

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20230005386

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command's (HRC) decision to deny his combat-related special compensation (CRSC) for Post-Traumatic Stress Disorder (PTSD) and reinstating 50 percent of his retired pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Privacy Act Compliance Form, 4 April 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 13 June 2003
- Enemy Action and Serious Incident Log, 2004 – 2005
- Memorandum, subject: Narrative of Action Relating to Combat Action Badge (CAB) Documentation, 21 July 2005
- Memorandum, subject: Narrative of Action Relating to CAB Documentation, undated
- Service and History of Awards, undated
- Photographs, 2005
- Awards Matrix, 2005
- DD Form 214 and DD Form 215 (Correction to DD Form 214), 4 February 2006
- DA Form 2166-8 (Noncommissioned Officer (NCO) Evaluation Report), June 2005
- Statement from Sergeant First Class (SFC) [REDACTED] undated
- DD Form 214, 29 December 2005
- Orders Number 04-315-00030, 10 November 2004
- DA Form 4980-14 (Army Commendation Medal (ARCOM) Certificate), 6 October 2005
- Memorandum, subject: Shoulder Sleeve Insignia for Former Wartime Service (SSI-FWTS) Authorized for Wear by Soldiers of the 983rd Engineer Combat Battalion (Heavy) for Service in Support of Operation Iraqi Freedom (OIF) 04-06, 21 October 2005
- DD Form 214, 2 January 2006

- Permanent Orders Number 289-06, 16 October 2007
- Permanent Orders Number 344-24, 9 December 2008
- VA (Veterans Affairs) Form 21-0781 (Statement in Support of Claim for Service Connection for PTSD, 18 April 2011
- VA Rating Decision, 17 October 2011
- Orders: BL-135-0021, 15 May 2014
- Orders: BL-135-0021 (A1), 2 July 2014
- Memorandum, subject: Commander's Summary of Events and Letter of Recommendation, 28 July 2014
- Indirect Fire (IDF) Strike Summary and Maps, 4 July 2014 to 28 July 2014
- DA Form 2823 (Sworn Statement) from the Applicant, 2 August 2014
- DA Form 2823, (3)
- Memorandum, subject: Recommendation of CAB, 28 August 2014
- DA Form 4187 (Personnel Action), 5 September 2014
- DD Form 214, 23 March 2015
- 156 pages of Progress Notes/Medical Records, printed 25 May 2017
- DA Form 5016 (Chronological Statement of Retirement Points), 29 May 2019
- VA Rating Decision, 5 June 2019
- Memorandum, subject: Permanent Physical Disability Retirement, 13 August 2019
- Orders Number D 225-11, 13 August 2019
- Enlisted Record Brief, 17 September 2019
- DD Form 2860 (Claim for CRSC), 18 September 2019
- Letter, Army Personnel Records Division, HRC, 12 February 2020
- Letter, Soldier Programs and Services Division, HRC, 17 April 2020
- Memorandum, subject: Retroactive Award of the CAB, 3 May 2020
- Memorandum, subject: Letter of Explanation, 3 May 2020
- Memorandum, subject: Letter of Explanation, 28 September 2020
- Letter, Dr. ██████████ 3Rivers Wellness, 16 March 2021
- Army Board for Correction of Military Records (ABCMR) Case AR20200009193, 21 July 2021
- Permanent Orders Number 347-03, 13 December 2021
- DD Form 215, 13 December 2021

FACTS:

1. The applicant states, in effect:

a. Determination was made that he did not provide a CRSC qualifying event. His application for CRSC was denied based on the reviewer not finding any CRSC qualifying events. He has since been awarded the CAB verifying direct enemy

engagement. He has also been seen by a psychologist who agrees that his PTSD diagnosis and problems are directly related to that engagement.

b. In his original VA rating decision, they specifically accepted that the base where he was stationed in Iraq was “subjected to attacks from mortars and rocket-propelled grenades (RPGs)” and the examiner stated that his PTSD is directly related to these attacks. He was stationed at Corregidor (East Ramadi) for about two months when it was the worst place on earth for a Soldier to be located. On his final denial letter, they granted him CRSC for tinnitus for the same paperwork that he submitted, and it states the very same circumstances on the same VA determination letter as to why they service connected him for the injury.

2. The applicant provides the following:

a. Privacy Act Compliance Form dated 24 April 2023, wherein the applicant requests assistance filing DD Form 149 to the Army Appeal Board.

b. An enemy action and serious incident log which shows the dates, locations, and the events that occurred while the applicant was deployed from 2004 to 2005. The applicant states, in effect, during his time at FOB Speicher, they made numerous convoys to and from other bases. He was the rear gun truck on all convoys to and from Camp Al Taqaddum, during their units’ relocation there. While located at Camp Al Taqaddum, the unit got hit several times with improvised explosive devices (IEDs) and small arms fire. While they were at Camp Corrigador, they were attacked by a very large number of enemy insurgents. The enemy insurgents were attempting to breach the compound, and a massive firefight ensued, and they had to defend themselves. On 6 October 2005, while at Camp Corrigador, he was walking to the latrine outside their barracks when a mortar came in, just on the other side of the barriers. He hunkered down when a second mortar landed directly behind him. Two days later, while sitting in their barracks, two RPGs came in. The first RPG scattered the company that was conducting an after-action review (AAR) in the convoy staging area. The second RPG struck two of their Soldiers. On 13 October 2005, while he was in the Morale, Welfare, and Recreation (MWR) building, a mortar or RPG hit the building. Several days later they received incoming mortars, and from 26 October to 29 October 2005, they took small arms fire.

