

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20230010848

APPLICANT REQUESTS:

- in effect, show his disability was combat related
- in effect, grant his combat related special compensation (CRSC) request

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter with photographs
- Orders 809920 Order to Initial Active Duty for Training (IADT)
- DD Form 261 (Report of Investigation Line of Duty (LOD) Misconduct Status)
- Email LOD Approval
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings)
- Memorandum Extension of Army National Guard (ARNG) Soldiers on Active Duty to complete the Integrated Disability Evaluation System (IDES) Processing
- Memorandum Request to Reopen LOD
- Email Updates Sworn Statement Questions and DA Form 3881 (Rights Warning Procedure/Waiver Certificate)
- DA Form 3881
- Email Disability Evaluation System (DES) Status Update
- Email Open Door Policy
- Email Extension Request
- Letter from U.S. Army Human Resource Command (AHRC)
- Email Inspector General (IG) Complaint
- Self-Authored Email regarding Death of Soldier at Fort Leonard Wood around 2008
- Memorandum Request for Impartial Medical Review
- Memorandum for Record (MFR) Medical Evaluation Board (MEB) Review
- Applicant Response to MFR
- Memorandum Approval Authority Response to Independent Medical Review
- Email IG Response
- DA Form 199-1 (Formal Physical Evaluation Board (FPEB) Proceedings)
- Memorandum Permanent Physical Disability Retirement

- Order D 198-16 Retirement Orders
- Memorandum Rebuttal to FPEB
- Medical Documents
- Excerpt from Department of Defense (DoD) 7000.14-R (Financial Management)
- Excerpt from DoD Instruction (DoDI) 1332.18 (Disability Evaluation System)
- Excerpt from Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation)

FACTS:

1. The applicant states:

a. He asks the Board to see his rebuttal to the FPEB. He believes he made his point very clear in the rebuttal. Unfortunately, he does not think the board even read his rebuttal, which is evidenced by the fact that in their response, they said he witnessed a peer pass out on 8 April 2008 and then he died 10 days later.

b. On 8 April 2008, he was on an airplane on his way to Fort Leonard Wood, Missouri, so he is not quite sure where they got this information, as it is inconsistent with his rebuttal and everything presented to them. The dates are not even correct, and it is apparent based on how inaccurate the findings are that his rebuttal was not even read.

c. Private (PVT) A- W- suffered from cardiac arrest at 1530 and was pronounced deceased at 1628 on 22 April 2008, as proven by the evidence he provided. The Soldier died within an hour of showing symptoms, not ten days later as noted in their decision to deny his CRSC.

d. He is asking to change his findings, on his FPEB, to include a V1/V3 code (combat). He humbly asks the Board to reconsider and grant CRSC. Please consider that they were not in physical training (PT) uniforms, at the time, but in fact, in Mission Oriented Protective Posture (MOPP) gear with their assigned weapon, responding to hypothetical nuclear, biological, and chemical (NBC) attacks, which clearly and unequivocally meets the standard under the provision "in the performance of duty under conditions simulating war and instrumentality of war."

e. Lastly, according to the criteria provided under law, "in the performance of duty under conditions stimulating war," if he had injured himself at the leadership reaction course, rappelling, negotiation of combat confidence or obstacle course, it would be considered combat related. Surely the preponderance of evidence indicates that his condition is combat related.

2. The applicant provides the following documents:

a. A self-authored letter, which states, in pertinent part:

(1) He submitted the exact rebuttal he sent to the FPEB appeals. He is deeply and humbly asking the Board reevaluate the denial of his request for a V1/V3 code. Specifically, he believes he qualifies under the provision of "in the performance of duty under conditions simulating war" and "instrumentality of war."

(2) According to DoD 7000.14-R in general it states 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 PT activities such as calisthenics, jogging, formation running, or supervised sports activities.

