

IN THE CASE OF: ██████████

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230006885

APPLICANT REQUESTS:

- to overturn the U.S. Army Human Resources Command (HRC) decision to deny his claim for Combat Related Special Compensation (CRSC) for Post-Traumatic Stress Disorder (PTSD)/Bipolar with anxiety and depressed mood
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Rating Decision
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings)
- HRC CRSC denial letter
- CRSC Form 12e (CRSC Reconsideration Request Form)
- DD Form 2860 (Claim for CRSC)
- Letter of Support from E-E-
- VA Form 21-4138 (Statement in Support of Claim)

FACTS:

1. The applicant states in effect, his claim for PTSD/Bipolar with anxiety and depressed mood was denied due to insufficient evidence to qualify for CRSC for this condition though his DA Form 199 and the VA rating decision clearly stated this condition was service connected. He experienced trauma during his first deployment to Iraq in 2003, when his unit encountered multiple incidents which have affected him to this day. He believes his CRSC claim for PTSD/Bipolar with anxiety and depressed mood should be approved because he still receives treatment through the VA every 2-months and receives injections of Aripiprazole and sees a behavioral health provider to combat this condition. He also has nightmares which are also exacerbated by sleep apnea, though they have lessened over the years. He has provided a statement from his spouse who has supported him throughout the process.

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

a. The applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 6 March 2001. He was discharged from the USAR DEP on 14 March 2001 and enlisted in the Regular Army. He had continuous service through reenlistments.

b. The applicant's Enlisted Record Brief shows he served in:

- Iraq during the period of 7 April through 11 August 2003
- Kuwait during the period of 9 September 2007 through 8 December 2008
- Kuwait during the period of 3 January through 8 September 2010
- Afghanistan during the period of 31 December 2013 through 6 November 2014

c. On 3 February 2020, the informal PEB found the applicant to be physically unfit for retention due to PTSD and chronic adjustment disorder with anxiety and depressed mood which was onset in 2003 while he was deployed to Iraq, due to combat stressors. Although the Medical Evaluation Board (MEB) found the condition was due to personal stressors which existed prior to service, the PEB determined the evidence did not rise to the level of clear and unmistakable. The PEB recommended the applicant be placed on the Temporary Disability Retired List (TDRL) with a 50 percent disability rating.

d. On 21 February 2020, Orders Number 052-0513, issued by Headquarters, U.S. Army Garrison, Fort Bliss, placed the applicant on the TDRL with a 50 percent disability on 12 May 2020. The order also stated his disability was based on injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. It also resulted from a combat related injury as defined in Title 26, United States Code, section 104.

e. The applicant was honorably retired from active duty on 11 May 2020 due to a temporary disability.

f. On 10 September 2020, HRC notified the applicant his claim for CRSC could not be processed and his record did not reflect he was receiving military retirement pay. In order to be eligible for CRSC the individual must be receiving retirement pay. Furthermore, it could not be confirmed the applicant had a VA waiver offsetting his retirement pay.

g. On 16 September 2020, HRC notified the applicant his claim for CRSC could not be processed though his retirement status was confirmed, his records did not show he had a VA waiver offsetting his retirement pay.

h. On 5 October 2020, the U.S. Army Physical Disability Agency PEB issued an administrative correction to the applicant's 3 February 2020 decision and found the

applicant to be physically unfit for retention due to PTSD and chronic adjustment disorder with anxiety and depressed mood with onset in 2003 while he was deployed to Iraq, due to combat stressors.

i. On 17 June 2021, HRC notified the applicant his claim for CRSC could not be processed though his retirement status was confirmed, it could not verify his retired pay account or his VA waiver status. These items could not be verified until his first retirement pay posts to his account.

j. On 28 February 2022, the informal PEB found the applicant to be physically unfit for retention due to PTSD and chronic adjustment disorder with anxiety and depressed mood and was rated as PTSD, bipolar II disorder and alcohol dependence in partial remission. The PEB recommended the applicant be placed on the Permanent Disability Retired List with a 70 percent disability rating.

k. On 2 May 2022, HRC notified the applicant his claim for CRSC was approved for cervical strain and bilateral tinnitus with a total combat related disability of 30 percent. However, it was unable to verify as a combat related disability for:

- PTSD, bipolar II disorder and alcohol dependence in partial remission - no documentation was provided to establish personal exposure to armed conflict in accordance with CRSC guidelines
- Obstructive sleep apnea – does not meet criteria for CRSC
- Lumbar degenerative arthritis of the spine, intervertebral disc syndrome and spinal stenosis – no documentation established causal relationship to combat related event
- Status post left knee chondroplasty, arthritis, degenerative and arthroscopic repair – no documentation established causal relationship to combat related event
- Left lower extremity radiculopathy - no documentation established causal relationship to combat related event
- Right lower extremity radiculopathy - no documentation established causal relationship to combat related event
- Erectile dysfunction – condition reviewed due to association with special monthly compensation

l. On 27 October 2022, HRC notified the applicant his claim for CRSC was approved for cervical strain and bilateral tinnitus with a total combat related disability of 30 percent. However, it was unable to verify as combat related the previously mentioned conditions.

m. On 15 March 2023, HRC notified the applicant that after review of all the documentation in support of his claim the previous adjudication(s) could not be

overturned. The documentation provided did not provide evidence to link the conditions to a combat related event. The disapproval was considered final.