c. A memorandum from the first sergeant (1SG), Headquarters Support Company (HSC), 983rd Engineer Combat Battalion, dated 21 July 2005, in which he states, in effect, on 20 January 2005, at 0620 hours, the second march unit of convoy was northbound on main supply route (MSR) Tampa enroute to Forward Operating Base (FOB) Speicher, Iraq from Camp Buehring, Kuwait. The convoy was stopped along MSR Tampa waiting to cross a bridge when he observed at least five distinct muzzle flashes and heard small arms fire to the east of the combat patrol. He (1SG) called on

the radio, "Contact right, contact right." Immediately upon witnessing this event, 1SG [REDACTED] SFC [REDACTED] captain (CPT) [REDACTED] specialist (SPC) [REDACTED] second lieutenant (2LT) [REDACTED] staff sergeant (SSG) [REDACTED] SPC [REDACTED] and SPC [REDACTED] returned fire. Weapons systems involved included the M16, M4, M249, and MK 19 assets. The return fire lasted for approximately 30 seconds. Tracer rounds were noted coming towards the convoy vehicles engaged and passed approximately 10 feet overhead. Secondary explosions were noted because of the MK 19 rounds being expended in the area of the enemy who initiated the attack. Soldiers included in this action noted for the CAB award that did not fire were engaged in different tasks associated with their designated positions. Drivers maintained control of their vehicles and continued to maneuver out of the kill zone when the convoy resumed forward movement, left side gunners continued to scan their sectors of fire for ambush and counterattack without diverting their attention to the activities on the right side of the convoy. There were no injuries or casualties sustained as a result of this action. The Soldiers engaged in this contact were clearly noted as being in imminent danger prior to the suppression of the enemy using firepower and well-aimed shots.

d. A memorandum from master sergeant (MSG) [REDACTED] (Retired), undated, which states, in effect:

(1) During their deployment to OIF III, he was assigned as the 1SG for HSC, 983rd Engineer Battalion and remained so until their return to the CONUS in December 2005. The applicant [SPC [REDACTED]], was assigned to Alpha Company, 983rd Engineer Battalion. Upon their initial entry into Iraq from Kuwait, all units converged at FOB Speicher in the north of Iraq with the majority of personnel being air lifted to the location. He was the NCO in charge of the Ground Assault Convoy and during this time, they were ambushed while enroute on 20 January 2005.

(2) On 3 October 2005, at 0015 hours, he was assigned as the truck commander on a support mission to Camp Corregidor on the east side of AR Ramadi, Iraq. His unit had combat heavy engineer support and they were transporting additional HESCO filler material for this camp to improve their defenses. Between Alpha Company, Bravo and HSC, all three units conducted allied operations to support every outpost in AR Ramadi during this period. The applicant [SPC [REDACTED]] was already at Camp Corregidor performing support engineer operations. At approximately 0320 hours, they had completed their mission of the delivery and prepared to convoy back to their base in AR Ramadi. Once they left Camp Corregidor, the enemy insurgents initiated an attack using mortars, RPGs, and heavy machine gun fire that they could hear from their base several miles away. This major offensive that was being conducted went on for several hours and there were numerous reports of mass casualties. He later learned that the applicant was performing the mission to secure the barracks area and monitor for any insurgent breach during this massive display of incoming fire, he had no doubt that the applicant

had placed himself in imminent danger through his actions, given the undeniable incoming fire that was witnessed throughout AR Ramadi on this day.

(3) The applicant has shown him the pictures he took of various shrapnel damage noted in his sleeping quarters along with Conex containers he was standing next to during the bombardment. This evidence combined with his knowledge of the attack that took place on this day leaves no doubt that the applicant was engaged under hostile fire while forward deployed in a combat zone.

(4) To validate his identity, MSG [REDACTED] (Retired) provided a copy of his service and history of his awards, his DD Form 214 and DD Form 215 which reflects the CAB that he was awarded upon his release from active duty for this period, his NCOER, an awards matrix, and several photographs of actions that the applicant made reference to concerning incoming mortar activity, enemy engagement in close proximity.

e. A statement from SFC [REDACTED] undated, which states, in effect:

(1) He was assigned to Alpha Company, 983rd Engineer Battalion during OIF III, in 2005. During OIF III, he was a SPC, assigned to the vertical platoon for engineer operations. On 3 October 2005, he was sent to Camp Corregidor to perform construction operations in support of this combat outpost located on the east side of Ramadi, Iraq. There was a loud thud at first, followed by an obvious explosion. He went to the second floor of the building where they were housed to see what was happening and he observed a light medium tactical vehicle (LMTV) truck take a direct hit by a mortar round that was approximately 75 meters away. This is when he realized they were under a major attack with small arms fire. They were ordered to stay in their modified barracks until they received further instructions from SGT [REDACTED] and SGT [REDACTED] [applicant], who were outside and, in the area, checking for enemy insurgents. This lasted for at least another 45 minutes where overhead helicopters and F-16s were both heard and seen firing rounds at the nearby enemy. When he exited the building, after receiving the "all clear," he observed a metal conex container that was 30 feet from their building peppered with shrapnel damage that had pierced the conex completely from mortar rounds that landed between their barracks and the conex.

