

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 November 2023

DOCKET NUMBER: AR20230004861

APPLICANT REQUESTS: reconsideration of his previous request to overturn the U. S. Army Human Resources Command (HRC) decision to deny his claim for Combat Related Special Compensation (CRSC) for:

- Obstructive Sleep Apnea
- Multiple Sclerosis with Bowel Dysfunction
- Unspecified Trauma and-or Stressor Related Disorder
- Acquired Bilateral Foot Pes Planus
- Weakness of Right Lower Extremity
- Weakness of Left Lower Extremity
- Lower Back Pain
- Left Knee Degenerative Joint Disease
- Migraines
- Erectile Dysfunction.

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

- Request for reconsideration
- HRC letter, 10 August 2021
- HRC letter, 22 October 2021
- Letter from G-S-
- Army Board for Corrections of Military Records (ABCMR) letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220000833 on 26 October 2022. The Board found that relief was not warranted. The Board concurred with the advising official findings that they were unable to verify the applicant's disabilities as combat related disability for weakness of right lower extremity secondary to multiple sclerosis and weakness of left lower extremity secondary to multiple sclerosis. The applicant's supporting documentation was a personal statement regarding how his disabilities were due in relation to combat and

training. His supporting documentation did not establish a link between the conditions and a combat related event.

2. The applicant states in effect, he requests the Board to reconsider his previous request to overturn the decision made by HRC for his CRSC claims. He provided a letter from First Sergeant (1SG) S-, who was in his chain of command during the mortar attack that happened at Forward Operating Base (FOB) Kalsu.

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

a. The applicant's service record was void of numerous documents. His Officer Record Brief shows he:

- commissioned as a second lieutenant (2LT)/O-1 on 12 December 2002
- pay entry basic date 18 December 2002
- served in Iraq during the period of 24 April 2007 through 1 June 2008

b. On 22 October 2019, the formal Physical Evaluation Board (PEB) found the applicant was physically unfit for retention and recommended a 60 percent disability rating and placement on the Permanent Disability Retired List (PDRL) for conditions that were onset in 2018, while stationed at Camp Red Cloud, Korea due to no specific trauma:

- multiple sclerosis (bowel dysfunction) at 30 percent
- multiple sclerosis (left lower extremity) at 20 percent
- multiple sclerosis (right lower extremity) at 20 percent

The following conditions were not unfitting for retention:

- Unspecified trauma- and/ or stressor-related disorder;
- lumbar spine strain, resolved;
- degenerative joint disease, right knee;
- degenerative joint disease, left knee;
- acquired symptomatic pes planus, right foot;
- acquired symptomatic pes plan us, left foot;
- migraine headaches;
- allergic rhinitis;
- erectile dysfunction;
- hemorrhoids in remission, post hemorrhoidectomy;
- pleurisy, resolved;
- normal bilateral hearing with recurrent tinnitus

c. On 19 December 2019, Orders Number 353-0006, issued by Headquarters, U.S. Army Garrison – Fort Carson, the applicant was placed on the PDRL on 4 March 2020 with a 60 percent disability.

d. On 26 February 2020, the applicant was honorably retired from active duty and assigned to the U.S. Army Reserve (USAR) Control Group (Retired Reserve). DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 17-years, 2-months and 15-days of active service.

e. On 29 April 2020, HRC notified the applicant his CRSC claim for Tinnitus was approved for 10 percent. However, his claims were denied for:

- Multiple Sclerosis With Bowel Dysfunction – 30 percent, PEB states that this disability is not combat related
- Unspecified Trauma And-Or Stressor Related Disorder – 30, No documentation in claim established personal exposure to armed conflict
- Weakness Of Right Lower Extremity Secondary To Multiple Sclerosis – 20 percent, PEB states that this disability was not combat related
- Weakness Of Left Lower Extremity Secondary To Multiple Sclerosis – 20 percent, PEB states that this disability was not combat related
- Left Knee Degenerative Joint Disease – 10 percent, documentation did not show accident or incident to connect disability to a combat-related event
- Lower Back Pain - 10 percent, documentation did not show accident or
- incident to connect disability to a combat-related event
- Bilateral Acquired Foot Pes Planus - 10 percent, documentation did not show accident or incident to connect disability to a combat-related event
- Allergic Rhinitis - 10 percent, condition did not meet the criteria for CRSC
- Erectile Dysfunction – 0 percent, condition reviewed due to association with Special Monthly Compensation (SMC)

f. On 30 April 2021, HRC notified the applicant his CRSC claim for Tinnitus was previously approved for 10 percent. However, his claims were denied for:

