

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230004575

APPLICANT REQUESTS: in effect,

- her Orders D 354-36, dated 20 December 2018, corrected to show her disability is based on injury or disease received in the line of duty (LOD) as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law
- reconsideration of her prior request for her DA Form 199 (Physical Evaluation Board (PEB) Proceedings) corrected to show her disability is based on injury or disease received in the line of duty (LOD) as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Orders D 354-36
- Copy of AR20200002040
- Leave and Earning Statement (LES)
- Army Combat Related Special Compensation (CRSC) Decision Letter (Claim # 378701)
- Orders 191-02
- Medical Evaluation Board (MEB) Narrative Summary (NARSUM)
- copy of the Carson memorandum

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200002040 on 13 October 2021.

2. The applicant states she is requesting that her retirement for permanent physical disability orders state her disease of PTSD is combat related. Line 15-16 states "no" for direct result of Armed Conflict.
3. The applicant enlisted in the Regular Army and served on active duty from 26 August 1980 to 25 August 1983. She enlisted in the Army Reserve on 6 July 1998.
4. The applicant underwent a medical examination on 15 June 2002 for retention purposes. She was found qualified for service and assigned a physical profile of 111111. Her DD Form 2808 (Report of Medical Examination), item 77 (Summary of Defects and Diagnoses) shows she had controlled hypertension and anemia.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

5. The applicant reenlisted in the Army Reserve on 18 February 2004. She was ordered to active duty in support of Operation Enduring Freedom on 20 June 2004. She served in Kuwait/Iraq from 25 June 2004 to 25 April 2005. She was released from active duty on 30 April 2005.
6. The applicant underwent a medical examination on 2 August 2007 for retention purposes. She was found qualified for service and assigned a physical profile of 111121. Her DD Form 2808 noted her blood pressure was mildly high and physician discussed this with her along with lifestyle changes and food. A blood pressure check was recommended after 2 to 4 weeks.
7. A memorandum, subjected: Results of Retention Physical, dated 25 October 2007, states the applicant was physically fit for retention. It further stated:
  - a. She did not meet the criteria of the Cardiovascular Screening Program (CVSP) and is referred to a medical provider outside of the military system for follow-up. This follow-up is the responsibility of the applicant and is to be done at no expense to the Army Reserve. Per paragraph 8-26 (revised CVSP), Army Regulation (AR) 40-501 (Standards of Medical Fitness), the applicant will provide copies for the military health record of any document from a civilian medical provided pertaining to the follow-up. The abnormal finding requiring follow-up: blood pressure.

b. She has one or more abnormal findings as indicated on the DD Form 2808 and requires follow-up with a civilian medical provider. In accordance with (IAW) AR 40-501, paragraph 6-3, this is the applicant's responsibility and is to be done at no expense to the Army Reserve. The applicant will provide copies for the military health record of any document from a civilian medical provided pertaining to the follow-up. The abnormal finding requiring follow-up: anemia.

c. Additional Comments: Letter sent to applicant regarding labs/test results.

8. The applicant reenlisted in the Army Reserve on 29 April 2009. She was ordered to active duty in support of Operation Enduring Freedom (Continental United States (CONUS) Support) from 10 October 2011 to 8 October 2012.

9. The applicant was issued her Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) on 11 August 2016.

10. A DA Form 199 shows:

a. An Informal PEB convened on 14 December 2018, wherein the applicant was found physically unfit with a recommended rating of 50 percent and that her disposition be permanent disability retirement.

b. The applicant was found unfit for posttraumatic stress disorder (MEB Diagnosis (Dx) 1). diagnosed in 2017, after being deployed to Iraq in 2004, due to occupational stressors. The PEB considered the applicant's report of combat stressors; however, the Board was unable to confirm the details of this report with the available records. In accordance with DoDI 1332.18, Enclosure 2, Appendix 2, paragraph 2.a., this [applicant] is unfit because DA Form 3349, Physical Profile limitations associated with this condition make the applicant unable to reasonably perform duties as required by their primary military occupational specialty 92G – Culinary Specialist. The applicant's condition prevents them from performing DA 3349, Physical Profile, Section 4 functional activity 24a. physically and/or mentally able to care and fire individual assigned weapon. (DA Form 3947, DA Form 3349, DA Form 7652, NARSUM, C&P Exam, VA Rating Decision).

c. She was found fit for pulmonary nodule, hypertension and tinnitus.

d. The PEB made the following administrative determinations:

(1) The disability disposition is not based on disease or injury incurred 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 as defined by law.