(2) SFC [REDACTED] provides Orders Number 04-315-00030, dated 10 November 2004 and a copy of his DD Form 214 which shows he was ordered to active duty in support of OIF in 2005, and assigned to Alpha Company, 983rd Engineer Battalion.

f. An ARCOM certificate, dated 6 October 2005, which shows the applicant was awarded the ARCOM for meritorious service during ground combat operations against enemy forces in support of OIF III from 27 October 2004 through 7 December 2005.

g. A memorandum dated 21 October 2005, which shows all Soldiers in the 983rd Engineer Combat Battalion (Heavy) who during OIF 04-06 entered Kuwait in December 2004 were attached to the senior Army command in the theater, are authorized to wear the XVIII Airborne Corps SSI-FWTS on their right shoulder as the primary or in addition to their authorized SSI-FWTS.

h. Permanent Orders Number 289-06, issued by HRC, Alexandria, VA, dated 16 October 2007, awarding Headquarters and Headquarters Company, 42d Infantry Division the Meritorious Unit Citation for exceptionally meritorious service in support of Operation Enduring Freedom (OEF), during the period 14 February 2005 to 1 November 2005.

i. VA Form 21-0781 dated 18 April 2011, which shows the applicant submitted a statement in support of claim for service connection for PTSD.

j. A VA rating decision, dated 17 October 2011, which shows he was service connected for:

- PTSD (Combat/Other Stressor), static disability, with an evaluation of 30 percent, effective 25 April 2011
- Low back strain, with an evaluation of 20 percent, effective 1 May 2008
- Status post anterior cruciate repair, medial meniscus tear, patellofemoral pain syndrome, right, 10 percent, effective 6 March 2009
- Tinnitus, static disability, with an evaluation of 10 percent, effective 25 April 2011
- Left knee medial degenerative meniscus tear associated with status post anterior cruciate ligament (ACL) repair, medial meniscus tear, patellofemoral pain syndrome, right, with an evaluation of 0 percent, effective 14 May 2008

k. Orders Number BL-135-0021, issued by Headquarters, U.S. Army Garrison, Fort Bliss, TX, dated 15 May 2014, deploying the applicant in support of OEF, at Camp Buerhing, Kuwait.

l. Orders Number BL-135-0021 (A1), dated 2 July 2014, were amended to show the applicant would also perform duty at Afghanistan.

m. A memorandum for record from the commander, 304th Engineer Company, dated 28 July 2014, which states, in effect, on 26 July 2014 at 1232 hours, enemy indirect fire from outside Bagram Airfield was initiated. Four mortars were fired into the area of operations with two impacting approximately 100 and 600 meters to the company tactical operations center (TOC). The two other mortars were destroyed before making impact, raining down unexploded ordnance within 200 meters from the

TOC. The TOC was evacuated to the bunkers outside the TOC until the all clear was given.

n. Indirect fire strike summary maps which show the approximate location of the 107mm rocket impact in relation to the TOC.

o. DA Form 2823 dated 2 August 2014, from the applicant, which states, in effect, on 26 July 2014, he was in the TOC when an unknown number of 107mm rockets impacted dangerously close to him. The Soldiers within the TOC grabbed their weapons and personal protective equipment and headed for the bunker outside the TOC for an indirect fire engagement. They stayed in the bunker until the all clear was given. Further inspection of the area after the attack revealed that one mortar impacted within 100 meters of the TOC, well within the 365 square meter potential death radius for the munition especially since the TOC was a canvas tent with little protection.

p. Sworn Statements from 3 other Soldiers involved in the indirect fire mortar attack which corroborate the statements provided by the applicant.

q. A memorandum dated 28 August 2014, from the company commander thru the chain of command recommending the CAB for 21 Soldiers, including the applicant, who participated in active combat with the enemy on 26 July 2014.

r. DA Form 4187 dated 5 September 2014, recommending the applicant for award of the CAB.

s. 156 pages of progress notes and medical records, printed on 25 May 2017. The applicant was diagnosed and treated for PTSD. The PTSD diagnosis is related to the applicant's stressor experience during his Iraq service and is related to his fears of hostile military activity. Dr. [REDACTED] Staff Psychiatrist, noted on 16 June 2016, that in his medical opinion, based upon a reasonable degree of medical and psychiatric probability, the applicant's traumatic brain residuals are at least as likely as not, related to the injury in service on 24 May 2014. The rationale is that the applicant meets DSM-V criteria for a mild traumatic brain injury (mTBI). He also stated that the applicant had PTSD and the symptoms of these disorders are intermingled and it is impossible to separate them without resulting to mere speculation.

t. DA Form 5016 dated 29 May 2019, which shows the applicant's chronological statement of retirement points.

u. A memorandum dated 3 May 2020, from the commander, 304th Engineer Company, referencing retroactive award of the CAB for the indirect fire attack on Bagram, Airfield, Afghanistan on 26 July 2014, at 1232 hours. He states the applicant was personally present and under hostile fire while performing satisfactorily in

accordance with their prescribed rules of engagement. The applicant was personally engaged by enemy, as he could have been reasonably injured by the shrapnel from the indirect fire explosion, or from unexploded ordnance that rained down on the area around their TOC as they ran to the bunker.

v. A memorandum dated 3 May 2020, from the applicant's former commander explaining the reason the applicant's CAB was unable to be submitted prior to his redeployment from Bagram Airfield, Afghanistan. The commander stated that due to the mass confusion caused by their two chains of command consistently trying to figure out who should support them, numerous actions were never administratively completed. Eventually both commands allowed enough time to pass without reviewing the CAB packets that the company had to redeploy from theater.

w. A memorandum dated 28 September 2020, from his former commander, which states, based on HRC's response and denial of the applicant's CAB request for the enemy engagement he was subjected to during combat action while performing duty at Bagram Airfield, Afghanistan, it is obvious that pertinent details were overlooked or misunderstood by the reviewer. The applicant's former commander states, in effect, he believes it was inaccurately determined by HRC that the applicant was located in a hardened structure during each attack. He believes this is the singular reason the CAB was denied. He reiterates the applicant was in a canvas tent with little protection when a 107mm mortar impacted within 100 meters of where he was working. During the same attack, at least one high-altitude detonations took place directly in front of him as he was running for the bunkers located 50 meters from the TOC across an open area. The detonation caused a Soldier to slip and fall and had to be helped up by two Soldiers, of which one being the applicant, to get the rest of the way to the bunker.

