

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230005713

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command (HRC) denial of Combat Related Special Compensation (CRSC) and 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 Number BG-244-0042 and BG-244-0042(N), 1 September 2011
- Behavioral Health medical documents, May - June 2013
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 26 June 2018
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), convened on 22 October 2020
- Orders Number D309-15, 4 November 2020
- HRC CRSC letter, 1 March 2021
- Department of Veterans Affairs (VA) eBenefits extract, 4 March 2022
- VA rating decision, 15 September 2022
- VA service-connected disability certification letter, 21 September 2022
- Master Sergeant L\_ F\_ statement, 23 January 2023
- CRSC Reconsideration Request Form, 26 January 2023
- HRC CRSC letter, 24 April 2023
- Email communications, 24, 25 April and 3 May 2023
- Company commander's statement, 3 May 2023

FACTS:

1. The applicant states, in pertinent part:

a. He applied to the HRC CRSC office during his medical evaluation board (MEB)/PEB in 2018. His Army Wounded Warrior (AW2) Program advocate did not explain the process and put together the application and sent it off. He was denied CRSC twice for not having evidence that would support his claim.

b. The first time he submitted a request they forgot to add in the Army ratings with the disabilities. When he finally received them, he sought reconsideration through his retirement orders, and the Army collaboration and because the Army removed him from the Temporary Disability Retired List (TDRL) to the Permanent Disability Retired List (PDRL). It was denied because the CRSC office wanted to know the actual incident. Mr. S\_ wanted a letter from his command explaining the incident to award CRSC. This last one was due to him submitting a letter from his platoon sergeant. The CRSC office explained that this was the last time and he had exhausted his attempts. Mr. S\_ stated, the CRSC office would only accept letters from the commander or first sergeant (1SG) who were there at the time the incident occurred. He did not know how to find them. His last option was the Veterans Affairs Administration. They were able to contact his commander and he provided him with a statement supporting his claims. Once his commander got involved the CRSC office said he could no longer apply through them, because it was his last attempt and he needed to send it to the Army Review Boards Agency (ARBA) to accept it now.

2. A review of the applicant's official records show the following:

a. He enlisted in the Regular Army on 15 February 2011 and reenlisted on 2 October 2015.

b. On 24 January 2018, a Formal PEB found the applicant physically unfit and recommended a rating of 70 percent for Post-Traumatic Stress Disorder (PTSD) and major depressive disorder, and his disposition be placed on the TDRL with a re-examination during October 2018. He did not concur and submitted a written appeal.

c. On 26 June 2018, DD Form 214 shows he was retired by reason of "disability, temporary (enhanced)." He completed 7 years, 4 months, and 12 days of net active service. In pertinent part, item 18 (Remarks) shows he served in Afghanistan from 27 September 2011 to 2 September 2012.

d. On 1 February 2019, the CRSC program office completed processing his initial claim. After carefully reviewing the available documentation, the HRC CRSC office denied the applicant's CRSC claim for PTSD with Major Depressive Disorder (9411), Shin Splints, Right Lower Extremity (5262), Shin Splints, Left Lower Extremity (5262), Cervical Strain (5237), Thoracolumbar Strain (5237), Gastroesophageal Reflux Disease with Irritable Bowel Syndrome (7319), and Tinnitus (6260). The CRSC office noted that, 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 any supporting documentation to verify combat exposure or any other CRSC qualifying criteria.

e. On 22 October 2020, an Informal PEB found the applicant physically unfit and recommended a rating of 100 percent for unspecified schizophrenia disorder and other psychotic disorder with other specified trauma disorder, and his disposition be permanent disability retirement. He concurred and waived a formal hearing of his case.

f. On 1 March 2021, the CRSC program office completed processing the applicant's reconsideration claim and awarded him CRSC for tinnitus rated at 10 percent, effective July 2018. He was denied CRSC for the other claims. The CRSC office noted that, no new evidence was provided to show a combat-related event caused his conditions. He provided no details on how his injury occurred as a result of a combat-related event and he was not awarded the Combat Action Badge.

g. On 24 April 2023, the CRSC program office completed processing the applicant's reconsideration claim and was unable to overturn the previous adjudication(s). The documentation he submitted still showed no new evidence to link his requested conditions to a combat-related event. This disapproval was considered final. If he chose to appeal this decision, he was directed to submit a Notice of Disagreement to ARBA.

h. On 30 May 2023, the applicant submitted a reconsideration claim to the CRSC office.

i. On 2 October 2023, the CRSC program office completed processing the applicant's reconsideration claim and approved his claim in accordance with current program guidance for gastroesophageal reflux disease with irritable bowel syndrome and history of H. Pylori gastritis rated at 30 percent and Tinnitus 10 percent (previously awarded). The applicant was denied CRSC for the following conditions:

- unspecified schizophrenia spectrum and other psychotic disorder with other specific trauma disorder – Final Disapproval; no evidence provided to show combat-related event
- mixed type headaches – No medical documentation in claim that establishes a definite causal relationship between a combat related event and the resulting disability
- thoracolumbar strain – Final Disapproval; no new evidence provided to show combat-related event caused condition
- cervical strain – Final Disapproval; no new evidence provided to show combat-related event caused condition
- shin splints right and left lower extremity – Final Disapproval; no new evidence provided to show combat-related event caused condition

j. The CRSC office noted in their 2 October 2023 letter to the applicant, to award mental health conditions, he must provide their office with official military documentation that establishes a direct causal relationship between a qualifying combat-related event

and his disability. Some examples of documentation are, but not limited to, Award Recommendations (DA Forms 638), combat badges, and award certificates; Evaluation Reports; or wartime chain of command statements corroborating exposure to armed conflict. Wartime chain of command must be 1SG and/or Company Commander or higher.

