

IN THE CASE OF: ██████████

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230000867

APPLICANT REQUESTS: reversal of the decision by the Program Office of Combat-Related Special Compensation (CRSC) at the U.S. Army Human Resources Command (HRC) to deny his CRSC claims for PTSD (post-traumatic stress disorder).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Claim(s) for Combat-Related Special Compensation (CRSC)
- Multiple HRC CRSC letters, September 2022, October 2021, September 201, and August 2021
- Multiple Department of Veterans Affairs (VA) Rating Decisions, March 2003, January 2010, December 201, January 2022, and June 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 215 (Correction to DD Form 214)
- DA Form 199 (Informal Physical Evaluation Board(PEB) Proceedings, 11 August 2020
- Reissued retirement orders, 25 September 2020
- Previous ABCMR Record of Proceedings, Docket Number AR20180015818, dated 22 August 2019
- Permanent Disability Retirement

FACTS:

1. The applicant states he was injured during a nighttime military parachuting incident in December 1991. Post incident, he had (and continues to have) PTSD symptoms related to the injury as well as another, separate service connected injury which occurred in April 1998. HRC has denied the connection of his VA rated service connected PTSD disability to the 1991 combat-related (hazardous duty) injury for CRSC eligibility. He attempted to have his PTSD diagnosis associated with the incident when he appeared before a medical board provider during his previous appeal to the board but was advised that it could not be included. He requests that this appeal/case be advanced on the Board's docket. Frankly, he was improperly discharged from service in 1998 and it took multiple appeals when the ABCMR finally recognized in 2020 that local

military officials had failed to follow Army regulations in place at the time of his separation from service. His family is in severe financial distress, living solely off his monthly VA Disability Compensation and he asks that a decision be made, in his favor, to include that his PTSD diagnosis/condition be included towards his CRSC award.

2. Review of the applicant's service records shows:

a. The applicant enlisted in the Regular Army on 17 January 1989. He held military occupational specialty 98G, Voice Interceptor. He served through two reenlistments in a variety of assignments, and he attained the rank/grade of sergeant (SGT)/E-5.

b. In 1991, during an airborne operation at Fort Bragg, NC, the applicant suffered an intra-articular left distal femur fracture which underwent operative internal fixation and subsequent operative removal of the internal fixation following fracture healing. This resulted in a full range of motion without evidence of ligamentous instability, but with chronic painful motion and activity related swelling.

c. The applicant continued his service on active duty after his femoral fracture had healed. However, he continued to experience some pain of varying degrees.

d. On 6 February 1998, a medical evaluation board (MEB) referred the applicant to a physical evaluation board (PEB) due to chronic knee pain secondary to degenerative joint disease having failed medical retention standards. On 24 February 1998, after being informed of the approved findings and recommendations of the MEB, the applicant agreed with the findings and recommendation.

e. On 3 September 1998, an informal PEB found the applicant physically unfit due to chronic left knee pain with degenerative joint disease post left femur fracture which occurred in 1991 during an airborne operation. The PEB recommended a combined disability rating of 10% and his disposition as separation with severance pay if otherwise qualified.

f. On 18 March 1998, after being advised of the findings and recommendations of the PEB and receiving a full explanation of the findings and recommendations, and legal rights, the applicant concurred and waived a formal hearing of his case.

g. On 6 April 1998, the applicant was injured in an accident while he was driving a fire/water truck as a volunteer firefighter and the truck rolled over. He was hospitalized at the [REDACTED] Medical Center ([REDACTED] MC) and treated for his injuries and discharged to the [REDACTED] MC on 8 April 1998.

h. On 23 April 1998, the applicant was discharged from active duty due to disability with severance pay. His DD Form 214 shows he was discharged in accordance with Army Regulation (AR) 635-40 (Physical Disability or Retention, Retirement, or Separation) with entitlement to severance pay. He completed 9 years, 3 months, and 7 days of active service.

i. On 11 May 1998, a DA Form 2173 was completed showing his injuries received were considered to have been incurred in line of duty (LOD). On 1 May 1998, a physician from the ■■■ MC noted his injuries and that permanent partial disability may result. The applicant's commander noted the details of the accident, that the applicant was on leave, that no formal LOD investigation was required, and that the injury is considered to have been incurred in LOD.

j. On 29 October 1998, the applicant was evaluated by the VA and awarded a combined service connected disability rating of 40%. He was awarded 20% for L 1 Vertebra compression fracture with T12-L 1 disc space narrowing; 10% for degloving injury of the scalp with right skull fracture; 10% for left femur fracture with arthritis of the knee; and 0% for residuals of buttock burns and right scapula fracture (major).