- Obstructive sleep apnea – 50 percent, condition did not meet the criteria for CRSC
- Multiple Sclerosis With Bowel Dysfunction – 30 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition
- Unspecified Trauma And-Or Stressor Related Disorder – 30, second disapproval; no new medical evidence provided to show combat-related event caused condition

- Weakness Of Right Lower Extremity Secondary To Multiple Sclerosis – 20 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition
- Weakness Of Left Lower Extremity Secondary To Multiple Sclerosis – 20 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition
- Left Knee Degenerative Joint Disease – 10 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition
- Lower Back Pain - 10 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition
- Bilateral Acquired Foot Pes Planus - 10 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition
- Allergic Rhinitis - 10 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition
- Migraines – 10 percent, documentation did not show accident of incident to connect disability to a combat related event
- Erectile Dysfunction – 0 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition

g. On 10 August 2021, HRC notified the applicant his CRSC claim for Tinnitus was previously approved for 10 percent and allergic rhinitis approved for 10 percent. For a total combat related disability of 20 percent. However, his claims were denied for:

- Obstructive sleep apnea – 50 percent, second disapproval; no new medical evidence provided to show combat-related event caused condition
- Multiple Sclerosis With Bowel Dysfunction – 30 percent, final disapproval; no new medical evidence provided to show combat-related event caused condition
- Unspecified Trauma And-Or Stressor Related Disorder – 30, final disapproval; no new medical evidence provided to show combat-related event caused condition
- Bilateral acquired foot pes planus – 30 percent, final disapproval; no new medical evidence proved to show combat related event caused condition
- Weakness Of Right Lower Extremity Secondary To Multiple Sclerosis – 20 percent, final disapproval; no new medical evidence provided to show combat-related event caused condition
- Weakness Of Left Lower Extremity Secondary To Multiple Sclerosis – 20 percent, final disapproval; no new medical evidence provided to show combat-related event caused condition
- Left Knee Degenerative Joint Disease – 10 percent, final disapproval; no new medical evidence provided to show combat-related event caused condition

- Lower Back Pain - 20 percent, final disapproval; no new medical evidence provided to show combat-related event caused condition
- Migraines – 10 percent, second disapproval; no new medical evidence provided to show combat related event caused condition
- Erectile Dysfunction – 0 percent, final disapproval; no new medical evidence provided to show combat-related event caused condition

h. On 22 October 2021, HRC notified the applicant his CRSC appeal was denied for:

- Obstructive Sleep Apnea
- multiple Sclerosis With Bowel Dysfunction
- Unspecified Trauma And-Or Stressor Related Disorder
- Acquired Bilateral Foot Pes Planus
- Weakness Of Right Lower Extremity
- Weakness Of Left Lower Extremity
- Lower Back Pain
- Left Knee Degenerative Joint Disease
- Migraines
- Erectile Dysfunction

The documentation he submitted made no mention of a combat related event in relationship to his disabilities. He claims were previously processed at the initial, reconsideration, and appeal levels.

4. The applicant provides a letter from G- S- which stated she was the Noncommissioned Officer in Charge (NCOIC) of 2nd Brigade, 3rd Infantry Division during the Iraq War troop surge during the period of 2007 through 2008. She served with the applicant as his NCOIC of the Brigade S6. While serving in Iraq, the Dining Facility for the unit was hit by a mortar round, a mortar was usually a simple lightweight, man-portable, muzzle-loaded weapon. Some personnel were injured while trying to get to safety after the attack. Afterwards, many Soldiers did not eat at the facility for a period of time, in fear it would be attacked again by insurgents/enemy personnel.