(3) The language specifies disabilities resulting from military training. It is not mentioned under "in the performance of duty under conditions simulating war" that the instances must occur outside the Continental United States. It does not state that the Soldier must be engaged in armed conflict with a belligerent force or that the person must be a prisoner of war. It does not state that the event resulted in an injury incurred in vehicle, vessel or device designated primarily for military service. These are the specific reasons why his request for V1/V3 were denied, but these are not listed as a prerequisite for "in the performance of duty under conditions simulating war". He believes the board did not apply the correct standard under this specific provision, which clearly applies to his situation.

(4) He must be clear, the post-traumatic stress disorder (PTSD) resulted from a death during military combat training. This was literally a practice alert for MOPP training, which involved tactical gear and an assigned weapon. This is clearly simulating war as NBC attacks are meant to simulate combat operations. Soldiers do not wear MOPP gear, nor carry a weapon unless they are simulating war or combat operations.

(5) Using the "in the performance of duty under conditions simulating war" as the qualifying standard, it clearly lists what does not qualify as being eligible for the V1/V3 code. It states physical activities such as calisthenics, jogging, formation running, or supervised sports activities do not qualify. Using this basis for what does not qualify, it clearly shows that responding to a hypothetical NBC attack in full MOPP gear certainly does qualify. It is in fact, military training and simulating war, specifically a practice alert of an NBC attack. He is confused as to why the board ruled this does not qualify as it is exactly what is listed under the stipulations that qualify - "from a military training exercise practice alert to simulate an NBC attack."

(6) Under the instrumentality of war definition, it is clear that both an M16 rifle and MOPP gear are instruments of war. DoD 7000.14-R states in pertinent part "an instrumentality of war is a ... device designed primarily for military service and intended for such service, at the time of the occurrence or injury...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. 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 wound 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 material." He believes there is a direct causal relationship between the death of PVT W- and the use of MOPP gear and carrying a weapon, which directly caused his PTSD. Thus instrument of war were directly involved in the diagnosis of his PTSD. Civilians do not use MOPP gear or military M16 rifles. These are clearly instruments of war. The only exception noted in the regulation of this not applying is: "if a member is engaging in a sporting activity, while on a field exercise, and falls and strikes and 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." He must reiterate, they were not doing any type of sporting event and this was not part of PT. Clearly, this shows the threshold has been met.

(7) He believes the facts and circumstances warrant the finding of payment of CRSC. The diagnosis of PTSD is based on witnessing the death of a Soldier at basic combat training and subsequent to combat related training thereafter, while at one station unit training.

(8) On 8 April, they began the day doing pugil stick competitions. They finished around 1400 and the drill sergeants prepared them for NBC training, which they called a practice alert. The Soldiers had to do MOPP drills. They had their assigned weapon, an M16, on their person, at all times. The training involved the drill sergeant calling out a MOPP level and the Soldiers had a very limited time to get the assigned gear on and run outside. If they were not able to get the assigned gear on in time, they had to do corrective action such as push ups and other strenuous activity for not being in the correct MOPP gear. Around 1512, when they were in MOPP level III, PVT A- W- fell over and was unresponsive. The temperature, at the time, was over 70 degrees and it was humid. Everyone was drenched in sweat. The drill sergeants attempted to give PVT W- an IV but he was still unresponsive. He was transported to the hospital and no one saw him again. The next day, the drill sergeants gathered everyone together and said "the private had died because he had a preexisting health condition and he lied, this is what happens when you lie." That was during the beginning of the third week of combat engineer training.

(9) The applicant asks that the psychological injury be given the same consideration as a physical injury as he lived in a constant fear that he could die at any moment, during combat simulations. This included war games, practice alerts, tactical exercises, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. On each event, he would question if it would be it for him, so much so his drill sergeant asked if a chaplain needed to be called because he was talking to himself, during a repelling exercise. He explained he was praying. The drill sergeants also told them during the night infiltration course training that they would be killed if they stood up from crawling. This exercise involved full battle gear and carrying their assigned weapon while doing a 200 meter low crawl beneath barbed wire under heavy machine gun fire. As trainees maneuvered in near pitch black conditions, tracer rounds and flares intermittently lit up the night sky and simulated explosion that rocked the air. This is literally simulated combat and he was extremely fearful he would lose his life that night, so much so that he actually froze, when starting the event.