3. On 24 June 2019, as part of adjudicating the applicant's petition for medical retirement vice disability severance pay, the Army Review Boards Agency (ARBA), Medical Advisor reviewed the applicant's records.

a. The medical advisor opined that it is unknown if the applicant did or did not meet medical retention standards for the injuries he sustained on 6 April 1998. If Army Regulations had been followed, the applicant should have been extended on active duty until he reached the Medical Decision Retention Point, and a new MEB (and likely a PEB) should have convened. Referral to the integrated disability evaluation system (IDES) for re-evaluation of the injuries sustained by the applicant on 6 April 1998 is strongly recommended.

b. On 22 August 2019, the Board concurred with the medical advisor's finding and recommended the applicant's referral to the IDES. As a result, on 11 August 2020, an informal PEB convened and found the applicant's medical conditions (listed below) unfitting. This PEB assigned a 70% combined disability rating and his disposition as permanent disability retirement.

- Post-concussive post degloving of scalp headaches, 30%
- Vertebral fracture, 20%
- Left knee post-traumatic arthritis, 10%
- Right sciatic nerve radiculopathy, 10%
- Left sciatic nerve radiculopathy, 10%

- Incomplete paralysis of the right 5th cranial nerve pod top from scalp degloving injury and right skull fracture, 10%
- Left trigeminal cranial nerve neuralgia, 10%

c. In September 2020, the applicant's original discharge orders were voided, and he was issued new orders placing him on the retired list, effective 23 April 1998. He was also issued a DD Form 215 that amended his DD Form 214 to reflect his retirement vice separation with severance pay.

4. On 3 August 2021, the CRSC Program Office at the U.S. Army Human Resources Command (HRC) responded to his claim for CRSC. Verified as Combat-Related:

- Postoperative left femur fracture with arthritis of the knee, Combat-related due to hazardous service (airborne jump), 30%, 15 September
- Residual scarring of the left lower extremity (left thigh), Combat-related due to an instrumentality of war, 10%, 15 September

5. On 10 August 2021, the CRSC Program Office at HRC informed the applicant they had conducted an audit of his CRSC claim and have approved his claim in accordance with current program guidance.

- Postoperative left femur fracture with arthritis of the knee, Combat-related due to hazardous service (airborne jump), 30%, Previously awarded; verified percentage and adjusted effective date, January 2008
- Residual scarring of the left lower extremity (left thigh), Combat-related due to an instrumentality of War, 10%, Previously awarded; verified percentage and adjusted effective date, January 2008 to May 2009
- Residual scarring of the left lower extremity (left thigh), Combat-related due to an instrumentality of War, 10%, Previously awarded; verified percentage and adjusted effective date, June 2009

6. On 22 September 2021, the CRSC Program Office at HRC informed the applicant they had reviewed his reconsideration request for Combat-Related Special Compensation (CRSC) and have made the following determination regarding his claim in accordance with current program guidance.

a. Verified as Combat Related

- Postoperative left femur fracture with arthritis of the knee, Combat-related due to hazardous service (airborne jump), 30%, Previously awarded; verified percentage and effective date, January 2008

- Residual scarring of the left lower extremity (left thigh), Combat-related due to an instrumentality of War, 10%, Previously awarded; verified percentage and effective date, January 2008 to May 2009
- Residual scarring of the left lower extremity (left thigh), Combat-related due to an instrumentality of War, 10%, Previously awarded; verified percentage and effective date, June 2009

b. Unable to Verify as Combat Related: Post-Traumatic Stress Disorder with Cognitive Disorder. No official evidence to support condition as secondary to 5010-5260. VA documentation must state condition is secondary to, related to, or aggravated by the disability to be awarded as a secondary condition.

