

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 August 2024

DOCKET NUMBER: AR20230003225

APPLICANT REQUESTS: reversal of the decision by the U.S. Army Human Resources Command (HRC) to deny combat-related special compensation (CRSC) for post-traumatic stress disorder (PTSD).

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

- Two DD Forms 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter from Psychologist, 12 February 2021
- Department of Veterans Affairs (VA) Letter and Rating Decision
- Letter of Support, 8 September 2022
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings)
- Orders D 302-02, 29 October 2021

FACTS:

1. The applicant states he was medically discharged from the U.S. Army Reserve (USAR) after 26 years of service due to his chronic post-traumatic stress disorder (PTSD). He has been actively engaged in therapy for many years and to date, in hopes of improving his quality of life despite the circumstances he was exposed to. He was denied by the Army; however, the VA recognized his PTSD as combat-related; however, his awards do not. He believes the problem with awards is they are unable to capture a Soldier's total career or accomplishments. Typically, prestigious awards were reserved for senior Soldiers. His unit did not even consider an award at his retirement for his years of hard work which truly broke his heart. As a result, deserving Soldiers, like himself, are denied benefits they have earned. He asks the Board to please consider the fact that he has been exposed to unfavorable experiences in dangerous environments. He has been under treatment and his exposure was just as severe as a Soldier that was lucky enough to receive an award. Awards were limited during deployments and although he was deserving of a higher award, units were also limited in recognizing a few.

2. The applicant provides:

a. The below listed documents, to be referenced in the service record:

- DD Form 214, for the period ending 6 April 2011
- DA Form 199, 26 October 2021
- Orders D 302-02, 29 October 2021

b. A letter from his psychologist, dated 12 February 2021 which states the applicant has been in therapy since 6 September 2013 and he has been his provider since April 2019. The applicant was diagnosed with PTSD in 2013. He described two traumatic events that took place during his deployment to Afghanistan. The applicant was required to take fellow Soldiers to the hospital for treatment and witnessed displays of death and injury, to include visible blood and decomposing smells. The second event occurred while he was on active orders, he was informed he was being targeted by enemy forces for his work in the community as a project supervisor. He has received a service connected disability rating from the VA as a result of those events.

c. A letter from the VA, dated 10 September 2021, notified the applicant of the disability assessment as part of his participation in the Integrated Disability Evaluation Assessment (IDES). The applicant refused to file a claim for VA compensation purposes, only the PEB referred condition would be addressed for PEB purposes only. No decision in regard to an increased evaluation for a condition subject to service connection has been made. A 70% evaluation was proposed for PTSD.

d. A letter of support from Mr. DTD, dated 8 September 2022, wherein he states he has known the applicant for over 30 years and has seen the effects of his deployment greatly affect his performance. The applicant was assigned to Forward Operating Base (FOB) Sharana, Afghanistan as part of a Facility Engineer Team (FET) from March 2010 to April 2011 under Operation Enduring Freedom (OEF). During his time in theatre and at that specific site, he was assigned as part of a trauma center and witnessed horrific acts of violence. Burn victims, gunshot wounds, amputees, and the typical events you would expect to be seen in a combat zone. The applicant has struggled with this experience and has been seeking treatment. The applicant has deteriorated.

3. A review of the applicant's service record shows:

a. The available service record is void of the applicant's DD Form 4 (Enlistment/Reenlistment Document). An NGB Form 590 (Statement of Understanding – Reserve Obligation and Responsibilities) shows the applicant enlisted in the Army National Guard (ARNG) on 15 August 1995.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows he served as a 63W (Wheel Vehicle Repair Specialist) for the state of [REDACTED].

c. He entered active duty on 7 September 1995. He was honorably released from active duty training on 28 February 1996. His DD Form 214 shows he completed 5 months and 22 days of active service for the period.

d. He was honorably released from the [REDACTED] ARNG on 14 August 2001 and transferred to the USAR. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 6 years of net service for the period.

e. He entered active duty on 20 October 2004. He was honorably released from active duty on 12 January 2006. His DD Form 214 shows he completed 1 year, 2 months, and 23 days of active service. Block 18 (Remarks) lists his foreign service in Kuwait/Iraq from 18 December 2004 to 12 December 2005.

f. He entered active duty on 25 March 2010. He was honorably released from active duty on 6 April 2011. His DD Form 214 shows he completed 1 year and 12 days of active service. Block 18 lists his foreign service in Afghanistan from 10 April 2010 to 4 February 2011.

g. A DA Form 199 shows on 26 October 2021, a physical evaluation board (PEB) convened and found the applicant physically unfit. The PEB recommended a combined rating of 70% and that the applicant's disposition be permanent disability retirement. His sole disabling condition was identified as PTSD (VASRD Code 9411) with a rating of 70%. On 28 October 2021, the applicant concurred with the findings, waived a formal hearing of his case, and did not request reconsideration by the VA. Additionally, the PEB made the following findings in Section V (Administrative Determinations), the disability disposition was based on disability or injury received in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war (5 USC 8332, 3502, and 6303). The disability did result from a combat related injury under the provisions of 26 USC 104 or 10 USC 10216.

h. Orders D 302-02 dated 29 October 2021, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permitted his retirement for permanent physical disability with an effective date of 28 November 2021.

4. A DD Form 2860 (Claim for CRSC), dated 9 December 2021, shows the applicant applied for CRSC based on his VA-awarded service-connected disability of PTSD (70%). He stated his PTSD was caused by his exposure to blood, traumatic human injuries (gunshot wounds, mortar injuries, other related injuries), and death during his combat tour in Afghanistan. Additionally, he feared his own assassination from incoming enemy mortar fire and snipers. The applicant was notified on 16 December 2021 his claim could not be processed without his signature.

5. On 2 February 2022, the applicant was notified his claim for CRSC had been approved and the below listed conditions verified as combat related. His claim of PTSD could not be verified as combat related. There was no documentation in his claim that established a personal exposure to armed conflict in accordance with CRSC guidelines.

- gastroesophageal reflux disease with irritable bowel syndrome – 60%
- tinnitus – 10%

6. On 8 September 2022, the applicant submitted a CRSC Reconsideration Request Form with a letter of support, his personal statement, and an award. The applicant was notified on 22 September 2022, of his second disapproval due to no medical evidence provided to show a combat-related event caused his condition.

7. Title 10, U.S. Code, section 1413a, as amended, established CRSC. CRSC provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it were 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. CRSC eligibility includes disabilities incurred as a direct result of:

- armed conflict (gunshot wounds, Purple Heart, etc.)
- training that simulates war (exercises, field training, etc.)
- hazardous duty (flight, diving, parachute duty)
- an instrumentality of war (combat vehicles, weapons, Agent Orange, etc.)

8. The Office of the Under Secretary of Defense for Military Personnel Policy provided guidance for processing CRSC appeals. This guidance stipulated that in order 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.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board noted that the PEB has determined that the applicant's PTSD is combat related due to armed conflict; however, this does not automatically qualify him for CRSC as the laws governing CRSC and DES differ. Because of the differences in program guidance, for CRSC, there must be proof that his condition is combat-related independent from the PEB's findings. There must be a direct casual relationship between a qualifying combat-related event and the contested disability. The Board found insufficient documentary evidence which confirms his personal exposure to armed conflict. The applicant has not satisfied this requirement. Therefore, the Board determined relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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:

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3. Title 38 U.S. Code 1110 states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the U.S. will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38 U.S. Code 1131 states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the U.S. will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of own willful misconduct or abuse of alcohol or drugs.

//NOTHING FOLLOWS//