(2) Evidence of record reflects the individual was not a member or obligated to become a member of an Armed Force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(3) The disability did not result from a combat-related injury under in 26 USC 104 or 10 USC 10216.

e. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

f. The applicant concurred and waived a formal hearing of her case on 19 December 2018.

e. The proceedings were finalized on 27 December 2018.

11. Orders D 354-36, dated 20 December 2018, shows:

- the applicant was placed on the retired list effective 24 January 2019
- Disability is based on injury or disease received in LOD as a direct result of Armed Conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law: NO
- Disability resulted from a combat related injury as defined in 26 USC 104: NO

12. The applicant applied for CRSC and subsequently been approved following reconsideration for a combined combat-related disability of 70 percent effective April 2020 for PTSD and tinnitus.

13. The applicant provided a copy of a LES showing a check dated of 15 November 2004 demonstrating she received hostile fire pay for this period. All other documents provided by the applicant were previously considered.

14. The applicant previously applied to the Board on 20 November 2019, requesting her PTSD be classified as combat incurred. On 13 October 2020, the Board denied the applicant's requests, determining the evidence presented did not demonstrate the existence of a probable error or injustice and that the overall merits of her case were insufficient as a basis for correction of her records.

15. The ABCMR requested an Advisory Opinion from the Army Physical Disability Agency on 3 August 2023. Their response was received on 7 September 2023 stating the applicant's request is legally insufficient and recommends no change.

a. A 14 December 2018 Informal Physical Evaluation Board (PEB) found the applicant unfit for continued service for PTSD. The PEB recommended a fifty percent rating and permanent disability retirement (PDR). The applicant concurred with the disposition and was separated on 24 January 2019. The applicant subsequently applied for and was granted Combat-Related Special Compensation (CRSC). The applicant now requests her retirement orders be updated to reflect her disability retirement is combat-related.

b. In accordance with AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), a designation of combat-related may be made if the service-connected disability was incurred as a direct result of armed conflict (among other causes not applicable here). Paragraph 5-24f clarifies there must be a definite causal relationship between the armed conflict and the resulting unfitting disability. Evidence of a definite causal relationship is lacking in this instance. Although the Medical Evaluation Board (MEB) Narrative Summary (NARSUM) indicates PTSD is related to military combat, the Behavioral Health NARSUM addendum notes symptoms of PTSD began in 2016 and point to occupational stressors (EEO complaint). There are indications the applicant reported exposure to combat trauma in 2004, but there is no evidence that the unfitting PTSD was caused by exposure to combat trauma. The causal relationship is missing. The PEB addressed this when it noted: "The PEB considered the Soldier's report of combat stressors; however, the Board was unable to confirm the details of this report with the available records." The applicant has provided no additional medical evidence to support her claim. Therefore, a combat related designation, notwithstanding the award of CRSC, is not warranted.

16. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

17. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record EMR (AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting reversal of the United States Army Physical Disability Agency's administrative determination that her military disability of PTSD was not related to combat as defined by law. She notes this condition was determined to be combat related by the United States Army Human Resources Command for the purpose of receiving Combat Related Special Compensation (CSRC). The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published 20 December 2018 by the United States Army Physical Disability Agency show she was permanently retired for physical disability with a 50% military disability rating effective 24 January 2019 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (17 January 2017). It shows her disability had been determined to not be combat related.

