

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230007043

APPLICANT REQUESTS:

- approval of his claim for Combat-Related Special Compensation (CRSC) as combat related due to an instrumentality of war for the following conditions:
  - Radiculopathy, Left Upper Extremity
  - Degenerative Disc Disease, Cervical Spine
  - Radiculopathy, Right Upper Extremity
  - Right Shoulder, Degenerative Joint Disease
- 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)
- counsel's brief
- Enclosure 1 - Power of Attorney
- Enclosure 2 - DD Forms 214 (Certificate of Discharge or Release from Active Duty), 18 August 1989, 8 January 2006, and 17 February 2011
- Enclosure 3 - applicant's chronological statement
- Enclosure 4
  - Army CRSC Decision Letter, (Claim # 8229), 17 October 2022
  - VA Rating Decision, 13 August 2021
  - DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, 9 July 2014
  - CRSC Reconsideration Form, 18 August 2022
  - Army CRSC Decision Letter, (Claim # 5074), 23 June 2022
- Enclosure 5 - VA Compensation and Pension (C&P) Examination, 12 January 2016

FACTS:

## 1. Counsel states, in summary:

a. The applicant's injuries are the direct result of his engagement in hazardous service and were otherwise incurred under conditions simulating war. He suffered numerous injuries during his deployment to Afghanistan and were the direct result of armed conflict or instrumentalities of war. These conditions were found to be service connected by the VA and is assigned a 100 percent disability rating. The applicant must be awarded CRSC entitlement for these medical conditions.

b. The applicant sustained an injury to his right shoulder and neck on 29 April 2010 during a live fire training exercise in Bagram Afghanistan. His injury was found in the line of duty while serving in a combat zone. He was also diagnosed with a disc hernia diagnosed as degenerative disc disease. The combination of his neck stiffness, shoulder dislocation and readjustment, and degenerative disc disease rendered him unfit for continued military service.

c. The applicant was evaluated by the PEB and found unfit for continued military service for bilateral radiculopathy (left and right upper extremity), degenerative disc disease (cervical spine), degenerative joint disease (right shoulder) with a rating of 80 percent and placement on the Permanent Disability Retired List (PDRL).

d. The applicant filed for CRSC and was awarded 10 percent total combat-related disability for tinnitus. His other conditions were denied on the basis that he did not provide enough evidence establishing a direct causal relationship between a qualifying combat-related event and his disability. The applicant claims he was verbally told he does not qualify for CRSC because he was doing his job and the machine gun did not fall on him. The decision letter does not state this but raises question concerning the evaluation process.

## 2. Counsel provided a statement from the applicant recounting his deployment and injuries, and is summarized below:

a. On 29 April 2010, in Afghanistan, he sustained an injury to his right shoulder and neck during a live fire exercise when he attempted to remove a .50 caliber machine gun from its mount. During demobilization, it was established his injury was in the Line of Duty while serving in a combat zone.

b. His VA examination and MRI determined he suffered a herniated disc at the C5-C6 area and had developed degenerative disc disease. He was ultimately medically [retired] from the Vermont National Guard on 9 July 2014.

c. He filed for and was denied CRSC for his shoulder and neck injury but was awarded 10 percent for tinnitus caused by loud gunfire.

3. The applicant served on active duty in the Regular Army from 19 August 1986 to 18 August 1989.

4. The applicant enlisted in the Vermont Army National Guard (VTARNG) on 21 February 2001.

5. The applicant entered active duty on 15 November 2004 in support of Operation Enduring Freedom.

6. A DA Form 2173 (Statement of Medical Examination), dated 30 November 2005, shows from January 2005 through December 2005, while the applicant was deployed to Kuwait and was exposed to human waste, indigenous plants and animals, composite material fires, petrochemical waste and fumes, gases, fumes, and dust of unknown origins, continuous loud noise exposure greater than 85 decibels, and airborne pathogens. He may have been exposed to infectious diseases. He was also subject to extreme exposure to sun and ambient temperatures. Personal hygiene with non-potable water was conducted throughout one year deployment. Wearing of individual battle armor and Kevlar may have contributed to head, neck, back, hip and knee pain.

7. The applicant was released from active duty on 8 January 2006.

8. The applicant entered active duty on 5 January 2010 in support of Operation Enduring Freedom.

9. A DA Form 4187 (Personnel Action), dated 2 December 2013, shows the applicant was placed on a medical hold to complete the PEB process.

