

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230006698

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command (HRC) denial of her Combat Related Special Compensation (CRSC) claim for Schizoaffective Disorder.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel statement
- Enclosure 3:
 - Orders Number D 110-12
 - Memorandum, Subject: Permanent Physical Disability Retirement
- Enclosure 4; Memorandum, Subject: Army Combat Related Special Compensation Decision Letter, 20 January 2023
- Enclosure 5; Department of Veterans Affairs Letter, 18 December 2017
- Enclosure 6; DA Form 3947 (Medical Evaluation Board (MEB) Proceedings)
- Enclosure 7; Severe Psychiatric Illness in the Military Healthcare System

FACTS:

1. The applicant states through counsel, in pertinent part:

a. The Department of the Army previously denied the applicant's claim for CRSC payments under claim number 7810. The Army concluded "we did not find documentation which confirms your personal exposure to armed conflict." (See, CRSC Decision Letter, Enclosure 3). The Army further noted that "medical documentation must be from the time the injury occurred and must clearly show a combat related event." The applicant respectfully contends that her b. Armed Conflict: The fact that a Soldier may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations, is not sufficient to support a finding that the disability resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

b. was caused by armed conflict and granting her CRSC entitlement for this condition is proper and in accordance with Department of Defense 7000.14-R, Volume 7B, Chapter 63 section 6.1.1. While she did not have an official diagnosis of schizoaffective disorder immediately after her deployment, she began to exhibit symptoms of schizoaffective disorder and was misdiagnosed.

c. The applicant deployed to Iraq in 2008 and began to exhibit symptoms consistent with the beginning stages of schizoaffective disorder after she was subjected to numerous traumatic events during her deployment. She was lowered into dark tunnels to pursue escaped prisoners, was required to examine the remains of the dead in order to determine a cause of death and observed prisoners who had been mutilated. She began to seek out mental health counseling following her return from Iraq. A review of her medical records indicates that she was experiencing symptoms of stress, anxiety and sleeplessness, and was initially diagnosed with adjustment disorder.

d. The applicant's mental health continued to deteriorate over the course of the next several years as she began to experience paranoia, depression, auditory hallucinations, concentration and memory issues, and social withdrawal. (See, Psychiatrist Summary, Enclosure 5). Her psychiatrist has indicated that the aforementioned symptoms initially and wrongfully attributed to adjustment disorder were actually the beginning symptoms of schizoaffective disorder.

e. The applicant has no family history of schizoaffective disorder, drug abuse, or any other underlying medical condition or circumstances that would have predisposed her to developing schizoaffective disorder. Her medical provider has stated the following with respect to her medical condition "This previously high functioning Veteran suffers from schizoaffective disorder, depressive type that began after she returned from a tour of duty in Iraq in 2008. The early symptoms were relatively mild, and she was diagnosed with Chronic Adjustment Disorder. However, in keeping with the nature of schizoaffective disorder, it progressed in severity until her mood got worse and she began to exhibit psychotic symptomatology and decline in functioning and self-care. The evidence used in coming to this opinion is the proximity of onset of her symptoms to her deployment to Iraq and the lack of any pre-morbid (pre-existing prior to military service) or family (genetic) psychiatric illness. She endured significant horrific and fearful incidents during her tour of duty in Iraq which I believe played a significant role in the causation of her illness. There is no history of drug abuse and no other information available that would change my opinion."

f. On 17 February 2022, a MEB determined that the applicant's schizoaffective disorder failed medical retention standards and recommended referral to the Physical Evaluation Board ("PEB"). (See, DA Form 3947, Enclosure 6). Upon receiving her case packet, the PEB concluded that she was unfit for further military service and ultimately placed her on the Permanent Disability Retired List (PDRL) with a 100 percent disability

rating for her schizoaffective disorder. (See, Enclosure 3). The retirement orders that were issued to her indicate that her schizoaffective disorder was the direct result of armed conflict.

