty while undergoing PEB processing, to include voluntary release, and that the applicant should have been placed on MEDCON orders. However, according to AFI 36-101, AGR members are not authorized MEDCON orders. Furthermore, the Board notes counsel's arguments and references to other AFBCMR cases he opines are similar to the applicant's situation. The Board does not find them to persuade our decision. Each case before this Board is considered on its own merits. While the Board strives for consistency in the way evidence is evaluated and analyzed, the Board is not bound to recommend relief in one circumstance simply because the situation being reviewed appears similar to another case. Each case is evaluated on its own merits.

Finally, regarding the third point, the Board finds that no additional relief is warranted based on the available evidence. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 29 Nov 23, in addition to the disabilities that were found by the Air Force CRSC Board to be combat-related, the following disabilities were also found to be combat-related and deemed qualified for CRSC: scars, posterior and right anterior neck – post cervical fusion under Veterans Affairs Schedule for Rating Disabilities (VASRD) code 7800 and painful/tender scars – post cervical fusion (2), and lumbar fusion / surgeries (5) under VASRD code 7804.

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-2024-03394 in Executive Session on 19 Mar 25, 2 Jun 25, and 23 Jun 25:

, Panel Chair
, Pannel Member
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: U.S. Court of Federal Claims Remand Order, Unopposed Motion for a Remand, and Applicant's Complaint, various dates.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit B: DVA Records, various dates.
Exhibit C: Advisory Opinion, AFPC/DPFDC, w/atch, dated 16 Oct 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Oct 24.
Exhibit E: Applicant's Response, w/atchs, dated 22 Nov 24.
Exhibit F: Advisory Opinion, AFPC/DPFDC, dated 3 Dec 24.
Exhibit G: Advisory Opinion, NGB/A1PP, w/atchs, dated 21 Jan 25.
Exhibit H: Notification of Advisories, SAF/MRBC to Applicant, dated 30 Jan 25.
Exhibit I: Applicant's Response, w/atch, dated 3 Mar 25.
Exhibit J: Applicant's CRSC Case to AFPC/DPFDC, various dates.
Exhibit K: Applicant's AFBCMR Case (BC-XXXX-XXXXX-X), dated 14 Nov 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.

X

Board Operations Manager, AFBCMR