x. A letter from Dr. [REDACTED] Counseling Psychologist from 3Rivers Wellness, dated 16 March 2021, which states he evaluated the applicant on 16 March 2021 for 90 minutes and completed a full evaluation and psychosocial history. During the applicant's evaluation, the psychologist administered the PTSD Checklist-5 (PCL-5) to gauge current signs and symptoms of traumatic stress. The applicant's total score of 44 indicated PTSD symptoms in the "severe" range. At the time of the evaluation, the applicant was endorsing symptoms consistent with a diagnosis of severe PTSD, including intrusive thoughts, nightmares and flashbacks of his service in Iraq and Afghanistan; emotional and physical hyperarousal related to these symptoms; cognitive and behavioral avoidance of these memories and related feelings and stimuli; trouble remembering important parts of the events; strong negative beliefs about self, others, and the world; irrational self-blame; strong negative feelings of anger, guilt, and shame; anhedonia; feeling distant from others; psychic numbing; irritability; hypervigilance; exaggerated startle; difficulty concentrating and staying focused; forgetfulness and short-term memory issues; and difficulty sleeping. These symptoms affect his ability to form new relationships and to engage fully in relationships and limit his productivity at

work. It is Dr. [REDACTED] medical opinion that the applicant's current diagnosis of PTSD is as likely as not incurred in or caused by in-service stressors encountered during his deployments to Iraq and Afghanistan and while engaged in direct enemy action.

y. A copy of ABCMR Case Number AR20200009193, dated 21 July 2021, which shows the Board determined the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommended that all Department of the Army records of the applicant be corrected by amending his DD Form 214 by awarding and adding the CAB. Permanent Orders Number 347-03, dated 13 December 2021, awarded the applicant the CAB for satisfactory performance while under hostile fire in accordance with prescribed rules of engagement.

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

a. He enlisted in the United States Army Reserve on 14 September 2002.

b. He was ordered to active duty in support of OIF and served in Kuwait/Iraq from 28 December 2004 to 4 December 2005.

c. He was ordered to active duty in support of OEF and served in:

- Kuwait from 22 May 2014 – 3 July 2014
- Afghanistan from 3 July 2014 – 10 December 2014
- Kuwait from 10 December 2014 – 9 February 2015

d. A VA rating decision, dated 5 June 2019, shows:

- Evaluation of PTSD with a TBI (also claimed as sleep disturbance), which was 30 percent disabling, increased to 50 percent, effective 4 March 2019
- Evaluation of right knee lateral femoral condyle chondral defect, strain, meniscal tear, ACL tear, osteoarthritis, and patellofemoral pain syndrome, status post cartilage restoration surgery, which was 10 percent disabling, continued
- Evaluation of asthma, which was 30 percent disabling, continued
- Service connection for migraine headaches was granted with an evaluation of 30 percent, effective 4 March 2019
- Evaluation of lumbosacral spine strain with lumbar degenerative joint disease, degenerative disc disease, and disc herniation, which was 20 percent disabling, continued
- Evaluation of cervical spine sprain with degenerative disc disease, which was 10 percent disabling, increased to 20 percent effective 4 March 2019
- Evaluation of right shoulder cuff tear (dominant), which was 20 percent disabling, continued

- Evaluation of left knee medial degenerative meniscus tear, which was 0 percent disabling, increased to 10 percent, effective 4 March 2019
- Evaluation of jaw sprain with temporomandibular arthralgia, which was 10 percent disabling, continued
- Evaluation of right fourth finger sprain with instability (dominant), which was 0 percent disabling, continued
- Service connection for surgical scars of the right knee, status post-surgical repair, was granted with an evaluation of 0 percent, effective 4 March 2019

e. On 11 July 2019, an informal Physical Evaluation Board (PEB) (DA Form 199) convened and found the applicant physically unfit. The PEB recommended a combined rating of 60 percent and that the applicant's disposition be permanent disability retirement. The disabling conditions were listed as PTSD and right knee lateral femoral condyle chondral defect, strain, meniscal tear, ACL tear, osteoarthritis, and patellofemoral syndrome, status post cartilage restoration surgery. The DA Form 199 states:

(1) PTSD onset occurred in 2004 while the Soldier was deployed to Iraq. In accordance with Department of Defense Instruction (DoDI) 133.18, this unfitting condition is compensable because it began during active duty or authorized training. The condition is considered in the line of duty (LOD). Behavioral Health examiner attributes condition to combat stressors. This condition medically disqualifies the Soldier [applicant] from worldwide deployment in a field or austere environment; therefore, the Soldier [applicant] is unfit.

(2) PEB referred as: right knee strain/right knee meniscal tear/right knee ACL tear/right knee joint osteoarthritis/right knee cartilage restoration surgery/right patellofemoral pain syndrome, onset occurred in 2004 while the Soldier [applicant] was deployed to Iraq. (LOD was completed). His condition and physical profile prevent him from performing in his primary military occupational specialty and from wearing a helmet, body armor, and load bearing equipment without worsening condition.

(3) Section IV (Medical Conditions Determined not to be Unfitting): listed Traumatic Brain Injury. It states, in full consideration of DoDI 1332.18, the condition is not unfitting because the Medical Evaluation Board (MEB) indicates the condition meets retention standards; does not indicate that the condition cause profile limitations, and does not indicate that performance issues, if any, is due to the condition.

(4) The PEB made the following findings in Section V (Administrative Determinations):

- The disability disposition is based on disease or injury in the LOD 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 LOD during a period of war.

- The disability did result from a combat-related injury under the provisions of 26 U.S. Code 104 or 10 U.S. Code 10216.

(5) Section VI (Instructions and Advisory Statements) noted that although the applicant's condition(s) have been determined to be combat related under the provisions of 26 U.S. Code 104 or 10 U.S. Code 10216, they may not qualify for Combat Related Special Compensation under the Department of Defense 7000.14-R, Vol 7b, chapter 63.

