

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008992

APPLICANT REQUESTS: in effect, approval of his application for Combat-Related Special Compensation (CRSC) for his cervical spine, right knee, and lumbar spine conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Appeal for CRSC
- DD Form 2860 (Claim for Combat-Related Special Compensation) Appendix A - Combat-Related Codes
- medical record (106 pages)

FACTS:

1. Counsel states:

a. The injuries sustained to the applicant's cervical spine, right knee and lumbar spine should be deemed combat related under either (HS) Hazardous Service or (IW) Instrumentality of War. Both HS and IW are valid reasons why Soldiers are awarded CRSC benefits. The applicant has been denied CRSC benefits for his injuries by the Army Human Resources Command (AHRC), Soldier Programs and Services Division.

b. This request for a correction of the records should be granted as the applicant did, in fact, injure himself (regarding his neck, back and right knee) while under Title 10 active-duty orders and while mobilizing to be sent overseas to participate in Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). The records show the injuries occurred due to hazardous service and as a result of participation on or around and instrumentality of war.

c. In accordance with the CRSC Section 1413a, Title 10, United States Code (USC), as amended revised program guidance January 2004, a military retiree is eligible for CRSC if he/she has a combat-related disability. A combat related disability is

defined as a disability with an assigned medical diagnosis code from the VASRD that was incurred:

- as a direct result of armed conflict (AC)
- while engaged in hazardous service (HS)
- in the performance of duty under conditions simulating war (SW) or
- through an instrumentality of war (IW)

d. Line of Duty Determinations (LODs) were completed by the applicant's Command after extensive investigation into the matter. These LODs show all of the applicant's claimed conditions were incurred during active-duty service either during, or preceding, deployment(s) to a combat zone.

e. The cervical spine injury, which is ultimately the direct result in the subsequent development of the chronic headache syndrome, were both as a direct result of a Humvee accident during improvised explosive device (IED) training at Camp Shelby, MS. The LOD further states that the applicant was mobbing at the time of injury, which is military terminology for mobilizing for deployment under Title 10 USC.

f. The right knee injury was a direct result of an injury sustained after jumping from a deuce and a half (2 1/2 ton military vehicle) in Baghdad, Iraq in 2004. This injury occurred directly in a combat zone, in Iraq, during Operation Iraqi Freedom (OIF).

g. The lumbar spine injury (now including arthritis) was a direct result of an injury sustained to the low back when the applicant was climbing on and off a mounted armored vehicle during active mobbing at Camp Shelby, MS.

2. The applicant served on active duty in the Air Force from 19 September 1988 to 18 September 1992 and in the [REDACTED] Air National Guard from 23 July 1993 to 15 October 1995. He enlisted in the [REDACTED] Army National Guard on 16 October 2000.

3. The applicant was ordered to active duty in support of Operation Enduring Freedom and Iraqi Freedom on 18 March 2003.

4. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant was treated on 6 April 2004 for right knee pain after jumping off a 2 1/2 ton truck in Baghdad, Iraq. His injury was considered to have occurred in the Line of Duty and he was returned to his unit on light duty.

5. The applicant was released from active duty on 14 June 2004.

6. The applicant was ordered to active duty on 5 April 2010.

7. A DA Form 2173 shows the applicant was treated for a low back injury pain on 5 September 2010 after climbing up onto a vehicle during training at Camp Shelby, MS. An MRI was conducted and showed a previous laminotomy at L5-S1 and a large broad based disc herniation with bilateral foraminal stenosis. His injury was considered to have occurred in the Line of Duty and referred to a military neurosurgeon.

8. A DA Form 3349 (Physical Profile) shows the applicant was placed on a temporary profile of 113111 for low back pain on 14 September 2010.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

9. A DA Form 2173 shows the applicant was injured in August 2010 at Camp Shelby, MS., where he was conducting improvised explosive device (IED) training from 10 August through 13 August 2010. He was in a Humvee accident. The vehicle suddenly stopped and was rear ended by another vehicle. The applicant reported a slight headache and stiff neck. He had a previous history of lower back pain and back surgery in 1995 and 2002. He developed increased pain while training for deployment. The applicant states his right leg became weak in September 2010 while trying to bear weight with right leg and was seen by neurosurgeon on 8 September 2010. Evaluation and MRI was positive for lumbar HNP (Herniated nucleus pulposus), lumbar spondylosis, thoracic spondylosis, and cervical spondylosis. He was referred to an Eisenhower Army Medical Center neurosurgeon for further evaluation. His injury was considered to have occurred in the Line of Duty.