7. On 5 October 2021, the CRSC Program Office at HRC informed the applicant they had reviewed his reconsideration request for CRSC for Post-Traumatic Stress Disorder with Cognitive Disorder.

a. This is a second disapproval as there is no new evidence provided to show combat-related event caused condition.

b. The CRSC Program Office reviewed his reconsideration request and the supporting documentation he provided. The evidence within the new documentation that he submitted still does not establish a link between requested conditions and a combat-related event. To award a condition as combat-related he must provide this office with official documentation that shows how each condition is combat-related as defined by CRSC program guidance. Official documentation includes medical documentation from the time each injury occurred, wartime chain of command endorsements which confirms exposure to armed conflict, copies of combat decorations (certificates, combat badges, and DA Form 638s), and evaluation reports which support exposure to armed conflict. [Department of Defense Financial Management Regulation 7000.14-R, Volume 7B, Chapter 63, Combat-Related Special Compensation].

8. On 12 September 2022, the CRSC Program Office at HRC informed the applicant that after reviewing all documentation in support of his claim for CRSC for Post-Traumatic Stress Disorder with Cognitive Disorder, the CRSC Office was unable to overturn the previous adjudication(s). The documentation which the applicant has submitted still shows no new evidence to link his requested conditions to a combat-related event. This disapproval is now considered final. If he chooses to appeal this decision, he must submit his Notice of Disagreement (NOD) to the Army Review Boards Agency (ARBA).

9. The HRC CRSC Division is responsible for verifying a claimant's injuries are directly connected to combat or combat-related operations as defined by DOD CRSC Program Guidance. It provides criteria, terms, definitions, and explanations that apply to making

combat-related determinations in the CRSC program. Incurrence during an actual period of war is not required. However, there must be a direct, causal relationship between the combat event or instrumentality of war and the disability. CRSC determinations must be made based on the program criteria.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting a reversal of the decision by the Program Office of Combat-Related Special Compensation at the U.S. Army Human Resources Command (HRC) to deny his CRSC claims for PTSD (post-traumatic stress disorder).

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- The applicant enlisted in the Regular Army on 17 January 1989.
- In 1991, during an airborne operation at Fort Bragg, NC, the applicant suffered an intra-articular left distal femur fracture which underwent operative internal fixation and subsequent operative removal of the internal fixation following fracture healing. This resulted in a full range of motion without evidence of ligamentous instability, but with chronic painful motion and activity related swelling. The applicant continued his service on active duty after his femoral fracture had healed. However, he continued to experience some pain of varying degrees.
- On 6 February 1998, a medical evaluation board (MEB) referred the applicant to a physical evaluation board (PEB) due to chronic knee pain secondary to degenerative joint disease, having failed medical retention standards.
- On 3 September 1998, an informal PEB found the applicant physically unfit due to chronic left knee pain with degenerative joint disease post left femur fracture which occurred in 1991, during an airborne operation. The PEB recommended a combined disability rating of 10% and his disposition as separation with severance pay if otherwise qualified.
- On 6 April 1998, the applicant was injured in an accident while he was driving a fire/water truck as a volunteer firefighter and the truck rolled over. On 11 May 1998, a DA Form 2173 was completed showing his injuries received were considered to have been incurred in line of duty (LOD). On 1 May 1998, a physician from the ■■■ MC noted his injuries and that permanent partial disability may result.
- On 23 April 1998, he was discharged from active duty due to disability with severance pay.
- On 22 August 2019 ARBA dispositioned to send the applicant back to the IDES process for injuries incurred in LOD. This PEB assigned a 70% combined disability rating and his disposition as permanent disability retirement.

- In September 2020, the applicant's original discharge orders were voided, and he was issued new orders placing him on the retired list, effective 23 April 1998. He was also issued a DD Form 215 that amended his DD Form 214 to reflect his retirement vice separation with severance pay.
- In August of 2021 there were numerous CRSC findings in his favor regarding medical claims, however they were unable to Verify as Combat Related: Post-Traumatic Stress Disorder with Cognitive Disorder.
- On 5 October 2021 he received a second disapproval with no new evidence to show that PTSD was a combat related condition.
- On 12 September 2022, the CRSC Program Office at HRC informed the applicant they after reviewing all documentation in support of his claim for CRSC for Post-Traumatic Stress Disorder with Cognitive Disorder, the CRSC Office was unable to overturn the previous adjudication(s). This disapproval is now considered final.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, documents from his service record and separation process, as well as a personal statement, claims for CRSC, multiple HRC CRSC letters, multiple Department of VA rating decisions, PEB proceedings, reissued retirement orders and permanent disability retirement. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant asserts that he was injured during a nighttime military parachuting incident in December 1991. He reported that post-incident he had, and continues to have, PTSD symptoms related to this injury, as well as another injury from a separate incident in April 1998. He reported that HRC has denied the connection of his VA rated service-connected PTSD disability to the 1991 combat-related (hazardous duty) injury for CRSC eligibility. He attempted to have his PTSD diagnosis associated with the incident when he appeared before a medical board during his previous appeal to the board but was advised that it could not be included. See ROP and supporting documents for full history, as well as full background on all medical concerns. This opine will focus on the mental health component of this case.

e. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no mental health EHRs are available for review. His service record and supporting documents did contain some records relevant to his physical health, though his full service treatment records (STR) were not present. The applicant's enlistment Report of Medical Examination completed 7 April 1988 did not show any psychiatric

concerns or diagnoses. Of the documents available from his time in service, there is no evidence that the applicant was experiencing a mental health condition, nor symptoms. Hence, there is insufficient evidence the applicant was diagnosed with PTSD, nor exhibited trauma related symptoms, during his time in service.

f. The applicant has been engaged in care at the VA since at least 1998, and with mental health care since at least 2004 (EHR's first notes are 2005 but applicant provided physical copies of notes dating as far back as 11 Jun 2004). He has engaged in outpatient therapy, medication management, and occupational therapy. He has been diagnosed with posttraumatic headaches, concussion with loss of consciousness of unspecified duration, depression, nightmares, insomnia disorder, PTSD, as well as numerous other physical health concerns. In addition, the applicant was diagnosed with cognitive disorder NOS during a neuropsychological evaluation on 19 October 2006. During the evaluation he reported a progression of cognitive dysfunction since his injury in 1998. Of note, the evaluator raised significant concerns about inconsistencies in the testing results, possible secondary gain, and the that other psychological issues were likely leading to his perceived cognitive decline. PTSD was not listed on his problem list until 2016 though per his EHR he was first diagnosed in 2006. His records consistently report his parachuting accident in 1991 and his MVA in 1998 as his primary traumas, though his records reflect he did experience childhood sexual trauma as well. Per the applicant's VA EHR, he is 100% service connected, to include 70% for PTSD, as well as numerous medical conditions. A Department of VA Rating Decision, dated 19 April 2022, shows the applicant was granted service connection for TBI combined with PTSD with cognitive disorder effective 16 February 2022. A Rating Decision letter from 19 January 2010 shows PTSD was increased from 50% service connection to 70% effective 23 October 2008. And lastly a Rating Decision letter from 7 May 2003 reflects he was rated at 50% for PTSD effective 12 September 2002. Per this rating letter, the applicant told the examiner he'd been experiencing PTSD symptoms "for the past five years, but feel they are a bit worse." This indicates the applicant did not report the trauma related symptoms starting until approximately the time of his 1998 MVA and around the time of his discharge, which is approximately 7 years after the date of the incident he is requesting consideration for CRSC. In addition, there is no evidence the applicant was diagnosed with PTSD until this compensation and pension (C&P) evaluation. Through review of Joint Legacy Viewing, this applicant did have "Community Health Summaries and Documents" available, though there was no record of a mental health diagnoses, nor mental health records.

g. Of note, the applicant was seen for an Informal Physical Evaluation Board (PEB) in 2020, as part of the process for reevaluating his disability status given his last PEB and ratings were determined prior to a LOD accident that occurred shortly before his discharge. The findings increased his service connection to 70%. As part of this he was

diagnosed with postconcussive postdegloving of scalp headaches, though this was associated solely with his 1998 accident. He was diagnosed and connected with other medical conditions, some of which did relate back to his 1991 accident. However, no mental health, nor potentially mental health related conditions were service-connected relating back to his 1991 incident.

h. CRSC

The applicant asserts that his VA rated service-connected PTSD should be connected to his combat-related (hazardous duty) injury for CRSC eligibility. However, the CRSC has given the applicant feedback on why he has not met their requirements, and the applicant has not provided any new evidence to support a change. The applicant's other founded and connected injuries do meet the requirements as laid out in "6.2- While Engaged in Hazardous Service" as viewed below. However, the applicant was not diagnosed or treated for PTSD while in the service, and while he has been service connected for PTSD, there is no evidence that the injury or disease is the direct result of actions taken in the performance of such service.