3. The applicant provides:

a. VA rating decision dated 22 February 2021 which shows the applicant was awarded 50 percent disability beginning 12 May 2020 and was increased to 70 percent effective 12 February 2021 for his service connected PTSD, Bipolar II Disorder and alcohol dependence in partial remission.

b. CRSC Form 12e (unsigned) which the applicant requested a reconsideration with new medical evidence which could verify the combat related link to PTSD, chronic adjustment disorder with anxiety and depressed mood.

c. DD Form 2860 (unsigned) which states the applicant was entitled to military retired pay for physical disabilities incurred in the line of duty where he requested a combat related determination for:

- Obstructive sleep apnea
- PTSD, adjustment disorder w/anxiety depressed
- Lumbar degenerative arthritis of the spine
- Cervical strain
- Post right knee synovectomy repair
- Post left knee synovectomy repair
- Bilateral tinnitus
- Right lower extremity radiculopathy
- Left lower extremity radiculopathy

He deployed with 2nd Chemical Battalion, 13th Corps Support Command to Iraq in 2003-04 and also Headquarters Headquarters Battalion, 10th Mountain Division to Afghanistan in 2015-16. During the deployments he served as a supply specialist and participated in at least 10 convoys. It was during those convoys/patrols where he witnessed some of the most gut wrenching moments. They were attacked by small arms fire by the insurgents when obtaining supplies. The continued training before the deployment and during the deployment for mounted and dismounted operations exacerbated his back and leg injuries. His experiences took a toll on his mental health throughout the years of his military career.

d. Statement from [REDACTED] which stated she has been married to the applicant for over 21-years and has been with him for his entire military career. Prior to his deployment to Iraq in 2003, he was a happy, kind and energetic person who did not show anger, irritability or anxiety prior to his enlistment in the Army. After the deployment, she noticed a significant change in his behavior. He had angry outbursts and he had

difficulty sleeping due to nightmares and sleep apnea. He talks to her about his panic attacks due to bad memories of his deployment. He also spoke to her about his behavioral health issues which included flashbacks about his tough deployment to Iraq. His issues have affected his ability to effectively spend time with his family and enjoy daily life. She believes his PTSD is a result from the mental stress of combat and over 19-years of active duty.

e. VA Form 21-4138 in support of the applicant's claim from [REDACTED] which reiterates her above statement.

4. On 12 September 2023, in the processing of this case, HRC provided an advisory opinion regarding the applicant's request to overturn his denied claim for CRSC. The advisory official stated the applicant was awarded 30 percent CRSC but he requested additional consideration for PTSD, Bipolar II Disorder; Obstructive Sleep Apnea; Lumbar Degenerative Arthritis of The Spine; Status Post Left Knee Chondroplasty, Arthritis; Status Post Right Knee Chondroplasty, Arthritis; Left Lower Extremity Radiculopathy; Right Lower Extremity Radiculopathy; and Erectile Dysfunction; however, their office was unable to verify a combat related event in relation to these conditions. The applicant's application has now been reviewed at the initial, reconsideration, and appeal levels and denied due to insufficient evidence.

The applicant stated his PTSD Disorder/Bipolar II Disorder is due to participating in convoys through Iraq in which he was engaged with small arms fire. During a review of his available records, evidence was not found which supports this claim. While the PEB findings stated the applicant's PTSD was combat related due to armed conflict, the PEB determinations are in reference to other laws than CRSC and does not automatically qualify for CRSC. To be awarded CRSC for PTSD he must submit official military documentation which established a direct causal relationship between a qualifying combat related event and the disability claimed.

5. On 20 September 2023, the Army Review Boards Agency Case Management Division provided the applicant the advisory opinion for review and comment. He did not respond.

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 concurred with HRC’s conclusion that there is no independent evidence in the available records that establishes a direct causal relationship between a qualifying combat-related event and the applicant’s PTSD. Based on a preponderance of the evidence, the Board determined HRC’s determinations regarding CRSC for the applicant were not in error or unjust.

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

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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. Title 10, USC, section 1413a (Combat Related Special Compensation (CRSC) (c) (Eligible Retirees), an eligible combat related disabled uniformed services retiree is a member of the uniformed services who: is entitled to retired pay (other than by reason of section 12731b of this title); and has a combat-related disability. Effective date shall take effect not later than 180-days after the date of the enactment of this act of 2 December 2002. (e) (Combat-Related Disability), "combat-related disability" means a

disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that: (1) is attributable to an injury for which the member was awarded the Purple Heart; or (2) was incurred (as determined under criteria prescribed by the Secretary of Defense); as a direct result of armed conflict; while engaged in hazardous service; in the performance of duty under conditions simulating war; or through an instrumentality of war.

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

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

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

b. Paragraph 1.1.1.3, for an eligible member who is retired under Title 10, USC, Chapter 61 (Title 10, USC, Chapter 61) with less than 20 years of active duty or with

less than sufficient service and age to qualify for retirement under Title 10, USC, section 12731, compensation is effective 1 January 2008.

c. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The Military Departments will determine whether a disability is combat-related based on the following criteria:

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

d. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

e. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

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

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

(2) In the Performance of Duty Under Conditions Simulating War. In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet

training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

(3) Instrumentality of War:

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

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

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

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

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

5. Title 26 USC, section 104 (Compensation for injuries or sickness), (b) (3) (Special rules for combat-related injuries), for purposes of this subsection, the term "combat-related injury" means personal injury or sickness, (A) which is incurred; as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or (B) which is caused by an instrumentality of war. In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts considered shall be the amounts which he receives by reason of a combat-related injury. (4) Amount excluded to be not less than veterans' disability compensation in the case of any individual described in paragraph (2), the amounts excludable under subsection (a) (4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans Administration.

6. 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//