g. On 20 January 2023, the applicant's application for CRSC benefits under claim number 7810 was denied stating there was no "documentation which confirms your personal exposure to armed conflict. Medical documentation must be from the time the injury occurred and must clearly show a combat related event." (See, Enclosure 4).

h. The applicant has proven that her schizoaffective disorder was a result of direct armed conflict by preponderance of the evidence. Her previous decision was denied because the Army continued to misconstrue the evidentiary burden imposed on her and instead imposed a much higher standard other than a preponderance of the evidence. She has shown that her exposure to events in Iraq are the definite causal relationship to her schizoaffective disorder because she was initially misdiagnosed with adjustment disorder which was later corrected to schizoaffective disorder- as soon as she returned from Operation Iraqi Freedom after completing the aforementioned duties. Therefore, she is entitled to CRSC entitlements.

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

a. On 14 December 2001, the applicant was appointed as a Reserve commissioned officer and executed an oath of office in area of concentration 35D (All Source Intelligence Officer).

b. On 15 May 2007, Orders Number 07-135-00184 issued by the 88th Regional Readiness Command, ordered the applicant to active duty in support of Operation Iraqi Freedom for a period of 400 days.

c. On 15 June 2008, the applicant was honorably released from active duty by reason of completion of required active service and returned to her U.S. Army Reserve unit. Item 18 (Remarks) shows service in Kuwait/Iraq from 31 August 2007 through 24 May 2008. She completed 11 months and 28 days of net active service.

d. On 28 December 2017, the applicant was issued a Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter).

e. On 10 April 2022, a PEB convened and found the applicant physically unfit for schizoaffective disorder and recommended her disposition be permanent disability retirement. DA Form 199 (PEB Proceedings) notes that "The Soldier first sought treatment for this condition in 2008 through Veterans Affairs. The Soldier had recently redeployed from Iraq and was experiencing symptoms of depression and anxiety due to the following stressors: witnessing traumatic combat related events and experiencing fear for her life (V1N3: Yes - Direct result of armed conflict)." "The disability did result

from a combat-related injury under the provisions of Title 26 United States Code (USC), section 104 10216." The applicant concurred with the findings and waived a formal hearing of her case.

f. On 25 July 2022, the applicant was informed by the U.S. Army Human Resources Command (HRC) that her claim for CRSC for schizoaffective disorder was not processed because it was missing a handwritten signature.

g. On 29 September 2022, the applicant was informed by HRC that her claim for CRSC for schizoaffective disorder was disapproved because there was no documentation in the claim that established personal exposure to armed conflict in accordance with CRSC guidelines. While HRC noted that the U.S. Army Physical Disability Agency (USAPDA) has determined schizoaffective disorder is combat related due to armed conflict; please recognize USAPDA determinations are in reference to other laws than CRSC. This means that although the PEB states your disability is combat related under Title 26 USC, section 104 or 10216, your disability does not automatically qualify for CRSC.

h. On 20 January 2023, the applicant was informed by HRC that her claim for CRSC for schizoaffective disorder was disapproved because there was no new medical evidence provided to show a combat related event caused condition. While HRC noted that the USAPDA has determined schizoaffective disorder is combat related due to armed conflict; please recognize USAPDA determinations are in reference to other laws than CRSC. This means that although the PEB states your disability is combat related under Title 26 USC, section 104 or 10216, your disability does not automatically qualify for CRSC.