10. A DA Form 3947 (Medical Evaluation Board (MEB) Proceedings) shows an MEB convened on 21 February 2013. After consideration of clinical records, laboratory findings, and physical examination, the Board found the applicant has the following medical conditions and was referred to the Physical Evaluation Board (PEB):

- history of lumbar spine L5-S1 herniated disc status post two surgical repairs, lumbar spine osteoarthritis L5-S1 with residual of pain and decreased range of motion - not incurred while entitled to base pay, existed prior to service, and permanently aggravated by service (medically unacceptable)
- cervical/upper thoracic spine mild disc bulge C7/T1 and T1/T2, cervical Spine minimal osteoarthritis with residual of pain and decreased range of motion -

incurred while entitled to base pay and did not exist prior to service (medically unacceptable)

- right knee anterior cruciate ligament reconstruction/meniscal repair and right knee hardware displacement with residual of pain and decreased range of motion - incurred while entitled to base pay and did not exist prior to service (medically unacceptable)
- hypertension (medically acceptable)
- headache syndrome (medically acceptable)
- erectile dysfunction (medically acceptable)
- right knee surgical scars x4 with no current sequela (medically acceptable)
- lumbar spine surgical scare with no current sequela (medically acceptable)
- low back pain with radiculopathy (no medical basis)

11. A DA Form 199 (Informal PEB Proceedings) shows an Informal PEB convened on 22 August 2013, wherein the applicant was found physically unfit with a recommended rating of 40 percent and that his disposition be permanent disability retirement.

a. The applicant was found unfit for:

- cervical osteoarthritis (PEB referred as cervical/upper thoracic spine mild disc bulge C7/T1 and T1/T2, cervical spine minimal osteoarthritis with residual of pain and decreased range of motion)
- lumbar spine L5-S1, herniated disc status post two surgical repairs, lumbar spine osteoarthritis L5-S1 with residual of pain and limitations in range of motion
- right knee anterior cruciate ligament reconstruction/meniscal repair and right knee hardware displacement with residual of pain and limitations in range of motion

b. The applicant was found fit for:

- hypertension
- headache syndrome
- erectile dysfunction
- right knee surgical scars x4 with no current sequela
- lumbar spine surgical scare with no current sequela
- low back pain with radiculopathy

c. The PEB made the following administrative determinations:

(1) The 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 as defined by law.

(2) The disability did result from a combat-related injury under in 26 USC 104 or 10 USC 10206.

d. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

e. The applicant concurred and waived a formal hearing of his case on 3 September 2013. He did not request reconsideration of his VA ratings.

f. The proceedings were finalized on 4 September 2013.

12. The applicant was honorably retired from the Army National Guard of the United States and the State ██████████ on 17 October 2013 for disability, permanent (enhanced).

13. The applicant applied for CRSC on 7 December 2020, for: Tinnitus (6260); Headache Syndrome (8100); Cervical Osteoarthritis (5237); Right Knee ACL Meniscal Reconstruction With Degenerative Arthritis (5010-5260); Lumbar Spine L5-S1 Herniated Disc S/P Two Surgical Repairs, Lumbar Spine Osteoarthritis L5-S1 With Residual Of Pain And Limitations In Range Of Motion (5242); and Erectile Dysfunction (7522).

a. The AHRC, Soldier Programs and Services Division, informed the applicant by letter, dated 2 January 2021 -

(1) The CRSC programs office complete the processing of his initial claim. After carefully reviewing all available documentation, AHRC was only able to partially approve a portion of his claim.

(a) His condition of "Tinnitus (6260)" received a total combat-related disability rating of 10%, effective February 2020, with a combat code "IN" meaning, Instrumentality of War.

(b) AHRC was unable to award CRSC for the applicant's remaining conditions (listed below) were denied because his claim lacked a documented direct causal relationship between the claimed disability and a CRSC qualifying event.

- Headache Syndrome (8100)
- Cervical Osteoarthritis (5237)
- Right Knee ACL Meniscal Reconstruction with Degenerative Arthritis (5010-5260)

- Lumbar Spine L5-S1 Herniated Disc S/P Two Surgical Repairs, Lumbar Spine Osteoarthritis L5-S1 With Residual Of Pain And Limitations In Range Of Motion (5242)
- Erectile Dysfunction (7522)

b. The applicant was informed he had the right to apply for reconsideration if he disagreed with this decision.

14. The applicant requested reconsideration of his CRSC application on 19 April 2021, for Headache Syndrome (8100); Cervical Osteoarthritis (5237); Right Knee ACL Meniscal Reconstruction with Degenerative Arthritis (5010-5260); Lumbar Spine L5-S1 Herniated Disc S/P Two Surgical Repairs, Lumbar Spine Osteoarthritis L5-S1 with Residual Of Pain And Limitations In Range Of Motion (5242); and Erectile Dysfunction (7522).

a. The AHRC, Soldier Programs and Services Division, informed the applicant by letter, dated 7 May 2021 -

(1) The CRSC programs office complete the processing of his reconsideration claim. After carefully reviewing all available documentation, AHRC was unable to award CRSC for the applicant's remaining conditions (listed below) were denied because his claim lacked a documented direct causal relationship between the claimed disability and a CRSC qualifying event.