(10) In this situation, the threshold is clearly being met. Combat engineer training did not involve PT activities. They were simulating combat. This is an ongoing psychological injury that was worsened, during the subsequent combat simulations. This is like a broken back that was initially injured, while conducting MOPP training, and subsequently reinjured at each of the war games, practice alerts, tactical exercises, etc., where there was a risk of death. He is begging the appeals board to grant payment of CRSC, because this clearly meets the criteria and this was not a PT event. This was combat engineer training and basic combat training. The names really say it all.

(11) Lastly, a picture is worth a thousand words, clearly the pictures on the left show what they were doing, at the time, which clearly qualifies. The pictures on the right shows what does not qualify. Please look at the pictures on the left and ask, is this jogging, running in formation, or a supervised sports activity? If the answer is no, then it should clearly meet the criteria as it is a practice alert meant to simulate an NBC attack, which clearly meets the criteria set in "in the performance of duty under conditions simulating war". Is this a military training practice alert in response to a hypothetical NBC attack? If the answer is yes, then according to the very clear and concise regulations, this most definitely qualifies.

(12) He believes, given the preponderance of evidence presented, it is proven, beyond a reasonable doubt that this is combat related. The board should have found the same conclusions as the individual medical readiness, based on the preponderance of evidence. He humbly asks the board to reconsider and grant payment of CRSC. Surely the preponderance of evidence indicates that his condition is combat related.

b. Orders 809920, published by Military Entrance Processing Station, 8 April 2008 ordered him to IADT with a reporting date of 9 April 2008 for a period of 10 weeks for basic training and five weeks for military occupation specialty training or until complete.

c. DD Form 261 (Report of Investigation LOD and Misconduct Status), 19 February 2021 shows it was an investigation of an injury. He was called or ordered to active duty for more than 30 days. The injury was sustained by chronic personal stressors unrelated to his military service. The medical diagnosis was PTSD, with delayed onset. The remarks state "While servicemember (SM) is diagnosed with PTSD, a prior LOD determination considered and rejected identical assertions that now form the basis of SM's PTSD, and found that SM's allegations of experiencing in-service traumatic events are not credible. Per Army Regulation 600-8-4 (LOD Policy, Procedures, and Investigations), no intervening event occurred to disturb the prior determination." The findings were not in the line of duty - not due to own misconduct.

d. Email from a medical specialist, 21 November 2021, states he looked up the applicant's LOD and according to the tracker, National Guard Bureau (NGB) has approved it as in LOD.

e. DA Form 3947 (MEB Proceedings) show his diagnosis of other trauma-and-stressor related disorder, diagnosed by the Department of Veterans Affairs (VA) as PTSD, major depressive disorder, and agoraphobia and panic disorder fails medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3-33c(2). The approximate date of origin was 7 January 2020. The board recommended he be referred to a PEB. The applicant signed the form but did not date it and did mark an election regarding the board's recommendation.

f. A memorandum from the California ARNG (CAARNG), 7 April 2020, request to reopen LOD for the applicant based on new information received concerning possible fraud, states in pertinent part:

(1) The commander recently received pertinent information that was not considered by the investigating officer (IO), at the time of the original LOD determination. Following the original determination, he has spoken with several servicemembers who have informed the commander the applicant has a history or pattern of engaging in a deliberate and systematic schemes to obtain an LOD and/or VA disability rating benefits that he would otherwise not be entitled.

(2) The commander believes the information provided by the servicemembers to be credible and he has concerns regarding the legitimacy of the applicant's claim(s). The IO should consider the new information and determine if the applicant has engaged in fraud and/or other misconduct in order to make an appropriate LOD determination.

g. Letter from AHRC, 3 May 2022 states, in pertinent part, the ABCMR in docket number AR20210006014 recommends the finding of "not in the LOD-existed prior to service-not service aggravated" be changed to read "in the LOD-existed prior to service-service aggravated". All Army records will be changed to reflect the new finding.