(6) On 15 July 2019, the applicant concurred with the findings, waived a formal hearing of his case, and did not request reconsideration of his VA ratings.

f. On 13 August 2019, the U.S. Army Physical Disability Agency (USAPDA) issued Order Number D 225-11 placing him on the retired list, effective 17 September 2019 in the rank/grade of MSG/E-8. The following statements reflect YES:

- Disability is based on injury or disease 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: YES
- Disability resulted from a combat related injury as defined by 26 U.S. Code 104: YES

g. DD Form 2860 shows the applicant submitted a claim for CRSC on 18 September 2019, describing his disability as PTSD with TBI, due to an armed conflict.

h. On 2 October 2019, CRSC Branch, HRC, sent the applicant a letter stating they were unable to process his CRSC claim because records show he did not have a VA waiver offsetting his retired pay.

i. On 25 October 2019, the applicant received a letter from VA that they received his VA Form 21-651 (Election of Compensation in Lieu of Retired Pay or Waiver of Retired Pay to Secure Compensation from Department of Veterans Affairs) on 15 October 2019. VA stated there was no indication that he is currently retired from military service and his VA Form 21-526EZ (Application for Disability Compensation and Related Compensation Benefits), received on 13 March 2019, had no indication that he selected to not receive VA compensation. Therefore, no further action would be taken.

j. On 15 November 2019, the applicant submitted a CRSC reconsideration request form, stating he received confirmation of VA receiving his VA Form 21-651.

k. A letter from CRSC Branch, HRC, dated 26 November 2019, shows they were unable to process the applicant's CRSC claim because records show he did not have a VA waiver offsetting his retired pay.

l. On 2 December 2019, the applicant submitted a CRSC reconsideration form and stated he verified, by telephone on 2 December 2019, that his regional VA office had his VA Form 21-651 in his compensation and pension files and stated it was his second time verifying.

m. On 3 December 2019, CRSC Branch, HRC sent the applicant another letter stating they were unable to process his CRSC claim because their records did not show that he had a VA waiver offsetting his retired pay and included a copy of the required waiver for his inconvenience.

n. A VA rating decision, dated 13 January 2020, which shows:

(1) Combat incurred disabilities:

- PTSD with TBI [PTSD – combat/other stressor verification] [Integrated Disability Evaluation System (IDES)/PEB referred], service-connected, incurred-COMBAT, service connected, static disability, 50 percent from 4 March 2019.
- Tinnitus, service connected, incurred-COMBAT, static disability, 10 percent from 25 April 2011

(2) Mild Traumatic Brain Injury, service connected, static disability, 10 percent from 24 March 2015 to 4 March 2019. Original date of denial, 4 October 2011.

o. On 12 February 2020, HRC notified the applicant that CRSC program office completed processing his initial claim, and after carefully reviewing the available documentation, they were unable to award his PTSD with TBI claim. According to program guidelines, he must show a documented direct causal relationship between the disability claimed and a CRSC qualifying event. While his claim contained his PEB proceedings, it did not include military supporting documentation to verify combat exposure or any other VRSC qualifying criteria. They reviewed his medical history in Armed Forces Health Longitudinal Technology Application (AHLTA) and did not find record of an injury received as a result of him being thrown out of his bunk during a rocket attack as he indicated on his PEB. His military records were also reviewed, and they did not find that he was awarded a retroactive CAB for hostile fire and being "blown up on convoys" as indicated on his request form. His medical record did state that he received numerous injuries as a result of playing football and volleyball during his deployment. Physical training injuries do not qualify for compensation. As a result, CRSC office was unable to award the condition(s) requested within his application. It

was noted that although PEB may determine disabilities are combat related under 26 U.S. Code 104 or U.S. Code 10216, his disabilities do not automatically qualify for CRSC (refer to page 2 of DA Form 199). After a thorough review of the documentation that he provided and available military records, they were unable to find any substantiating documentation linking the cause of his condition(s) to the qualifications for CRSC entitlement.

p. On 20 March 2020, the applicant submitted an application to CRSC for another reconsideration.

q. On 17 April 2020, the Chief, Special Compensation Branch, HRC, notified the applicant that after carefully reviewing all available documentation, they were only able to partially approve a portion of his claim. Tinnitus was verified as combat-related due to an instrumentality of war, with a total combined-related disability of 10 percent, effective October 2019. Documentation that he submitted made no mention of a combat-related event in relationship to his PTSD. He was informed that his claim had been previously processed at the initial, reconsideration, and appeal levels, and they considered this determination final. He was informed that if he disagreed with the determination, he had the right to appeal to the Army Review Boards Agency (ARBA).

r. A letter from the Deputy Chief, Soldier Programs and Services Division, HRC, dated 6 July 2020, shows the applicant was notified that asthma does not meet the criteria for CRSC. Their records indicated that he received his final CRSC determination letter 17 April 2020. He was informed that the determination was final; therefore, they could not process his request and if he disagreed with the determination, he had the right to appeal with ARBA.

s. DD Form 215, dated 13 December 2021, shows the applicant was awarded the CAB for the period ending on 23 March 2015.

4. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant seeks eligibility for CRSC for PTSD with TBI. This review will focus on medical evidence involving a possible nexus between the applicant's behavioral health condition and his combat experiences.

b. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant joined the Reserves in September

2002. He was deployed in Kuwait/Iraq 20041228 to 20051204 with MOS 21W20 Carpentry and Masonry Specialist. He was deployed to Kuwait 20140522 to 20140703; Afghanistan 20140703 to 20141210; and to Kuwait 20141210 to 20150209. His MOS was 12H40 Construction Engineer. He was discharged under provisions of AR 635-40 through the IDES process. An Informal PEB convened 11Jul2019 found the applicant unfit to continue to serve due to the following two conditions: PTSD and Right Knee Lateral Femoral Condyle Chondral Defect, Strain, Meniscal Tear, ACL Tear, Osteoarthritis, and Patellofemoral Pain Syndrome, Status Post Cartilage Restoration Surgery. He was discharged with disposition permanent disability retirement and placed on the retired list 17Sep2019. His service was characterized as honorable. Of special importance, in December 2021, he was awarded the Combat Action Badge for satisfactory performance on 26Jul2014 while under hostile fire.

c. Summary of pertinent medical records and related

(1) 11Sep2005 and 05Dec2005 Post Deployment Health Assessments. He endorsed that he had developed 'dizziness, fainting and lightheadedness' during this deployment. The applicant responded 'Yes' to 'During this deployment, did you ever feel like you were in great danger of being killed'? 'Yes' to Did you see anyone wounded, killed or dead during this deployment? And 'No' to 'Were you engaged in direct combat where you discharged your weapon'?