c. The applicant's 14 December 2018 Informal Physical Evaluation Board (PEB) Proceedings (DA 199) show the applicant's PTSD was determined to be unfitting for continued military service. The PEB made the administrative determination the disability was not combat related: They found no evidence that one of these disabilities was the direct result of armed combat; was related to the use of combat devices (instrumentalities of war); the result of combat training; incurred while performing extra hazardous service though not engaged in combat; incurred while performing activities or training in preparation for armed conflict in conditions simulating war; or that he was a member of the military on or before 24 September 1975. The PEB stated the same onset in the rationale for each disability: "Diagnosed in 2017, after being deployed to Iraq in 2004, due to occupational stressors. The PEB considered the Soldier's report of combat stressors; however, the Board was unable to confirm the details of this report with the available records." From his 8 October 2019 medical evaluation board behavioral health narrative summary:

d. "6 January 2017. VA. Psychology note. SM reported increased depressive and PTSD symptoms that began September 2016 related to occupational stressors (EEO complaint) with current symptoms of anhedonia, depressed mood, feeling tired, overeating, difficulty concentrating, memories, nightmares, avoiding memories and external reminders, having strong negative beliefs about herself, negative feelings, and hypervigilance. SM said she had been exposed to combat related trauma in Iraq 2004. Provider discussed treatment options within the Combat PTSD clinic and SM requested a referral ...

e. 10 February 2017. VA. Intake for traumatic stress program. SM presented with report of "PTSD and MDD who was in the military from 1980-1983 and 1998 to the present in the Reserves. She was in Iraq from 2004-2005. She notes that her index trauma stems from hearing a soldier get burned alive." She reported anxiety, nightmares, flashbacks, avoidance."

f. From the referenced 6 January 2017 behavioral health encounter:

g. "The primary trauma described by Veteran included seeing a trailer get bombed. A soldier was trapped inside with his ammunition, which then exploded and killed him. She currently endorses the following PTSD symptoms: re-experiencing memories, nightmares, and physical sensations related to, avoiding memories and external reminders, having strong negative beliefs about herself, strong negative feelings, and hypervigilance.

h. Veteran stated that she had not experienced these symptoms until September 2016 but that she believed she had been 'pushing them back.' Therapist provided psychoeducation about PTSD symptoms and treatment that is available within the Combat PTSD clinic."

i. This trauma history was consistent in the mental health histories she gave in multiple behavioral encounters both before and after she entered IDES. This markedly limits or removes the possibility her trauma history was given for possible secondary gain via a combat related determination by her PEB.

j. The supporting documents include photographs and news stories of the event the applicant claims as her primary traumatic stressor.

k. It is more likely than not that the main cause of her PTSD was exposure to enemy action while in Iraq, i.e., caused by enemy action(s). It is therefore recommended her DD 199 and orders be corrected to reflect that her disability is combat related. Because these actions are routinely executed by United States Army Physical Disability Agency and are not performed by the Office of the Surgeon General, it is recommended that if the Board grants the applicant's request that her case be sent to the United States Army Physical Disability Agency for these corrections.

#### BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, regulatory guidance and applicable U.S. Code. The Board considered the advisory opine statement that it was more likely than not that the applicant was injured in the line of duty. The Board

found that statement insufficient to support the existence of a clear causal relationship between the applicant's injury and service. Therefore, the Board agreed documentation available for review does not meet the burden of proof and reconsideration of her prior request to show her disability is based on injury or disease received in the line of duty not warranted.

3. The Board further determined that based on the denial of line of duty determination, there is no cause for reconsideration of her prior request for a correction to DA Form 199 (Physical Evaluation Board (PEB) Proceedings) to show her disability is based on injury or disease received in the line of duty (LOD) as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law and reconsideration of her previous request is not warranted.

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:

1. The Board determined 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 and referral of the request the United States Army Physical Disability Agency for correction is not warranted.

2. The Boar further determined 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 to amend the decision ofby the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200002040 on 13 October 2021.

2/28/2024

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. AR 600-8-4 (Line of Duty (LOD) Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 (Statement of Medical Examination and Duty Status) completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 (Report of Investigation LOD and Misconduct Status) and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. The worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty is considered an

aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. An injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

2. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a

finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Title 38 USC, section 1110 (General - Basic Entitlement) 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 United States 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 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) 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 United States 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.