h. Memorandum for MEB, request for impartial medical review (IMR) for the applicant, 3 October 2022, states in pertinent part, the applicant requests an IMR for his MEB findings, 26 September 2022. He asks the IMR provider to advise and counsel him regarding one issue: the title of his proposed failing condition diagnosis, and he objects to some language found in the narrative summary. He does not agree with Dr. C- F- J-, MEB psychologist's assessment of his behavior health condition - at least as a diagnosis, he disagrees with titling this condition "other trauma and stressor related disorder" as opposed to PTSD. The entire memorandum is available for the Board's review.

i. MFR MEB IMR, 11 October 2022, states, in pertinent part the determination is "the MEB has not appropriately addressed the Soldier's psychiatric conditions. The Soldier's failing diagnosis, which is currently other trauma-and-stressor related disorder, shall be revised to reflect PTSD." The entire MFR is available for the Board's review.

j. Medical documents, which are available for the Board's review.

3. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the ARNG on 27 February 2008.

b. DD Forms 214 (Certificate of Release or Discharge from Active Duty) show he was ordered to active duty, as a member of the ARNG, on:

(1) (Enlisted) 8 April 2008 and was honorably released on 25 July 2008. The type of separation was release from active duty training.

(2) (Enlisted) 22 February 2009 and was honorably released on 13 May 2009. The type of separation was release from active duty training.

(3) (Officer) 4 May 2010 and was honorably released on 1 July 2010. The type of separation was release from active duty training.

(4) (Officer) 12 June 2011 and was honorably released on 19 February 2012. The type of separation was release from active duty for completion of required active service.

(5) (Officer) 29 March 2014 and was honorably released on 30 July 2014. The type of separation was release from active duty training.

(6) (Officer) 15 May 2018 and was honorably released on 31 August 2018. The type of separation was release from active duty for completion of required active service.

(7) (Officer) 1 October 2018 and was honorably released on 30 September 2020. The type of separation was release from active duty for completion of required active service.

c. NGB Form 337 (Oaths of Office) shows he took the oath of office in the CAARNG on 14 May 2009. Orders 140-1051, published by the CAARNG, 20 May 2009 laterally appointed him from the rank of sergeant to second lieutenant in the CAARNG effective 14 May 2009.

d. ABCMR docket number AR20210006014, wherein the applicant requested his LOD be found service aggravated. The ABCMR granted full relief.

e. Memorandum from USAPDA, 11 May 2022, who administratively terminated the non-duty related case for the applicant.

f. DA Form 199-1 (FPEB Proceedings), 22 June 2023, which found him physically unfit due to his PTSD. The board recommended a rating of 100 percent and that he be permanently retired due to disability. The board found the PTSD was not a direct result of armed conflict, caused by an instrumentality of war, or incurred during hazardous service or conditions simulating war and did not give him a V1/V3 code. The applicant did not concur and attached his written appeal. He did not request reconsideration of his VA ratings.

g. Memorandum from USAPDA, 17 July 2023, informing him that the USAPDA found him to have a disability and permanently retired him with a disability rating of 100 percent. Order D 198-15, published by USAPDA, 17 July 20 23 retired him effective 16 August 2023 and placed him on the retired list on 17 August 2023.

h. Memorandum from U.S. Army Physical Disability Agency (USAPDA), 17 July 2023, states in pertinent part:

(1) USAPDA reviewed the entire case, to include the Joint Legacy Viewer, wherein, he non-concurred with the FPEB findings. He requests that his unfitting condition of PTSD be awarded a V1/V3 combat code.

(2) A review of all of his records confirms that he has a prolonged behavioral health history. They note he experienced a traumatic event by witnessing the passing out of a peer, during a basic training event on 8 April 2008, subsequently, his peer died 10 days later. The actual training event did not have a causal relationship to his behavioral health condition since witnessing the passing out of the peer was the traumatic event and not the training.

(3) USAPDA concluded that his case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System in making its determination. The findings and recommendations of the FPEB are supported by a preponderance of evidence and therefore affirmed.

i. NGB Form 22 (National Guard Report of Separation and Record of Service) shows he was honorably transferred from the ARNG to the U.S. Army Reserve Control Group (Retired Reserve) on 16 August 2023. He had 14 years, 3 months, and 3 days of net service this period with 8 months, 7 days of prior reserve component service and 6 months and 10 days of prior active federal service. He had 15 years, 5 months, and 20 days total service for pay and retired pay.