(2) 01Jun2006 Progress Note VAMC. He was seen for low back pain (history of injury while in Iraq) and right knee pain. During the Iraq/Afghanistan Post Deployment Screen completed during the visit, the PTSD Screen and Depression Screen were negative.

(3) 06May2007 Post-Deployment Health Reassessment. The PTSD Screen and Depression Screen were negative.

(4) 15Nov2010 MH Biopsychosocial Assessment/Psychiatry Admission Evaluation Note, VAMC. The applicant reported a history of combat related trauma including IED explosions while on convoys. One IED hit another vehicle in an area through which his truck had just passed, and soldiers were killed. He had guilt from this believing he should have seen the IED. They took incoming mortar—one landed less than 20 feet away. He was startled from the explosion and reported he saw others injured. The dates of these events were not mentioned. He endorsed re-experiencing symptoms to include distressing recollections and nightmares. He endorsed avoidance symptoms to include working hard to avoid thinking and feeling about traumas. He endorsed having symptoms since returning from Iraq in 2005. DSM-IV Diagnosis: PTSD, Chronic due to combat related trauma. Of note, his TBI screen was positive, and he endorsed the following symptoms: Memory problems or lapses; irritability; headaches; and sleep problems. The applicant declined individual therapy. He was

prescribed Temazepam for sleep in December 2010 which he reported taking as needed.

(5) 15Nov2010 TBI Screening Consult VAMC. The applicant reported that the most serious deployment related injury occurred in October 2005. He endorsed experiencing 1 fall, 5 or more blasts, and 5 blunt traumas other than from blast/vehicular injury (e.g., assault, blunt force, sports related or object hitting head). He indicated that he did not have loss of consciousness (LOC) with any events, but he did experience a period of disorientation or confusion immediately following the incident for up to 24 hours afterward. He denied any memory loss immediately before or after the incidents. He denied ever having received any treatment for his deployment related TBI symptoms. Diagnoses: TBI and PTSD.

(6) 15Jul2011 Initial PTSD C&P Exam. The most stressful event occurred at Ramadi: He had been walking around the jersey barrier area and walked into the latrine when mortar came in just on the other side of the barrier and rocked him hard enough to smack him against the walls. He stated that he hunkered down when a second one landed directly behind on top of the latrine. This incident occurred on 06Oct2005. He described another incident on 08Oct2005, in Ramadi: He was sitting on his cot when an RPG came in just outside the building. A second RPG came in shortly thereafter injuring one soldier's foot and peppering a second soldier in the face. He stated that he was close to an explosion several times during deployment, one was about 20 feet away. In addition, an accident occurred on post where a person died due to a heavy vehicle rolling over him. The applicant's overall level of traumatic stress exposure was high. He reported a lack of emotional expression and recent memory problems since his deployment. Other symptoms included hypervigilance, it was hard to relax, he experienced nightmares and flashbacks and was easily irritated. Diagnosis: Chronic PTSD due to experiences during his Iraq service and was related to his fears of hostile military activity. He took Temazepam for sleep intermittently, as needed.

(7) 08Aug2011 Neuropsychological Exam of TBI C&P Exam. The TBI event was recorded as being the result of a mortar hit about 20 feet away, experienced when he was walking from the barracks to the latrine in October 2005. The impact caused him to slam against the walls. A second mortar hit about 100 feet away. He was unsure if there was LOC. He felt shaken and dazed and reported his memory for the events of the following few days was very vague and sketchy. His ears were ringing. He did not report the incident at the time, and he was never checked out—he went to work the following day. The examiner indicated that per their review of records, they did not find mention of TBI or headaches related to TBI in his service treatment records. PCL-M score 58 was suggestive of a PTSD diagnosis. PHQ-9 score 11 was suggestive of moderate depressive symptoms. MoCA score was 26/30 (normal cognitive screen). Diagnosis: No diagnosis could be made due to questionable validity of certain

neuropsych test scores. The examiner did note a positive Romberg during physical exam, but no other neurologic testing was confirmatory of neurological deficit.

(8) 09Aug2011 (Initial) TBI C&P Exam. The reported event was in October 2005 while in Ramadi he was exposed to mortar 20 meters away. There was no LOC. There was less than 12 hours of altered sensorium. There was no visit to the medic and no imaging. Current TBI symptoms included decreased memory, sleep disturbance, headaches, and photosensitivity, episodic balance issues (lasting seconds) and tinnitus. MoCA score was 27/30 (normal cognitive screen). PTSD symptoms: Hypervigilance and bad memories. The examiner opined that the claimed TBI was less likely than not (less than 50% probability) incurred in or caused by the claimed in-service injury, event, or illness due to the following: Lack of documentation of injury or evaluation in service treatment records; lack of notation of current complaints (headache, vertigo and memory loss) in post deployment survey; lack of apparent disability during deployment; lack of continuity of care for reported symptoms until several years following the reported incident; and evidence of lack of best effort during neuropsych testing. Largely as a result of this opine and neuropsych test results, service connection for TBI was initially denied in 2011 (04Oct2011 VA Rating Decision).