10. A DA Form 199 shows the applicant underwent an informal PEB on 9 July 2014. He was found unfit with a recommended rating of 80 percent and placement on the PDRL.

a. The applicant's disability disposition is based on disease or injury incurred in the line of duty 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 line of duty during a period of war for the following conditions:

- Cervical degenerative disc disease.
- Right upper extremity radiculopathy.
- Left upper extremity radiculopathy.
- Right shoulder degenerative joint disease.

b. He was found fit for:

- hypertension
- tension headaches
- chronic diarrhea
- right upper extremity radiculopathy
- left upper extremity radiculopathy
- left shoulder strain with acromioclavicular osteoarthritis
- degenerative arthritis of the spine, lumbar
- left knee medial meniscal tear
- bilateral hip joint derangement with loss of motion, no radiographic degenerative change
- bilateral ankle joint derangement with loss of motion, no radiographic degenerative change
- posttraumatic stress disorder (PTSD)
- right ear sensorineural hearing loss (in the frequency range of 500-4000 Hz)
- left ear sensorineural hearing loss (in the frequency range of 500-4000 Hz and 6000 Hz or higher)
- tinnitus.

c. The proceedings were finalized on 15 September 2014.

11. The applicant was retired from the VTARNG effective 9 October 2014.

12. The applicant applied for CRSC on 3 February 2021, however, his application was not processed as it was not signed and returned without action.

13. He reapplied for CRSC on 30 March 2022.

a. Army CRSC Decision Letter, dated 23 June 2022, shows his conditions of tinnitus and hearing loss (left ear) were verified as combat-related due to an instrumentality of war with a 10 percent rating effective April 2016.

b. The following conditions were considered secondary to a condition which is not combat related:

- Radiculopathy, Left Upper Extremity
- Degenerative Disc Disease, Cervical Spine
- Radiculopathy, Right Upper Extremity
- Right Shoulder, Degenerative Joint Disease

c. The letter advises the applicant that it is noted the Physical Disability Agency (PDA) has determined that his (Radiculopathy, Left Upper Extremity, Degenerative Disc Disease, Cervical Spine, Radiculopathy, Right Upper Extremity, Right Shoulder, Degenerative Joint Disease) conditions are combat related due to an instrumentality of war; and to please recognize that PDA determinations are in reference to other laws than CRSC. This means that although the Physical Evaluation Board Proceedings (PEB) states his disability is combat related under 26 USC 104 or 10 USC 10216, his disability does not automatically qualify for CRSC.

14. The applicant requested reconsideration of his CRSC application on 18 August 2022. Army CRSC Decision Letter, dated 17 October 2022 restates the reasons for his denial with the addition his reconsideration did not include new evidence to support his request.

15. Counsel provided the applicant's VA rating decision of 13 August 2021 showing the following relevant injuries:

- radiculopathy, left upper extremity (dominate) associated with degenerative disc disease, cervical spine
  - service connected, Gulf War, secondary static disability
  - 30 percent from 02/18/2011
  - 40 percent from 01/12/2016
- degenerative disc disease, cervical spine
  - service connected, Gulf War, presumptive static disability
  - 20 percent from 02/18/2011
  - 30 percent from 05/03/2013
- radiculopathy, right upper extremity (non-dominate) associated with degenerative disc disease, cervical spine
  - service connected, Gulf War, secondary static disability
  - 30 percent from 02/18/2011
  - 40 percent from 01/12/2016
- right shoulder, degenerative joint disease (non-dominate)
  - service connected, Gulf War, incurred static disability
  - 20 percent from 02/18/2011 (5003-5201)
  - 20 percent from 06/10/2021

- tinnitus
  - service connected, Gulf War, incurred static disability
  - 10 percent from 02/18/2011
- Hearing loss, left ear
  - service connected, Gulf War, aggravated static disability
  - 0 percent from 02/18/2011

16. The ABCMR requested an advisory opinion from Army Human Resources Command (AHRC), Special Compensation Branch and received the following response on 14 September 2023:

a. The applicant submitted his initial CRSC application on 31 March 2022. He is currently approved for 10 percent CRSC for Tinnitus and Hearing Loss, Left Ear. He has requested additional consideration for Radiculopathy, Left Upper Extremity; Degenerative Disc Disease, Cervical Spine; Radiculopathy, Right Upper Extremity; and Right Shoulder, Degenerative Joint Disease; however, their office was unable to verify a combat related event in relation to these injuries. The applicant's claim has now been reviewed at the initial and reconsideration levels and denied due to insufficient evidence.