4. On 13 January 2024, the Legal Advisor, USAPDA provided an advisory opinion, which states in pertinent part:

a. The applicant argues the combat-related designation is warranted under conditions simulating war. He argues that the FPEB did not apply the correct standard. Admittedly, the FEB write-up is somewhat misleading in its discussion of Continental United States location, prisoner of war status, and conflict with a belligerent force. Address of these issues clouds the actual assessment of whether a condition is incurred under conditions simulating war, which is whether the disability results from "military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training (combatives training) rappelling, and negotiation of combat confidence and obstacle courses". The FPEB, and the USAPDA in its rebuttal response, do not contest the applicant's assertion that the MOPP exercise would qualify as "conditions simulating war." Rather, the point is that his condition was not incurred as a result of the MOPP exercise; his condition was incurred as a result of seeing a fellow Soldier collapse and later die, in fact, that is very clear from the record. There is a lack of direct causal connection between the MOPP exercise and the condition incurred. If the condition was as a result of the MOPP exercise, a combat code under conditions simulating war would be appropriate. However, this is not the case here. As such, a combat award, under this provision, is not warranted.

b. The applicant also argues that a combat award is justified as an injury incurred by an instrumentality of war. He maintains both MOPP gear and M16 assault rifles are

instrumentalities of war. Under the instrumentality of war provision, a combat award is appropriate "if the disability was incurred, during 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 material." There is a requirement that the instrumentality of war have a direct causal connection to the condition or injury. In his rebuttal he states, "I believe there is a direct causal connection between the death of PVT W- and use of MOPP gear and carrying a weapon, which directly caused my PTSD." While he may be correct that there is a direct causal connection between those two items and the other Soldier's death, the same does not extend to the applicant's condition. As noted before, the direct causal connection of his condition is the fellow Soldier's collapse, not the gear. Therefore, a combat award under the injury incurred by an instrumentality of war is not appropriate.

c. USAPDA finds the applicant's request to be legally insufficient and recommends no change be made to his physical disability determination.

5. On 26 March 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On 28 March 2024, the applicant responded stating, in pertinent part:

a. What this case ultimately comes down to, is do we treat mental health disabilities, such as PTSD, the same as we do physical injuries? The advisory opinion does not contest that the MOPP exercise would qualify as "conditions simulating war". However, they are stating that there is not a direct casual connection between the PTSD and the MOPP exercise. Further, the advisory opinion states that the condition would also qualify under the instrumentality of war provision however, the opinion falsely claims "the condition was caused by the Soldier's passing out and not the exercise itself." He believes both of these statements are untrue.

b. He humbly disagrees that the "condition", PTSD, was not caused by the MOPP exercise. What this fundamentally comes down to is there is still a stigma against treating mental health injuries the same as physical injuries. If he had sustained a physical injury, we would not be at this point; however, because Army culture views mental health injuries differently, we arrive at this decision. He must also state that this is the negative stigma, which prevented him from seeking help for all those years, which ultimately worsened his symptoms. If the Soldier passed out and he fell over him, during the MOPP training and broke his leg, the condition would certainly qualify, and we would not have this disagreement because it is a physical injury. Mental disabilities should be treated no differently than physical disabilities.

c. To set the record straight, it was not the Soldier's collapse that caused his PTSD. It was the screaming, running, chaos, and death (simulating war) of which he had

nightmares about that ultimately caused his PTSD. He is not sure why they keep referring to the collapse of the Soldier as the cause of his PTSD, it is not. It was the participating in that exercise, which caused it. Had he not been participating in the exercise, the death never would have happened, and his PTSD would have never happened.