3. The applicant provides through counsel:

a. Orders Number D 110-12 issued by the USAPDA which placed the applicant on the PDRL, effective 20 May 2022, under the authority of Title 10, USC, section 1204. These orders state " Disability is based on injury or disease received in the Line of Duty (LOD) as a direct result of Armed Conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law: YES" " Disability resulted from a combat related injury as defined in 26 USC 104: YES" " Retirement is due to a disability incurred in the line of duty in a combat zone or as a result of performing combat related operations (as implemented by Section 020303b, DoD 7000.14-5, Volume. 7a) YES."

b. Memorandum, Subject: Permanent Physical Disability Retirement which notified the applicant of her permanent disability retirement determination.

c. Department of Veterans Affairs Letter dated 18 December 2017, wherein the author states in pertinent part, the applicant has been under his care since June of

2017. Her diagnosis was schizoaffective disorder going back to at least 2008 when she returned from a tour of duty in Iraq. The impact of the condition and resultant symptoms have led to a gradual decline in functioning. She initially was thought to have chronic adjustment disorder, when she first returned from Iraq, in which there were no recognized significant social and occupational impairments. In the authors medical opinion, it is at least as likely as not that her schizoaffective disorder is a result of events or exposure while in the military.

d. DA Form 3947 wherein the applicant was referred to a PEB for schizoaffective disorder.

e. Severe Psychiatric Illness in the Military Healthcare System which discusses psychotic disorders within the military healthcare system.

4. On 12 September 2023, HRC, Chief, Special Compensation Branch, provided an advisory opinion which states:

a. The applicant submitted her initial CRSC application on 2 August 2022. She has requested consideration for schizoaffective disorder (VA (Veterans Affairs) Code 9211); however, our office was unable to verify a combat related event in relation to her condition. Her claim has now been reviewed at the initial and reconsideration levels and denied due to insufficient evidence.

b. The applicant served in Iraq from 31 August 2007, thru 24 May 2008. She stated on her CRSC application that her schizoaffective disorder is due to being lowered into a darkened tunnel to pursue a prisoner, examining the mutilated bodies of dead prisoners to determine the cause of death, and numerous other unspecified traumatic events. While we acknowledge her deployment to Iraq, serving in a combat zone is not sufficient, by itself, to award CRSC. Additionally, the events described by her do not meet the CRSC criteria for armed conflict. To qualify under armed conflict, there must be evidence which confirms the applicant's personal exposure to armed conflict. Examples of armed conflict include receiving small arms fire or exposure to improvised explosive devices or rocket blasts.

c. We have reviewed all documentation submitted by the applicant and did not find documentation which confirms her personal exposure to armed conflict, as required by program guidelines. She submitted as evidence the DA Form 199 that found her condition to be combat related due to armed conflict; however, USAPDA determinations are in reference to other laws than CRSC. This means that although the PEB states a disability is combat related under Title 26, USC, section 104 or 10216, the disability does not automatically qualify for CRSC. The CRSC program is managed under the provisions of Title 10, USC, section 1413a and DoD FMR 7000.14-R Volume 7B,

Chapter 63. Due to the differences in program guidance, our office must verify the condition is combat-related independent from the PEB's findings.

d. We have reviewed the applicant's DD Form 214's and available military service record; however, we did not find documentation which confirms her personal exposure to armed conflict. To award mental health conditions, she must provide this office with official military documentation that establishes a direct causal relationship between a qualifying combat-related event and the 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 First Sergeant and/or Company Commander or higher.

5. On 14 September 2023, a copy of the advisory opinion was provided to the applicant through counsel.

6. On 14 November 2023, through counsel, the applicant responded stating in pertinent part:

a. The Army Special Compensations Branch points out that it must verify a condition is combat-related independent from PEB findings. To that end, the Army is not persuaded by the applicant's DA Form 199 or her retirement orders, which indicate that her schizoaffective disorder was the direct result of armed conflict. The Army reasons that Title 10, USC, section 10126 and Title 26, USC, section 104 are used for PEB Proceedings, and have no bearing on CRSC determinations. Rather, the Special Compensations Branch states that "[t]he CRSC program is managed under the provisions of DoD FMR 7000.14-R and Title 10, USC, section 1413a." But those regulations call for a broad consideration method for assessing combat veterans: "Determinations of whether a disability is combat-related will be based on the preponderance of available documentary information [...] All relevant documentary information is to be weighed in relation to known facts and circumstances[...]."⁴ [emphasis added]. In no way do these regulations preclude the opinions of PEB proceedings, or the opinions of doctors who have cared for her during the 15 years since she returned from Iraq. Therefore, the Army's dismissal of this medical documentation is unfounded. The LOD determination made on 3 December 2021, is also relevant. It affirmed that her schizoaffective disorder "occurred on 15 June 2008 while deployed to Camp Bucca, Iraq while serving in qualified military duty status."

