

IN THE CASE OF: ██████████

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230005878

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command (HRC) denial of his Combat Related Special Compensation (CRSC) claim to add injuries to his right ankle and shoulder and left shoulder and a personal appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Reconsideration request to the U.S. Army Human Resources Command (HRC), 22 August 2022
- HRC denial letter
- CRSC reference guide
- Reconsideration request to HRC, 19 November 2022
- HRC letter, 15 February 2023

FACTS:

1. The applicant states:

a. He believes the CRSC program manager incorrectly denied his request for CRSC compensation for these injuries. He feels the medical records, documents and chain of command statements he provided to the CRSC Program Manager corroborate that injuries to his right ankle, left shoulder and right shoulder were the result of a combat related event.

b. He has attached a copy of his CRSC reconsideration packet, dated 22 August 2022, with sixteen exhibits (exhibit 2) that was sent to the CRSC program manager. This reconsideration packet contained medical records, doctor notes, chain of command statements and other records that outlined why the above injuries should be considered and categorized as combat related. He has also attached the CRSC response to the reconsideration packet along with the Army CRSC reference guide attached to the CRSC response (exhibits 3 and 4).

c. He has also attached a copy of his CRSC reconsideration packet, dated 19 November 2022, he forwarded to CRSC regarding their above CRSC response (exhibit 5). Additionally, he has attached the CRSC response, dated 15 February 2023, containing their final disapproval for the above injuries along with the Army CRSC reference guide they provided in their response (exhibits 6 and 7).

d. He injured his right ankle during armed combat operations during Desert Storm. During the evening of the ground offensive, the unit he was with encountered armed Iraq forces. After exiting his vehicle to engage the enemy forces, he ran toward a dug-out berm/hole, which resembled a large foxhole for cover. At the time, he along with other Soldiers were receiving enemy fire and returning fire. While running he was wearing full combat gear with weapons and ammunition and heard and felt a snap and his ankle collapsed under him as he jumped and landed into the hole during the armed skirmish. Again, this occurred during the exchange of live gun fire between himself, other Soldiers and the Iraqi forces during the allied ground offensive. Due to this ground offensive, he did not have the luxury of being able to stop to have his ankle looked at and treated by medical personnel immediately as they were traveling with the 3rd Armored Division clearing bunkers and capturing enemy forces. He was able to obtain a notarized letter from First Sergeant (1SG) [REDACTED] (Retired), who witnessed the combat-related injury event. His telephone number is included in his statement. He was later treated at the 912th Mobile Army Surgical Hospital (MASH) unit for the injury as described by 1SG [REDACTED] as he thought maybe he had cracked a bone in his ankle from the event as his ankle would continually swell. He attached the medical records from the 912th MASH unit which described the ankle injury as he described it to the treating physician. He told the treating physician he hurt his ankle while running and jumping into a berm hole during the evening hours of the ground offensive and his ankle maintained its swollenness. He also attached a copy of his demobilization/redeployment medical evaluation which listed that he had an ankle injury during his deployment to the Gulf War. He also attached a copy of the Bronze Star Medal he was awarded during the Gulf War to the CRSC Program Manager. These documents are attached in exhibit 2 of this application. He feels these documents corroborate that his ankle injury was combat related under the CRSC program guidance.

e. He injured his left shoulder during armed combat operations during his service in Operation Enduring Freedom (Afghanistan). The injury to his left shoulder was due to loading cases of ammunition and explosives on a chinook helicopter while performing armed combat operations in the Tora Bora Mountains and under direct sniper fire. He attached a letter from Sergeant First Class (SFC) (Retired) [REDACTED] who was the unit 1SG during the deployment. His phone number is included with his statement. During this armed combat mission, a contingent of Taliban was spotted and they started receiving sniper fire from them. He had to immediately load cases of explosives and ammunition while engaging the enemy sniper. SFC [REDACTED] was with him and witnessed the injury he sustained to his left shoulder. He also attached a letter from Chief Warrant Officer Four

(CW4) (Retired) ██████ who was assigned to his higher headquarters at the 3rd Military Police Group while he was deployed to Afghanistan. CW4 ██████ can attest to the situational report that he sent to his higher headquarters advising them that he had injured his shoulder during a combat mission in the Tora Bora Mountains. His telephone number is included in his statement. He also attached a letter from CW4 ██████ (Retired), who was also a commander of a Criminal Investigation Division unit deployed to Afghanistan. CW4 ██████ can attest to the fact that he reported to him the injury to his shoulder. His number is included in his statement. He also attached copies of his redeployment medical records from Womack Army Medical Center regarding the injury to his shoulder. He also attached a copy of his Officer Evaluation Report (OER) he received during his deployment to Afghanistan, which outlines the numerous combat missions that he participated in while deployed to Afghanistan. He also attached a copy of the Bronze Star he was awarded for his deployment to Afghanistan. All of these documents and medical records were provided to the CRSC program manager attached in exhibit 2 of this application. He feels the statements from SFC ██████ CW4 ██████ and CW4 ██████ along with the medical records, OER and Bronze Star Award corroborate that his shoulder injury was the result of a combat related event.

f. The injury to his right shoulder is a secondary condition related to the above armed combat operations for the left shoulder. He attached a copy of a doctor's statement in support of this condition along with the Veterans Affairs rating decision, 17 March 2006 to the CRSC program manager which are attached in exhibit 2 of this application.