d. The advisory opinion does not have merit under certain conditions. For example, if they were doing casual PT and the Soldier died, he would not qualify. This is because PT is not simulating combat. There is no inherent perceived danger to PT. Simulating combat, however, creates an inherent perceived danger to the individual. That is the point of simulating combat, to create that fear in an individual. This is why one injury qualifies and one does not. The human body perceives stress the same way in a simulated combat environment. It was this environment, which created the conditions for PTSD to manifest. The thought that he was going to die. Simulating combat causes chemical changes in the brain, also noted as the "fight or flight" response, which also effects how the brain perceives trauma. It was this deliberately triggered "fight or flight" response, which caused increased stress hormones in his brain, which led to the disability. If it was not for these stress hormones and other chemical reactions in his brain, he probably would not have PTSD. Therefore, a direct causal relationship must be established between the MOPP gear training and the PTSD. Further, he can confidentially say that he does not think he would have this disability if he witnessed someone pass out, during PT. This was much different. People pass out all the time for various reasons, it does not mean that individuals who watch it are going to get PTSD. That is not a valid argument. It is the conditions leading up to an individual passing out and dying that may cause PTSD. In this case, they were "simulating combat" in which there is an inherent risk of injury or loss of life.

e. The facts discussed so far and agreed upon are, they were simulating war, which the advisory opinion outright states and supports and does not try to argue. Further, the disability (PTSD) occurred, while they were simulating war. If a disability occurs, during either of the two conditions listed below, then it qualifies. Therefore, by those two facts alone this clearly meets the criteria for a V1/V3 code.

f. Lastly, the regulation does not differentiate between physical and mental health disabilities, which means that it does not say a different standard should be applied, when determining if it was combat related. Thus, his mental health disability should be treated no differently than a physical injury. He believes a causal relationship has been more than established. He asks that the Board ignore the stigmas associated with mental health and treat this the same as a physical injury. Finally, if we remove the MOPP training from this situation, the Soldier would not have died, and the applicant would not have gotten PTSD. Therefore, we must rule that the MOPP training was the proximate cause of the PTSD.

g. The applicant defines "in the performance of duty under conditions simulating war" and "instrumentality of war" from regulation, which have already been discussed in the record of proceedings.

h. In conclusion, he sustained a documented and diagnosed disability, during the MOPP training. The MOPP training was designed to simulate combat and forces Soldiers to release stress hormones in their brain (also known as fight or flight). These stress hormones change the chemicals in the brain. During this simulated combat, a Soldier dies. The cause of his disability was the training, which was intensified by a death of a Soldier due to the training. Therefore by regulation, this is a combat related disability. The regulation also does not state that there is a difference between physical and mental health disabilities. As such, this should be treated exactly as a physical injury would be treated. He asks the Board to include or involve a mental health professional who can explain how PTSD is caused. This certainly was not caused by someone passing out, but the conditions meant to simulate combat, which caused a death.

i. Finally, he is enclosing the findings of his psychiatrist who has personally treated him for five years, the MEB psychologist, and the evaluator of the IMR. All three professionals have signed the attached memorandum and IMR, which support the conclusion his disability is combat related. Surely, the input of these professionals should be considered.

6. The applicant provides an MFR from A- C.P-, 28 March 2024, not previously considered, which states, in pertinent part:

a. The applicant's PTSD, chronic is directly caused by the dramatic events he witnessed, while conducting MOPP training at basic training. The fight-or-flight response is a physiological reaction that occurs in response to a perceived harmful event or threat. It involves a series of hormonal and physiological changes that prepare the body to either fight the threat or flee from it. This response can have a significant impact on individuals with PTSD. It is general knowledge that events such as combat or events simulating combat illicit a fight or flight response. Stress hormones such as adrenaline and cortisol are released, during the fight or flight response. The hormonal and physiological changes have a direct link with the diagnosis of PTSD. The MOPP training clearly triggered a fight or flight response in the applicant. This a direct relationship between the training and the diagnosis of PTSD.

b. In PTSD, the fight-or-flight response can become dysregulated, leading to an over activation of the stress response system. When individuals with PTSD are exposed to triggers that remind them of the traumatic event, their bodies may react as if they are facing the same threat again, even when there is no actual danger present. This

explains why the applicant had symptoms when around triggers, throughout his military career.