(9) 09Apr2014 Pre-Deployment Health Assessment. The applicant endorsed trouble hearing and noises in his head (e.g. ringing). He denied concerns about head injury and mental health concerns. PTSD screening and Depression screening were negative.

(10) 24May2014 TMDS USMHK-ER (Arifjan Kuwait). The applicant presented with complaints of left side facial laceration in the cheek bone area and left jaw pain, secondary to running into another player while playing football about 20 minutes prior. There was no LOC.

(11) 1Feb2015 SRP Deployment Clinic. Post-deployment Health Assessment (DD Form 2796). The applicant responded 'Yes' to 'Did you ever feel like you were in great danger of being killed'? List of pertinent symptoms endorsed as 'Bothered a Little' on Deployer Questions 11a. through 11ee: 'Feeling tired or having low energy', 'trouble sleeping', 'trouble concentrating on things (such as reading a newspaper or watching television)', 'memory problems', 'balance problems', 'trouble hearing', 'sensitivity to bright light', and 'hard to make up your mind or make decisions'. Provider Comments: "SM had two significant injuries, May 24th 2014 had a concussion with laceration of the left cheek bone, with shifting of his teeth. Also injured the neck and upper back". He was referred to TBI Clinic. PTSD Screening and Depression Screening were negative.

(12) 17Feb2015 Western Region Initial TBI Screening. The applicant responded to the question 'Do you have injuries from any of the following events during your most recent deployments'? Fragment-No; bullets-No; vehicular (MVA)-No; blast-No; fall-No;

and blow to the head-YES. He endorsed the following right after the injury: Headache, dizziness, memory problems, balance problems, ringing in ears, and sleep problems. The incident reported in the screening visit was that he was playing football when he collided with another player resulting in a concussion/mild TBI.

(13) 18Feb2015 Patient Health Questionnaire Fort Bliss. For the question 'how often over the prior 2 weeks was he bothered with the following?', he denied 'little interest or pleasure in doing things'; 'feeling down, depressed, or hopeless'; 'poor appetite or overeating'; 'feeling bad about yourself'; 'moving or speaking slowly'; and 'thoughts of being better off dead'. He endorsed being bothered several days with 'trouble falling asleep'; 'feeling tired or having little energy'; and 'trouble concentrating on things'. Because of his symptoms, he found it 'somewhat difficult' to do his work, take care of things at home or get along with other people. For questions specifically designed to discern the presence of PTSD (PCL), he answered that he was experiencing 'a little bit' in the prior month: 'Repeated, disturbing memories thoughts or images of a stressful event from the past'; 'repeated, disturbing dreams of a stressful event from the past'; 'feeling very upset when something reminded you of a stressful experience from the past or avoid having feelings related to it'; 'trouble falling or staying asleep'; 'having difficulty concentrating'; 'being "super alert" or watchful on guard'; and 'feeling jumpy or easily startled'. He endorsed that because of his symptoms, he found it 'somewhat difficult' to do his work, take care of things at home or get along with other people. The screen for anxiety (GAD-7) revealed in the past 2 weeks he endorsed trouble relaxing; being so restless that it was hard to sit still; and becoming easily annoyed or irritable. It should be noted that although the applicant did not seek BH services during this deployment, he did report characteristic PTSD symptoms during the post deployment questionnaire, which is evidence that is suggestive of having been exposed to significant combat stressors and the clinical significance should not be eclipsed by the non-combat TBI incident that was documented in medical records during this deployment.

(14) 18Feb2015 SFMC-TBI Clinic Fort Bliss. Visit for exam for special screening for TBI (New). The applicant was playing football and he collided with another player. He cut his left upper cheek on the other player's glasses. The hit caused him to fall. There may have been a brief LOC. He felt dazed and confused. He was checked out by the medic and then she was taken to the ER. After the concussion he noted that he was having balance issues, dizziness, worsening of headaches, and some sleep problems. He also reported some short term memory difficulties. Of note, Romberg's sign was present manifested by mild swaying with his eyes closed. Diagnosis: Concussion with No Loss of Consciousness and History of TBI.

(15) 07Jun2015 Post Deployment Health Re-Assessment. The applicant answered 'Yes' to 'During your deployment, did you ever feel like you were in great danger of being killed?' He was 'bothered a little' by the following: 'Feeling tired or

having low energy'; 'trouble sleeping'; 'trouble concentrating on things'; and 'hard to make up your mind or make decisions'. He was 'bothered a lot' by the following: Memory problems, tinnitus and sensitivity to bright light. PTSD Screening and Depression Screenings were negative.

(16) 19Apr2016 and 19Apr2017 Deployment Mental Health Assessments. In the PAST YEAR 'did you receive care for any mental health condition or concern such as, but not limited to post traumatic stress disorder (PTSD), depression, anxiety disorder, alcohol abuse or substance abuse?' Answer: 'No'. 'Have you ever had any experience that was so frightening, horrible, or upsetting that, in the PAST MONTH, you': 'Have had nightmares about it or thought about it when you did not want to?' Answer: 'No'. 'Tried hard not to think about it or went out of your way to avoid situations that reminded you of it?' Answer: 'No'. 'Were constantly on guard, watchful or easily startled?' Answer: 'No'. 'Felt numb or detached from others, activities, or your surroundings?' Answer: 'No'. PTSD Screening and Depression Screening were both negative.