b. The Special Compensations Branch itself elsewhere rejects a bifurcation of regulations. In its disapproval letter, it notes: "In order to receive the full retroactive CRSC entitlement, you must file your CRSC claim within 6 years of any VA rating decision that could potentially make you eligible for CRSC, or the date you become entitled to retired pay [...] "[emphasis added]. Additionally, the VA's website lists "VA

decision notice" under its evidence items for CRSC determination by the branches. While none of this requires the Special Compensation Branch to affirm the findings of the PEB, it does underscore that these various entities are talking about the same Soldier.

c. The Army's advisory opinion also asks for the following: "The applicant must provide this office with official military documentation that establishes a direct causal relationship between a qualifying combat-related event and the disability." The advisory opinion then lists things that might come from a command: award recommendations, combat badges, chain of command statements, and the like. These would verify the combat-related event. In her case, the pursuit of escaped prisoners in dark tunnels and gruesome examinations of deceased individuals. But can any of these establish the "direct causal relationship" of a combat related event to a disability? No. Combat badges do not include a commander's statement about a Soldier's mental health. They relay facts about what a Soldier has done. Only medical personnel can diagnose a disability. The link which the Army calls for necessitates medical documentation, which always comes after an event. Was the applicant supposed to delay in her duties in order to try to bring mental health experts with her?

d. The VA, through the PEB process, has classified the applicant's condition as combat related. As Dr. R- wrote in his 27 October 2017, treatment letter, "her mental health issues go back several years and she initially remained untreated for over 9 years, likely impacted by traumatic incidents experienced during a deployment to Iraq in 2008." He continued: "Her functioning over that period of time has deteriorated to the degree that she has not been able to work in any gainful employment since 2013." The same doctor wrote the following to the MEB: "I do not anticipate that the applicant will be able to return to gainful employment in the foreseeable future." Dr. R- called her condition "chronic and debilitating," and stated that "she had psychiatric symptoms going back to at least 2008 when she returned from a tour of duty in Iraq." Dr. R- found it significant that her pre-morbid functioning was high: she rose to the rank of Major, put herself through school, bought property and managed it well, etc. But for her experience in Iraq, she would not be suffering schizoaffective disorder today.

7. Counsel also provides a Memorandum, Subject: LOD Determination, dated 3 December 2021, wherein the applicant's schizoaffective disorder, an illness that occurred on 15 June 2008 while deployed to Camp Bucca, Iraq, was approved and found to be in the LOD existed prior to service-service aggravated.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and the conditions under which CRSC can be approved. The Board considered the applicant's post-service diagnosis of a behavioral health condition and applicable statutory and regulatory guidance regarding CRSC. The Board considered the experience that the applicant brought forward as the reason for her CRSC request. A determination for CRSC must show a definite causal relationship between the armed conflict and the resulting unfitting disability. The Board found insufficient evidence that the experience she incurred was a direct result of armed conflict and; therefore insufficient to determine a causal relationship between the incident and the diagnosis of Schizoaffective Disorder. After due consideration of the case, the Board determined the evidence presented did not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned and reversal of the U.S. Army Human Resources Command (HRC) denial of her Combat Related Special Compensation (CRSC) claim for Schizoaffective Disorder.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[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. 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, USC, sections 1110 and 1131, permit the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The

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

//NOTHING FOLLOWS//