c. It is the doctor's professional opinion that the diagnosis of PTSD is directly related to the MOPP training and the perceived fear of death the applicant witnessed. His witnessing someone pass out is not the proximate cause of his PTSD. The training, which simulated combat caused a fight-or-flight response, which caused hormonal and physiological changes which were worsened when he witnessed a perceived injury/death to oneself or another. In this case it was the simulated combat, which caused the perceived threat/injury.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Counter to the PEB advisory opinion, in the Board's opinion, the applicant's diagnosed PTSD had a direct link to the MOPP training event and that the death of a fellow Soldier near in time to the event enhanced the negative impact of the PTSD. The Board also findings that training which caused the applicant's PTSD is "military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training (combatives training) rappelling, and negotiation of combat confidence and obstacle courses". Therefore, based upon the regulatory guidance the Board recommends that the applicant's record be amended to show that the applicant's PTSD disability was combat related and that he be paid combat related special compensation (CRSC) for the disability.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's physical disability determination to reflect his PTSD was combat related. Therefore, the applicant's record should be forwarded to DFAS for Combat Related Special Compensation (CRSC) payment.

//SIGNED//

X

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, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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. It states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

4. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which

contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

6. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

7. Department of Defense Instruction (DODI) 1332.38 (Physical Disability Evaluation), paragraph E3.P5.2.2 (Combat-Related), covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for

armed conflict. A physical disability shall be considered combat related if it makes the member unfit or contributes to unfitness and was incurred under any of the following circumstances:

- as a direct result of armed conflict
- while engaged in hazardous service
- under conditions simulating war
- caused by an instrumentality of war

8. DODI 1332.38, paragraph E3.P5.2.2.3 (Under Conditions Simulating War), in general, covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live-fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

9. Appendix 5 (Administrative Determinations) to enclosure 3 of DODI 1332.18 (Disability Evaluation System) (DES) currently in effect, defines armed conflict and instrumentality of war as follows:

a. Incurred in Combat with an Enemy of the United States: The disease or injury was incurred in the LOD in combat with an enemy of the United States.

b. Armed Conflict: The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with sections 3501 and 6303 of Reference (d). The fact that a Service member may have incurred a disability during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

c. Engaged in Hazardous Service: Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

d. Under Conditions Simulating War: In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; rappelling; and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

e. Caused by an Instrumentality of War: Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a

result of 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 material, the criteria are met. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an injury resulting from a Service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

10. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

11. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

12. Department of Defense (DOD) Financial Management Regulation 7000.14-R Volume 7B (Military Pay Policy – Retired Pay) provides in Chapter 63 (Combat Related Special Compensation (CRSC)) that CRSC is 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. 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.

a. CRSC is a monthly entitlement. A retiree is entitled to CRSC for each month during which, for the entire month, the member has applied for and elected CRSC under these provisions, meets preliminary CRSC criteria, and meets final CRSC criteria.

b. With regard to the effective date, 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. 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.

c. Disability ratings by the Secretary of the Military Department concerned (or designee), as of the date on which the member retired, may be used to help make determinations of whether the member meets preliminary CRSC criteria. The actual computation of the amount of CRSC payable to an eligible retiree is based solely on VA disability determinations and the amount of VA compensation paid, without regard to any disability that is not combat-related.

d. When the VA makes a retroactive increase in a member's VA disability compensation pertinent to a member's combat-related disabilities under CRSC, DFAS and VA will exchange data to determine the additional retroactive amount that the member is entitled to receive as the result of CRSC. DFAS will compute the additional entitlement and advise VA in order for VA to pay the member the appropriate additional authorized VA disability compensation. Any increase affecting CRSC qualified disabilities in the current month requires that CRSC be re-computed.

e. 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

f. 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.

g. 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.

13. Title 26, USC, section 104, authorizes special rules for combat-related injuries for compensation for injuries or sickness. For purposes of this subsection, the term "combat-related injury" means personal injury or sickness (A) which is incurred (1) as a direct result of armed conflict, (2) while engaged in extra-hazardous service, or (3) under conditions simulating war; or (B) which is caused by an instrumentality of war.

15. Title 10, USC, section 1552 states, the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

16. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//