5. AR 635-40 (Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

6. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

7. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

8. Department of Defense Financial Management Regulation (DoD FMR) provides in chapter 63, paragraph 630101 the CRSC was effective on 31 May 2003 to provide special compensation to members of the uniformed service who may have retired pay reduced by reason of receiving VA disability compensation where a portion of such VA compensation is the result of disabilities that are combat-related. Eligibility requirements have changed since its inception. CRSC is not military retired pay. It is payable from funds appropriated for pay and allowance payable by the Secretary of the Military Department concerned.

a. Paragraph 6302 (Determinations of Combat-Relatedness) The following criteria, terms, definitions, and explanations will apply to making combat related determinations in the CRSC Program. 630201 (Direct Result of Armed Conflict) subparagraph 630201(A) states the disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. The fact that a member incurred the disability during a period of war, or in an area of armed conflict or while participating in combat operations is not sufficient to support a combat-related determination. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Paragraph 6303 (Entitlement) states CRSC is a monthly entitlement. A member must file an application with the Military Department from which the member retired to determine entitlement. A retiree is entitled to CRSC for each month during which, for the entire month, the member: 630301 (A) has applied for and elected CRSC under these provisions (section 6304). 630301 (B) meeting the preliminary CRSC criteria (Section 6305) and 630301 (C) meets the final criteria (section 6306) that is, has a combat-related disability or disabilities.

c. Paragraph 630602 (Other Combat-Related Disabilities) states a combat-related disability is a disability with an assigned medical diagnosis code from VASRD that was incurred. The Military Departments will determine whether a disability is combat-related based on the following criteria:

- (1) As a direct result of armed conflict,
- (2) While engaged in hazardous service,
- (3) In the performance of duty under conditions simulating war, or
- (4) Through an instrumentality of war.

d. The Department shall record for each disability determined to be combat-related which of the circumstances provided above qualifies the disability as combat-related. A determination of combat-relatedness (see section 6302) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A

retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. 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. CRSC determinations must be made on the basis of the program criteria.

e. Paragraph 631001 (Basis for Determination) states 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 and conjecture. The burden of proof that a disability is combat-related rests with the applicant and the member is required to provide copies of documents in his or her possession to the best of his or her ability. Military Departments may compile a list of typical documents used for CRSC verification.

9. 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. Payments under this section are not retired pay. Payment is made by the Military Department, not the VA, and is tax free. Eligible retirees are those who have combat related disabilities and are entitled to retired pay. The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense. A combat-related disability means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that –

a. is attributable to an injury for which the member was awarded the Purple Heart;  
or

b. was incurred (as determined under criteria prescribed by the Secretary of Defense) as a direct result of armed conflict, engaged in hazardous service, in the performance of duty under conditions simulating war or through an instrumentality of war.

10. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former

service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

11. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

12. Department of Defense Instruction (DODI) 1332.38 (Physical Disability Evaluation), paragraph E3.P5.2.2 (Combat-Related), covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability shall be considered combat related if it makes the member unfit or contributes to unfitness and was incurred under any of the following circumstances:

- as a direct result of armed conflict
- while engaged in hazardous service
- under conditions simulating war
- caused by an instrumentality of war

13. DODI 1332.38, paragraph E3.P5.2.2.3 (Under Conditions Simulating War), in general, covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live-fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

14. Appendix 5 (Administrative Determinations) to enclosure 3 of DODI 1332.18 (Disability Evaluation System) (DES) currently in effect, defines armed conflict and instrumentality of war as follows:

a. Incurred in Combat with an Enemy of the United States: The disease or injury was incurred in the LOD in combat with an enemy of the United States.

b. Armed Conflict: The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with sections 3501 and 6303 of Reference (d). The fact that a Service member may have incurred a disability during a

period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

c. Engaged in Hazardous Service: Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

d. Under Conditions Simulating War: In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; rappelling; and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

e. Caused by an Instrumentality of War: Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a result of 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 material, the criteria are met. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an injury resulting from a Service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

15. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

16. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-



marital; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

//NOTHING FOLLOWS//