

IN THE CASE OF: ██████████

BOARD DATE: 18 April 2024

DOCKET NUMBER: AR20230010077

APPLICANT REQUESTS: in effect, approval of his claim for Combat-Related Special Compensation (CRSC) and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) ratings and benefits decisions, dated August 2019
- VA Medical Progress Notes (29 pages)
- Letter from the U.S. Army Human Resources Command (AHRC) Special Compensations Division, dated 18 October 2022

FACTS:

1. The applicant states that after he got out of the Army, he was diagnosed with PTSD by the VA. He was not aware he had the disability until he was sent to the medical ward.
2. The applicant was retired on 31 January 1996 by reason of sufficient service for retirement after completing over 24 years of active service. His active service includes deployment to Southwest Asia in support of Operations Desert Shield and Desert Storm.
3. The applicant submitted a DD Form 2860 (Claim for CRSC), dated 11 June 2020, based on degenerative arthritis, PTSD, anxiety, insomnia, and migraine headaches. In his claim, he argued that while serving during the Gulf War, he was exposed to chemicals that caused long-term health effects that include migraine headaches, insomnia, anxiety, and PTSD. He also indicated that his degenerative arthritis resulted from overuse while in the military.

(Note: CRSC is a form of concurrent receipt which is paid monthly. It restores military retired pay that is offset when a military retiree accepts compensation from the VA for a disability or condition that can be attributed to a combat-related event as defined by the Department of Defense program guidance. This allows eligible retirees to concurrently receive an amount equal to or less than their length of

service retirement pay and their VA disability compensation, if the injury is combat-related.)

4. In support of his claim, the applicant provided his VA Rating Decision, dated 16 December 2019, showing he was granted service-connected disability compensation for the following conditions, which were deemed to have been incurred during peacetime:

- PTSD
- migraine headaches
- degenerative arthritis, right shoulder
- right knee pain
- dermatitis with skin itching (Vietnam Era)

5. On 11 August 2020, the AHRC CRSC Division disapproved the applicant's request for CRSC for PTSD because no documentation in the claim established the disability was combat related in accordance with CRSC guidelines. His claim for CRSC based on migraine headaches and degenerative arthritis was also denied because the documentation did not show accident or incident to connect disability to a combat-related event. The applicant was advised that to apply for reconsideration, he must provide official documentation that show how each condition is combat-related as define by CRSC program guidance. Medical documentation must be from the time the injury occurred and must clearly show combat related event.

6. On 13 April 2021, the AHRC CRSC Division disapproved the applicant's request for reconsideration because no new medical evidence was provided to show that combat-related events caused the conditions. (Note: The applicant's application for reconsideration is not available.) The CRSC Division informed the applicant the following:

We reviewed your reconsideration request and the supporting documentation you provided. The evidence within the new documentation that you submitted still does not establish a link between requested conditions and a combat-related event. To award a condition as combat-related you must provide this office with official documentation that shows how each condition is combat-related as defined by CRSC program guidance. Official documentation includes medical documentation from the time each injury occurred, wartime chain of command endorsements which confirms exposure to armed conflict, copies of combat decorations (certificates, combat badges, and DA Form 638s [Recommendation for Award]), and evaluation reports which support exposure to armed conflict.

Your claim for CRSC did not specify which condition(s) you are requesting for consideration. We have reviewed the above service connected conditions that are

in the Veterans Affairs database and were unable to authorize CRSC. To reconsider, you must provide this office with a request form that clearly lists which disabilities you want to be considered and you must provide official medical documentation that shows how each condition is combat-related as defined by CRSC program guidance.

7. The applicant submitted a second application for reconsideration, dated 15 August 2022, claiming CRSC for the same conditions. In support of his application, he provided his VA Rating Decision, dated 16 August 2022, showing he was granted service-connected disability compensation for PTSD, migraine headaches, and degenerative arthritis, right shoulder. He did not provide new argument with his second application for reconsideration.

8. On 18 October 2022, the AHRC Special Compensations Branch disapproved the applicant's CRSC application for reconsideration because no new medical evidence was provided to show a combat-related event caused the condition(s). The Special Compensations Branch stated the following:

After reviewing all documentation in support of your claim, we are unable to overturn the previous adjudication(s). The documentation which you have submitted still shows no new evidence to link your requested conditions to a combat-related event. This disapproval is now considered final. If you choose to appeal this decision, you must submit your Notice of Disagreement (NOD) to the Army Review Boards Agency (ARBA).

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.

2. The Board found no evidence indicating the applicant has a service-connected disabling condition that meets the combat-related criteria for CRSC. Based on a preponderance of the evidence, the Board determined AHRC's decision to deny his CRSC claim was not in error or unjust.

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.

9/3/2024

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CHAIRPERSON
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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. CRSC, established by Title 10, U.S. Code, section 1413a, as amended, 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. Payment is made by the Military Department, not the VA, and is tax free. Eligible members are those retirees who have 20 years of service for retired pay computation (or 20 years of service creditable for Reserve retirement at age 60) and who have disabilities that are the direct result of armed conflict, especially hazardous military duty, training exercises that simulate war, or cause by an instrumentality of war. Such disabilities must be compensated by the VA and rated at least 10% disability. Military retirees who are approved for CRSC must have waived a portion of their military retired pay because CRSC requires the Military Department to return a portion of the waived retired pay to the military retiree.

2. Effective 1 January 2008, Department of Defense implemented supplemental guidance as a result of the enactment of the National Defense Authorization Act for Fiscal Year 2008. This change provided special rules for CRSC eligible retirees with fewer than 20 years of service who retired under chapter 61 (Retirement for Physical Disability) of Title 10, U.S. Code, and for Temporary Early Retirement Authority (more than 15 but less than 20 years of total active service).

3. The Under Secretary of Defense for Military Personnel Policy provided policy guidance for processing CRSC appeals. It states that in order for a condition to be considered combat-related, there must be evidence of the condition having a direct, causal relationship to war or the simulation of war. An instrumentality of war is a vehicle, vessel, or device designated primarily for military service and intended for use in such service at the time of the occurrence or injury. It may include such instrumentalities not designated 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.

4. The AHRC Special Compensation Branch webpage shows the CRSC Division is responsible for verifying a claimant's injuries are directly connected to combat or combat-related operations as defined by Department of Defense CRSC Program Guidance. It provides criteria, terms, definitions, and explanations that apply to making combat-related determinations in the CRSC program.

a. 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.

b. Incurrence during an actual period of war is not required. However, there must be a direct, causal relationship between the instrumentality of war and the disability. The disability must be incurred incident to a hazard or risk of the service.

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 or military ordinance, vehicles, or material.

5. Title 26, U.S. Code, section 104, states that for the purpose of this subsection, the term "combat-related injury" means personal injury or sickness which is incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or which is caused by an instrumentality of war.

6. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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//