(17) 03Jun2016 Initial TBI DBQ. October 2005, he was assigned to the 983rd Engineering Battalion, Alpha Company and he was in a latrine and one mortar landed 20 feet away and then another hit 100 feet away. He hit his head on the top of the latrine. There was no LOC; however, the VA BH examiner endorsed TBI was sustained from this October 2005 event because the applicant was dazed, dizzy, disoriented, and confused at the time of the injury. The VA BH examiner opined there were no enduring residuals, as mTBI symptoms, according to DSM-V and TBI studies, all remit within a few weeks, if not sooner. The VA BH examiner also endorsed the applicant sustained a TBI in 2014, when he was playing football in Kuwait. In the 16Jun2016 Addendum, the same examiner opined that based upon a reasonable degree of medical and psychiatric probability, the Veteran's current traumatic brain residuals were at least as likely as not, related to the TBI injury in service on 24May2014. They also noted that the applicant had PTSD and that the symptoms of the TBI and PTSD conditions were intermingled. Therefore, it was impossible to separate them without resulting to mere speculation.

(18) 05Apr2019 Mental Disorders DBQ. "SM denied experiencing any traumatic events during his 2014-2015 deployment other than sustaining a head injury while playing football. However, he reports that since this deployment his unit has had 3 soldiers die." One committed suicide, a second died from accidental overdose, and the third died when his head was crushed between 2 vehicles while on duty and the applicant was part of the cleanup crew. With regard to his current symptoms, he thinks about his 2005 deployment and the soldier whose head was crushed. He has nightmares about these events and tries very hard not to think about them. He also reported anxiety, problems sleeping and problems with memory. DSM-5 Diagnosis: PTSD. The examiner opined the applicant's sleep issues were due to his PTSD. They deferred to the TBI examiner for the origin of his memory issues. The applicant denied being involved in treatment for his condition.

(19) 26Apr2019 Review TBI DBQ. Two TBI events were referenced: The 2005 (October) mortar incident and the 2014 (May) incident while playing football in Kuwait. The applicant endorsed that prior to the second TBI, his level of functioning had returned to his premorbid level of functioning with no residual cognitive symptoms. In the current TBI evaluation of cognitive functioning, "his performance across several validity measures indicate that scores were unlikely to be an accurate representation of his current level of cognitive functioning, particularly on memory tasks due to issues with effort or motivation in this evaluation"...."There were problems with validity noted in the 2011 evaluation as well". In addition to the cognitive complaints, the applicant reported headaches and light sensitivity.

(20) 11Jul2019 Informal PEB. The Informal PEB found that the PTSD condition had onset in 2004 while deployed in Iraq. They indicated that the BH examiner attributed the condition to combat stressors. They indicated that the applicant had reported that mortar came in just on the other side of the barrier and rocked him hard enough to smack him against the walls. And finally, the Informal PEB indicated that combat codes V1 (incurred in the line of duty as a direct result of armed conflict) and V3 (injury or illness attributable to the special dangers associated with armed conflict) were warranted.

(21) 16Mar2021 3Rivers Wellness note. A doctorate level counseling psychologist affirmed the applicant's PTSD diagnosis with ongoing symptoms. The BH specialist documented the applicant endorsed symptoms included intrusive thoughts, nightmares and flashbacks related to his service in Iraq and Afghanistan as well as emotional and physical hyperarousal related to these experiences. They opined his current PTSD diagnosis was as likely as not incurred in or caused by in-service stressors encountered during deployments to Iraq and Afghanistan.

d. The applicant was service connected by the VA for PTSD at 30% effective 25April2011. The applicant was ultimately service connected for TBI at 10% effective 24Mar2015. The VA TBI examiner indicated there was no reason to suspect that current cognitive complaints were residual post-concussive cognitive changes and that these symptoms may be impacted by psychiatric symptoms, sleep disturbance, and/or magnification of symptoms. As a result, the TBI was subsumed into the PTSD evaluation and PTSD with TBI was rated at 50% effective 04Mar2019.

e. Summary of evidence in medical records

(1) The applicant was diagnosed with PTSD due to combat experiences from deployments in 2004/2005 and 2014/2015. He endorsed mental health symptoms largely during deployment related surveys, C&P exams/DBQ exams or other such evaluation (3Rivers Wellness Note). There were relatively few treatment visits for his

PTSD condition. There were no active duty (to include in-theatre) service treatment notes for a mental health condition to include PTSD.

(2) The applicant was also diagnosed with TBI from combat related events during deployments in 2004/2005 and 2014/2015; as well as a non-combat related TBI incident in May 2014. There were no contemporaneous service treatment notes for the October 2005 IED mediated TBI incidents or for the 26Jul2014 incident(s) for which the applicant received the CAB award.

(3) There was medical documentation in service treatment records while the applicant was in theatre for the 24May2014 TBI sustained while playing football. There were other in-theatre service treatment records for both deployment time frames in 2004/2005 and 2014/2015; however, the in-theatre service treatment records available for review did not specifically involve treatment for his combat incurred PTSD condition or other mental health condition or combat incurred/combat related TBI incidents.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board found sufficient evidence to support a conclusion that the applicant's PTSD resulted from his exposure to multiple combat events. Based on a preponderance of the evidence, the Board determined the applicant's record should be corrected to show his CRSC claim for PTSD was approved.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing his claim for CRSC based on his PTSD diagnosis was approved.

3/6/2025

X [REDACTED]

CHAIRPERSON
[REDACTED]

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. CRSC, as established by Title 10, U.S. Code, 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. Military retirees who are approved for CRSC must have waived a portion of their military retired pay since CRSC consists of the Military Department returning a portion of the waived retired pay to the military retiree. CRSC benefits are equal to the amount of VA disability compensation offset from retired pay based on those disabilities determined to be combat related. Title 31, USC, section 3702(b), states CRSC is subject to a 6-year statute of limitations. CRSC applicants are entitled to submit up to three appeals before a final determination is granted.

2. Title 10, U.S. Code, 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. Army Regulation 635-40 (Physical 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/her 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. Paragraph 3-2 states 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. Paragraph 3-4 states 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. Paragraph 4-24b (1) states based upon the final decision of USAPDA, USA HRC will issue retirement orders for permanent retirement for physical disability.

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

//NOTHING FOLLOWS//