b. The applicant claims that his neck and shoulder conditions occurred while in Afghanistan in April 2010 while loading a .50 caliber machine gun into a vehicle turret. He submitted as evidence the DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) that found his neck and shoulder conditions to be combat related; however, PDA determinations are in reference to other laws than CRSC. This means that although the PEB states a disability is combat related under 26 USC 104 or 10 USC 10216, the disability does not automatically qualify for CRSC.

c. They have reviewed the applicant's military medical records and found a note that he injured his shoulder and neck while lifting a .50 caliber machine gun. Lifting military equipment is not considered a combat related event and does not qualify for CRSC under instrumentality of war or simulating war. To award this condition, the applicant must provide this office with military medical documentation that shows how the condition is combat related as defined by CRSC program guidance. Medical documentation must be from the time the injury occurred and must clearly show a combat related event.

17. A copy of the advisory opinion was provided to the applicant on 18 September 2023.

**BOARD DISCUSSION:**

1. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, and U.S. Army Human Resources Command's advisory opinion, the Board found insufficient evidence that his left upper extremity, cervical spine, right upper extremity, and degenerative joint disease are combat related. Based on evidence in the record the Board found the applicant's record lacked sufficient details to show a casual event and noted the manner in which he was injured. The Board determined relief was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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.

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.



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 (DoD FMR) provides in chapter 63, paragraph 630101 the CRSC was effective on 31 May 2003 to provide special compensation to members of the uniformed service who may have retired pay reduced by reason of receiving VA disability compensation where a portion of such VA compensation is the result of disabilities that are combat-related. Eligibility requirements have changed since its inception. CRSC is not military retired pay. It is payable from funds appropriated for pay and allowance payable by the Secretary of the Military Department concerned.

a. Paragraph 6302 (Determinations of Combat-Relatedness) The following criteria, terms, definitions, and explanations will apply to making combat related determinations in the CRSC Program. 630201 (Direct Result of Armed Conflict) subparagraph 630201(A) states the disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. The fact that a member incurred the disability during a period of war, or in an area of armed conflict or while participating in combat operations is not sufficient to support a combat-related determination. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Paragraph 6303 (Entitlement) states CRSC is a monthly entitlement. A member must file an application with the Military Department from which the member retired to determine entitlement. A retiree is entitled to CRSC for each month during which, for the entire month, the member: 630301 (A) has applied for and elected CRSC under these provisions (section 6304). 630301 (B) meeting the preliminary CRSC criteria (Section 6305) and 630301 (C) meets the final criteria (section 6306) that is, has a combat-related disability or disabilities.

c. Paragraph 630602 (Other Combat-Related Disabilities) states a combat-related disability is a disability with an assigned medical diagnosis code from VASRD that was incurred. The Military Departments will determine whether a disability is combat-related based on the following criteria:

- (1) As a direct result of armed conflict,
- (2) While engaged in hazardous service,
- (3) In the performance of duty under conditions simulating war, or
- (4) Through an instrumentality of war.

d. The Department shall record for each disability determined to be combat-related which of the circumstances provided above qualifies the disability as combat-related. A

determination of combat-relatedness (see section 6302) 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. Paragraph 631001 (Basis for Determination) states determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where quality of information is more important than quantity. All relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation and conjecture. The burden of proof that a disability is combat-related rests with the applicant and the member is required to provide copies of documents in his or her possession to the best of his or her ability. Military Departments may compile a list of typical documents used for CRSC verification.

2. Title 10, U.S. Code, section 1413a, as amended, established CRSC. CRSC provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it were not for the statutory prohibition for a military retiree to receive a VA disability pension. Payments under this section are not retired pay. Payment is made by the Military Department, not the VA, and is tax free. Eligible retirees are those who have combat related disabilities and are entitled to retired pay. The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense. A combat-related disability means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that –

a. is attributable to an injury for which the member was awarded the Purple Heart;  
or

b. was incurred (as determined under criteria prescribed by the Secretary of Defense) as a direct result of armed conflict, engaged in hazardous service, in the performance of duty under conditions simulating war or through an instrumentality of war.

//NOTHING FOLLOWS//