5. On 24 May 2022, in the processing of ABCMR Docket Number AR20220000833, HRC, Chief for the Special Compensation Branch, provided an advisory opinion regarding the applicant's request to overturn their previous decision to deny the applicant's claim for CRSC. The advisory official stated on 15 April 2020, the applicant was awarded 20 percent CRSC for Tinnitus and Allergic Rhinitis. He requested consideration for Obstructive Sleep Apnea, Multiple Sclerosis with Bowel Dysfunction, Unspecified Trauma and or Stressor Related Disorder (VA Code 9413), Bilateral Acquired Foot Pes Planus, Weakness of Right Lower Extremity Secondary to Multiple Sclerosis, Weakness of Left Lower Extremity Secondary to Multiple Sclerosis, Lower

Back Pain, Left Knee Degenerative Joint Disease, and Migraines. His application was reviewed at the initial, reconsideration, and appeal stages and denied due to insufficient evidence and failure to meet program guidelines. The HRC advisory opinion is available for further review.

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 Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board considered supporting documentation from the applicant's previous case and that provided for reconsideration. The Board noted the applicant's combat-related determinations for Tinnitus and Allergic Rhinitis. However, the Board agreed that in the absence of any new documentation sufficient to substantiate a nexus between Weakness of Right Lower Extremity Secondary to Multiple Sclerosis and Weakness of Left Lower Extremity Secondary to Multiple Sclerosis, there was no statutory or regulatory basis upon which to warrant a recommendation for relief.

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 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 to amend the decision of the ABCMR in Docket Number AR20220000833 on 26 October 2022.



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, USC, section 1413a (Combat Related Special Compensation (CRSC) (c) (Eligible Retirees), an eligible combat related disabled uniformed services retiree is a member of the uniformed services who: is entitled to retired pay (other than by reason of section 12731b of this title); and has a combat-related disability. Effective date shall take effect not later than 180-days after the date of the enactment of this act of 2 December 2002. (e) (Combat-Related Disability), "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); as a direct result of armed conflict; while engaged in hazardous

service; in the performance of duty under conditions simulating war; or through an instrumentality of war.

2. Title 10, USC, chapter 61, section 1201 (Regulars and members on active duty for more than 30 days: retirement), (a) Retirement - upon a determination by the Secretary concerned that a member is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b). (b) Required Determinations of Disability - determinations by the Secretary that: (1) based upon accepted medical principles, the disability is of a permanent nature and stable; (2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and (3) either; (A) the member has at least 20 years of service; or (B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either (i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service); (ii) the disability is the proximate result of performing active duty; (iii) the disability was incurred in line of duty in time of war or national emergency; or (iv) the disability was incurred in line of duty after 14 September 1978.

3. Department of Defense Financial Management Regulation 7000.14-R, Volume 7B, (Military Pay Policy – Retired Pay), provides information for the specific qualifications and entitlement for military retired pay, describes the basic types of retirement (regular, non-regular, and disability), discusses voluntary and involuntary retirements, and explains basic qualifications for the differing military retired pay programs.

a. Chapter 63, Combat Related Special Compensation (CRSC), paragraph 1.1 Effective Date. The CRSC program became effective 31 May 2003. Payments are made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving VA disability compensation for a disability that has been determined to be combat related by the Military Department. No CRSC is payable for any month prior to June 2003.

b. Paragraph 1.1.1.3, for an eligible member who is retired under Title 10, United States Code, Chapter 61 (10 U.S.C. Chapter 61) with less than 20 years of active duty or with less than sufficient service and age to qualify for retirement under 10 USC, section 12731, compensation is effective 1 January 2008.

c. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The

Military Departments will determine whether a disability is combat-related based on the following criteria:

- as a direct result of armed conflict
- while engaged in hazardous service
- in the performance of duty under conditions simulating war, or
- through an instrumentality of war

d. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) 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. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to only state the fact that a member incurred the disability during a period of war, in an area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

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

(3) Instrumentality of War:

a. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

b. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

c. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

d. For example, if a member is on a field exercise, and is engaged in a sporting activity and falls and strikes an armored vehicle, then the injury will not be considered to result from the instrumentality of war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

4. Title 38, USC, sections 1110 and 1131, permit the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered physically unfit for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

5. Title 26 USC, section 104 (Compensation for injuries or sickness), (b) (3) (Special rules for combat-related injuries), for purposes of this subsection, the term "combat-related injury" means personal injury or sickness, (A) which is incurred; as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or (B) which is caused by an instrumentality of war. In the case of an

individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts considered shall be the amounts which he receives by reason of a combat-related injury. (4) Amount excluded to be not less than veterans' disability compensation In the case of any individual described in paragraph (2), the amounts excludable under subsection (a) (4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans Administration.

//NOTHING FOLLOWS//