3. In support of his case the applicant provides:

a. Orders Number BG-244-0042 and BG-244-0042(N) dated 1 September 2011, which show he was deployed in support of Operation Enduring Freedom on or about 15 September 2011, not to exceed 365 days.

b. Behavioral Health medical documents dated May through June 2013, showing he was admitted, diagnosed, and treated for PTSD and depression.

c. Orders Number D309-15 dated 4 November 2020, published by the U.S. Army Physical Disability Agency, which removed the applicant from the TDRL because of permanent physical disability, effective 4 November 2020. The orders show a disability percentage of 100 percent.

d. Department of Veterans Affairs (VA) eBenefits extract dated 4 March 2022, which shows his service-connected disabilities and a total combined disability rating of 100 percent.

e. VA rating decision dated 15 September 2022, which shows he is service connected for the following conditions:

- Unspecified schizophrenia spectrum and other psychotic disorder with other specific trauma disorder rated at 100 percent
- Gastroesophageal reflux disease with irritable bowel syndrome and history of H. Pylori gastritis; 30 percent
- Thoracolumbar strain; 10 percent
- Cervical strain; 10 percent
- Shin splints right lower extremity; 10 percent
- Shin splints left lower extremity; 10 percent
- Tinnitus; 10 percent
- Mixed type headaches; 0 percent

f. VA service-connected disability certification letter dated 21 September 2022, which shows his gross benefit amount and combined evaluation of 100 percent, effective 1 December 2021.

g. A statement from MSG L\_ F\_ dated 23 January 2023, states, a mortar was fired, directly hitting the living area breaking windows, and damaging the living area where the applicant was staying along with another First Lieutenant S\_. Soldier's including the applicant were ordered to take cover and put on all combative gear. The applicant crying at the time was next to him, frightened, and scared. He was then ordered by the command to continue to the bomb trenches, Staff Sergeant H\_ D\_ had to grab the applicant, while in a state of shock, and confusion of what just happened, as he saw the applicant was not in the right state of mind to comply with the order.

h. CRSC Reconsideration Request Form dated 26 January 2023, showing he requested reconsideration of his CRSC claims.

i. Email communications dated 24, 25 April and 3 May 2023, which shows the applicant and HRC CRSC officials discussing the commander and 1SG letters that he was attempting to submit to the CRSC office. The applicant was advised to submit the letters with his application to ARBA.

j. A statement from his commander dated 3 May 2023, wherein, the commander states, in part:

(1) During the time in Afghanistan, his unit was consistently in the targetable range of indirect fire from Rockets, Mortars, and other rocket propelled explosive charged devices. This event happened in late July or early August of 2012; around 1900-2100, Bagram Airfield was getting hit with indirect fire attacks from Mortars and other Rocket and Artillery weapons.

(2) "I was talking on the phone in my room (in our connex row barracks) around 2030 or so when an indirect fire round hit our row of buildings. I quickly got off the internet phone with my wife and ran to check out the condition of my troops – it was then that I was notified that my Executive Officer (XO) and several Soldiers/ troopers were directly affected by the blast or in the blast area; Specialist (SPC) H\_ [applicant] was one of my Soldiers that was directly affected by the immediate blast area. Many of my Company Troopers lived on/in the adjacent or connecting rooms next to mine (on the opposite side of the row of buildings). SPC H\_'s [applicant's] room was on that side and the low row. As the XO 1LT S\_ and SPC H\_ [applicant] were exiting their rooms, the rocket artillery landed less than 15 feet from his door and at the base of the stairs, he had just opened his door (on the way to the latrine) from left to right, as the rocket artillery landed and exploded in front of him. Had it not been for the direction that the door was built on the frame of the room, the blast would have killed him. Instead, the blast knocked him 20-25 feet back into his room – the door took most of the impact – it is what propelled him back in the room due to the force of the blast. This is also the case for the stairs, his proximity and location on the stairs likely saved his life or prevented serious injury from the blast."

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was not warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.
3. The Board determined the evidence of record did not include any official military documentation establishing a direct causal relationship between a qualifying combat-related event and his disability.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

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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. Department of Defense Financial Management Regulation, Volume 7B:

a. Section 630301 states a member may not be paid CRSC unless they have applied for and elected to receive compensation under the CRSC program by filing an application on DD Form 2860 (Claim for CRSC), with the Military Department from which they retired. A member may apply for CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid for any month after May 2003 for which all conditions of eligibility were met.

b. 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

c. 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.

## d. 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.

(c) Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against their will in custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

(2) While Engaged in Hazardous Service. Hazardous service is service that includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of such hazardous service requires that the injury or disease be the direct result of actions taken in the performance of such service. Travel to and from such service, or actions incidental to a normal duty status not considered hazardous, are not included.

(3) 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.

(4) 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.

2. 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 Army Board for Correction of Military Records (ABCMR). In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//