- Headache Syndrome (8100)
- Cervical Osteoarthritis (5237)
- Right Knee ACL Meniscal Reconstruction With Degenerative Arthritis (5010-5260)
- Lumbar Spine L5-S1 Herniated Disc S/P Two Surgical Repairs, Lumbar Spine Osteoarthritis L5-S1 With Residual Of Pain And Limitations In Range Of Motion (5242)
- Erectile Dysfunction (7522)

b. The applicant was informed he had the right to appeal if he disagreed with this decision.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board through counsel 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 through counsel of the applicant's petition, available military records and US Army Human Resources Command-Special Compensations Branch preliminary finding, the Board concurred with the HRC preliminary finding of insufficient evidence that the applicant's cervical spine, right knee, and lumbar spine conditions disabilities was the direct result of armed combat; was related to the use of combat devices (instrumentalities of war). The Board determined the records is absent evidence supporting the applicant's disability and or injury was linked to a combat-related event.

2. The Board found the applicant jumping out of a truck and being rear ended during training in 2003 is not combat related. The Board noted, the applicant nor his counsel provided sufficient evidence to show any medical treatment documentation during his deployment. The Board noted of the 106 medical pages provided by the applicant and his counsel, it shows the applicant noted his injury in Mary 2004 at the Irwin Army Community Hospital. The Board agreed the applicant, nor his counsel have demonstrated an error or injustice occurred based on the preponderance of evidence and regulatory guidance. Therefore, the Board denied relief requesting for approval of his application for Combat-Related Special Compensation (CRSC) for his cervical spine, right knee, and lumbar spine conditions.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

3/25/2024

X [REDACTED]

CHAIRPERSON
[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 (DOD) 7000.14-R Field Management Regulation (FMR) Volume 7B, Chapter 63, (Combat-Related Special Compensation (CRSC)), dated May 2022, and currently in effect, provides for special compensation to members of the Uniformed Services who have retired pay reduced because of receiving U.S. Department of Veterans Affairs (VA) disability compensation where a portion of such VA disability compensation is the result of disabilities that are combat-related as determined by the Military Department. 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 6.0 (Determinations of Combat-Relatedness) states the following criteria, terms, definitions, and explanations will apply to making combat-related determinations in the CRSC Program.

(1) Paragraph 6.1 (Direct Result of Armed Conflict) -

(a) Paragraph 6.1.1. states 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) Paragraph 6.1.2. states 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) Paragraph 6.1.3. states Armed conflict may also include incidents involving a member while interned as a prisoner of war, while detained against his or her will in the custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

(2) Paragraph 6.2 (While Engaged in Hazardous Service) states, 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 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) Paragraph 6.3 (In the Performance of Duty Under Conditions Simulating War) states, 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) Paragraph 6.4 (Instrumentality of War) -

(a) Paragraph 6.4.1. states 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) Paragraph 6.4.2. states 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) Paragraph 6.4.3. states 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) Paragraph 6.4.4. states, for example, if a member is engaging in a sporting activity while on a field exercise and falls and strikes an armored vehicle, the injury would not be considered the result of an 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.

b. Paragraph 10.2 (Processing of Applications) states, each Military Department will receive, and process applications submitted by members retired from that Military Department on DD 2860, Claim For Combat-Related Special Compensation (CRSC). Applications will be reviewed, and an application will be approved only if the applicant satisfies both preliminary and final CRSC criteria. An application must be received by the military department prior to the member's death in order to be considered. An application for CRSC submitted by a member's survivors will not be considered. The DFAS-Cleveland site will be notified of each approved application for payment.

(1) Paragraph 10.2.1. (Initial Review) states, each Service Department will review the member's application to determine if the member meets the preliminary criteria in section 4.0. If a member does not satisfy each of the preliminary CRSC criteria, then the application will be denied, and no further consideration is necessary. The member may reapply when his or her ratings satisfy the specified thresholds and meet all four preliminary CRSC criteria in section 4.0.

(2) Paragraph 10.2.2. (Final Review) states, if the member meets all four preliminary criteria in section 4.0, then the Military Department will determine whether the member's disabilities are qualifying combat-related disabilities, as prescribed in section 6.0. The Military Department will record each disability determined to be combat related with assigned medical diagnosis code from VASRD. The Military Department will forward the approved claims with VASRD codes categorized as either combat or Purple Heart to the DFAS-Cleveland site for payment.

b. Paragraph 10.3 (Denial and Appeal) -

(1) Paragraph 10.3.1. (Denial) states, when a Military Department denies a CRSC application, they will provide a letter to the member specifying the reasons(s) for the denial. The Military Department will inform the member that he or she may seek reconsideration by submitting additional, clarifying, or new documentary information to the Military Department in support of his or her claim. The Military Department will

review the additional or new information and will inform the member of the results of the review. The Military Department will also inform the member that CRSC is subject to the same appeals and correction processes applicable to military pay and allowances, including application to the appropriate Board for Correction of Military Records (BCMR) under the provisions of 10 U.S.C. § 1552.

(2) Paragraph 10.3.2. (Appeal) states, the Military Department will provide the member a DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, section 1552, and the address of the BCMR, including its website.

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