For review: For the purpose of granting CRSC, combat related is defined in paragraphs 6.1, 6.2, 6.3 and 6.4 respectively of Department of Defense Financial Management Regulation 7000.14-R, Volume 7B, Chapter 63 (DoD FMR, 2022). For the purpose of this opine, the focus will be on 6.2:

6.2. While Engaged in Hazardous Service

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.

i. The applicant has already been found eligible for other conditions under this definition. However, PTSD has not. The basis for determining combat related for the purposes of awarding CRSC is defined in 10.1 (10.1.1 and 10.1.2):

10.1.1 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.

10.1.2. The burden of proof that a disability is combat-related rests with the applicant, who is required to provide copies of documents in his or her

possession to the best of his or her ability. A record submitted by a member may be used in support of his or her application if that record appears regular on its face and is consistent with Military Service documents and procedures in use at the time, based on the best information available. Military Departments may compile a list of typical documents used in various time periods. If necessary, the Military Departments, under agreement with VA may request copies of certain documents (i.e., DD 214, "Certificate of Release or Discharge From Active Duty", medical records, final VA ratings) from VA to support CRSC determinations.

j. The requirements of proof and documentation were further elaborated to the applicant in correspondence from CRSC. Per CRSC correspondence on 12 September 2022, "the documentation which you have submitted still shows no new evidence to link your requested conditions to a combat-related event. This disapproval is now considered final." A CRSC Decision letter from 2 August 2021 also stated "No official evidence to support condition as secondary to 5010-5260. VA documentation must state clearly that a condition is secondary to, related to, or aggravated by the disability to be awarded as a secondary condition." Further this letter informs the applicant of the needed documentation.

... To award a condition as combat-related you must provide this office with official documentation that shows how each condition is combat-related as defined by CRSC program guidance. Official documentation includes medical documentation from the time each injury occurred, wartime chain of command endorsements which confirms exposure to armed conflict, copies of combat decorations (certificates, combat badges, and DA Form 638s), and evaluation reports which support exposure to armed conflict.

k. Of note, mental health assessments and letters from mental health providers cannot be used to award CRSC as they are based solely on personal, uncorroborated statements and are not based on any treatment record from the time of the event. As stated in a note from 5.2: "An 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."

l. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant was experiencing PTSD during his time in service. The applicant has since been service connected for PTSD, however CRSC correspondence has made it clear that his service connection and/or official documentation has not yet directly linked his PTSD to the combat-related (hazardous duty) incident. In addition, CRSC has been clear in their requirements and the applicant did not supply any new information which could be used to update their findings.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board found insufficient evidence to support a conclusion that the applicant's PTSD is a combat-related disability as defined by law for the purpose of CRSC. Based on a preponderance of the evidence, the Board determined the decision to deny CRSC for PTSD was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

2/12/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, United States Code, § 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). CRSC, as established by 10 USC, section 1413a, as amended, provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it was not for the statutory prohibition for a military retiree to receive a VA disability pension. Payment is made by the Military Department, not the VA, and is tax free. Eligible members are those retirees who have 20 years of service for retired pay computation (or 20 years of service creditable for reserve retirement at age 60) and who have disabilities that are the direct result of armed conflict, especially hazardous military duty, training exercises that simulate war, or caused by an instrumentality of war. Such disabilities must be compensated by the VA and rated at least 10 percent disabling. Eligible members are retired veterans with combat-related injuries who meet certain criteria.

b. Sub-section 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.

2. The Under Secretary of Defense, Military Personnel Policy has provided policy guidance on the processing of CRSC appeals. This guidance states that for a condition to be considered combat-related, there must be evidence of the condition having a direct, causal relationship to war or the simulation of war or caused by an instrumentality of war.

3. Title 26, U.S. Code, section 104, states the term "combat-related injury" means personal injury or sickness that is incurred as a direct result of armed conflict; while engaged in extra hazardous service, under conditions simulating war; or which is caused by an instrumentality of war.

//NOTHING FOLLOWS//