2. A review of the applicant's official record shows the following:

a. Having had prior Regular Army enlisted service, on 1 December 1987, Orders Number 229-70-A-59 issued by the U.S. Army Chemical and Military Police Centers and Fort McClellan, ordered the applicant to active duty in the rank of warrant officer one, for a period of five years.

b. On 3 December 1987, the applicant was honorably discharged from active duty by reason of being ordered to active duty a warrant officer of the Army.

c. On 4 December 1987, DA Form 71 (Oath of Office Military Personnel) shows the applicant was appointed as a Reserve warrant officer and executed an oath of office.

d. On 30 November 2003, the applicant was honorably retired from active duty and transferred to the U.S. Army Control Group (Retired Reserve). DD Form 214 (Certificate of Release or Discharge from Active Duty), item 18 (Remarks) shows the applicant served in Southwest Asia from 21 November 1990 to 1 June 1991 and Afghanistan in support of Operation Enduring Freedom from 26 December 2001 through 31 May 2002.

e. On 4 November 2004, the applicant was informed by HRC that his claim under CRSC II guidance for Post-Traumatic Stress Disorder (PTSD) was approved. However, the following conditions were not approved:

- Nasal Swelling
- Asthma
- Degenerative Arthritis
- Tinnitus

f. On 17 January 2005, the applicant was informed by HRC that his claim under CRSC for the following conditions were not approved due to not being combat related:

- Nasal Swelling
- Asthma
- Degenerative Arthritis
- Tinnitus

g. On 20 July 2005, the applicant was informed by HRC that his claim under CRSC for the following conditions were not approved due to not being combat related:

- Nasal Swelling
- Asthma
- Degenerative Arthritis
- Tinnitus
- Degenerative Arthritis of the Spine

h. In ABCMR Docket Number AR20050003651, the applicant petitioned the Board to have all of his Veterans Affairs rated disabilities approved for CRSC. On 26 October 2005, the Board denied the applicant's request.

i. On 15 November 2005, the applicant was informed by HRC that his claim under CRSC for the following conditions were not approved due to not being combat related:

- Nasal Swelling
- Asthma
- Degenerative Arthritis
- Tinnitus
- Degenerative Arthritis of the Spine

j. On 2 June 2006, the applicant was informed by HRC that his claim for CRSC for PTSD was approved and increased to 70 percent. However, the following conditions were not approved:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

k. On 18 April 2019, the applicant was informed by HRC that his claim under CRSC for the following conditions were not approved due to not being combat related:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

l. On 6 April 2022, the applicant was informed by HRC that his claim under CRSC for the following conditions were approved:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The following conditions were denied:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

m. On 25 October 2022, the applicant was informed by HRC that his claim under CRSC for the following conditions were approved:

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

The following conditions were denied:

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

n. On 15 February 2023, the applicant was informed by HRC that his claim under CRSC for the following conditions were approved:

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

The following conditions were denied:

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

o. On 26 July 20232, the applicant was informed by HRC that his claim under CRSC for the following conditions were approved:

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

The following conditions were denied:

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

3. The applicant provides:

a. Reconsideration request to HRC, dated 22 August 2022, wherein he requests reconsideration of his CRSC claim to add his injured right knee, right shoulder and left shoulder as combat related injuries. In his reconsideration he reiterates his provision of doctors notes, chain of command statements and letters from 1SG S-. The entire application is available for the Board's review in the supporting documents.

b. CRSC reference guide which provided the guidance with documents to be submitted and what is considered an instrumentality of war/armed conflict.

c. Reconsideration request to HRC, dated 19 November 2022, wherein the applicant provides to HRC a reconsideration request for his denial to add his right ankle injury, right shoulder, and left shoulder injury. If HRC's decision was final, he requested the necessary information to appeal the decision to the Board.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the applicant has not demonstrated by a preponderance of the evidence that the HRC CRSC office erred in denying CRSC for conditions affecting his right ankle and shoulder and left shoulder. The Board found no evidence of a combat-related event, as defined in the governing Department of Defense regulation, related to the claimed conditions. The Board determined there was no error or injustice in the CRSC eligibility determination made in the applicant's case.

**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.

4/24/2024

X 

---

CHAIRPERSON  


I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

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

a. Section 630301 states, a member may not be paid CRSC unless he or she has 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 he or she retired. A member may submit an application 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.

(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.

2. Title 38, United States Code, sections 1110 and 1131, permit the Veterans Affairs (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.

3. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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//