

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20230011422

APPLICANT REQUESTS: payment of Combat Related Special Compensation (CRSC)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Veterans Evaluation Service Appointment Information
- Department of Veterans Affairs (VA) Rating Decision and Letter
- DA Form 2823 (Sworn Statement)
- Medical Records

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, he has applied for CRSC more than six times and has been denied every single time. He has provided numerous documents to prove his combat relation for compensation and it has been denied. He would like the Board to look at the documentation and to overrule the earlier decision. He has served, like others before him, and would like to feel as if he was being heard and taken seriously for his combat and the role he took to serve the people. He would like this matter looked at and given serious thought about his request for payment of CRSC and what it would do to help him and his family. He applied more than six times and it took a while for the rejection on every one of his applications before he could take the action higher.
3. The applicant provides the following documents:
  - a. VA Rating Decision, 11 April 2019, states evaluation for migraine headaches, which is 0 percent disabling, is increased to 50 percent effective 4 May 2016. Evaluation of lumbar degenerative arthritis, lumbosacral strain and intervertebral disc syndrome, which is currently 20 percent disabling, is increased to 40 percent, effective 4 May 2016.

Evaluation of cervical strain, which is currently 0 percent disabling, is increased to 10 percent effective 4 May 2016.

b. DA Form 2823 (Sworn Statement) from Sergeant First Class (SFC) (Retired) D-E. O- Sr., 11 June 2022, states, in pertinent part:

(1) The applicant was deployed, in support of Operation Iraqi Freedom from August 2009 to July 2010. He often traveled on logistics convoys to and from Forward Operating Base Warhorse to Baghdad, Iraq. Although none of the convoys encountered direct enemy fire, there were occasions when the infantry escort team, supporting the logistics convoy, encountered enemy indirect artillery fire, small-arms, fire, rocket propelled grenades, and improvised explosive device (IED) attacks, forcing the infantry escort to return fire. There was also an occasion when the assigned Army Explosive Ordnance Disposal company was called to detonate an IED. The applicant was subjected to loud noises, resulting from explosions and detonations throughout his deployment.

(2) He was also assigned to the team responsible for shredding and then burning all sensitive and unclassified documentation. Although much of the documentation being burned was paper, it was the best practice to use a small amount of an accelerant to ensure thorough destruction of all documents.

(3) The SFC does not recall the timeframe when the applicant began complaining of headaches or migraines. He would be sent to the Brigade's Aid Station, where he was treated and then released. On several occasions he received 24 to 48 hour quarters and one to two weeks of ibuprofen or equivalent medication. Over time, his symptoms appeared to worsen but were not severe enough to warrant early redeployment. As the deployment got into the spring and summer months, with the increased temperature and sandstorms, the applicant began to show signs of fatigue, he would sporadically have a dry cough as well as breathing challenges. He continued to complain about migraines, which were treated by the Brigade's Aid Station by placing him on profile work restrictions. To accommodate his work restrictions, he was moved to a more even shift, limiting his exposure to the high heat and sandstorms, and he was removed from all logistics convoys and from the paper burning team.

(4) The applicant redeployed on one of the brigade's first large group flights allowing him to return to the United States and seek treatment and hopefully begin to recover and rehabilitate outside the austere environment. Upon the SFC's redeployment, he was placed on assignment instructions approximately 20 days later. However, throughout his transition, the applicant was still having challenges with migraines.

c. Medical records, which are available for the Board's review and will be reviewed by the Army Review Boards Agency Medical Section/Mental Health Section who will provide advisory opinions.

4. 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 Regular Army and entered active duty on 7 January 2008. He remained in the Regular Army through immediate reenlistments.

b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 3 May 2016. He had completed 8 years, 3 months, and 27 days of active service. He had service in Iraq from 12 August 2009 through 29 July 2010. The type of separation was retirement for disability, permanent (enhanced). His service record is void of a DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) or any medical documentation.

c. Memorandums from U.S. Army Human Resources Command (AHRC), CRSC, 3 May 2019, 30 May 2019, and 22 August 2019, show they reviewed his claim for CRSC and made the following determination regarding his claim in accordance with current program guidance. They were unable to verify the following disabilities as combat related:

- Chronic adjustment disorder with anxiety and depressed mood, 30 percent
- Left elbow lateral epicondylitis, limitation of flexion, 20 percent
- Right Elbow Lateral Epicondylitis, limitation of flexion, 20 percent
- Right Shoulder Strain, 10 percent
- Left Shoulder Strain, 10 percent
- Left Knee Strain, 10 percent
- Right Knee Strain, 10 percent
- Left Ankle Strain, 10 percent
- Right Ankle Strain, 10 percent
- Erectile Dysfunction, 0 percent
- Migraine Headaches, 50 percent

On 27 April 2023, AHRC, CRSC, states after reviewing all documentation in support of his claim, they are unable to overturn the previous adjudication(s). The documentation which he has submitted still shows no new evidence to link his requested conditions to a combat-related event. This disapproval is now considered final. He could appeal the decision with the Board.

5. On 18 June 2024, the Chief, Special Compensation Branch, AHRC, provided an advisory opinion, which states in pertinent part:

a. The applicant's claims for CRSC has been reviewed at the initial reconsideration, and appeal levels and has been denied due to insufficient evidence and failure to meet program guidelines. AHRC was unable to verify a combat related event in relation to the conditions requested.

b. He submitted behavior health notes that attribute his mental health conditions to seeing disturbing images, while deployed. He reported seeing Soldiers die by IED blasts and being shot. Although traumatic, the loss of fellow Soldiers, friends, or comrades in a time of war does not meet the guidelines for award of CRSC. Seeing fellow Soldiers remains and being exposed to their combat trauma does not qualify. To meet the definition of combat-related for Armed Conflict, the disability must have been a direct result of the Soldier's personal exposure to armed conflict. AHRC acknowledges the applicant served in Iraq from 12 August 2009 through 29 July 2010; however, serving in a combat zone, in and of itself, is not sufficient to award CRSC. They have reviewed all documentation submitted by the applicant and his available electronic personnel record and did not find evidence of his personal exposure to armed conflict, as required by program guidelines. To reconsider, he must provide AHRC with official documentation that shows how each condition is combat related as defined by CRSC program guidance. For mental health conditions, official documentation includes wartime chain of command endorsements, which confirms exposure to armed conflict; copies of combat decorations; and evaluation reports, which support exposure to armed conflict.

c. He has provided AHRC with documentation, which verifies he has been diagnosed with the remaining conditions he has claimed to be combat related, but to date, he has not submitted medical documentation, which verifies how the conditions occurred. The VA determining that a condition is service connected does not imply that the same condition is also combat related. His DA Form 199 (Formal PEB Proceedings) attributes his back pain and left leg radicular symptoms to no specific trauma and the medical records regarding his back pain state he frequently had to lift heavy objects and was made to wear his gear in his vehicle. Neither lifting heavy objects nor wearing combat gear are considered combat related events. Medical records for his original right heel pain and left shoulder pain state he was in "week 1 of 9 weeks of training" but make no mention of what caused the conditions. Similarly, medical records state that he has "verbalized since 2010 both of his knees and ankles crack" but do not state what caused the conditions. To meet the criteria for CRSC, each condition must be the direct result of a combat related event. Sustaining an injury, while deployed or in the field, is not sufficient to prove that a combat related event caused the injury. To reconsider, he must provide AHRC with official military medical documentation that shows how each 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.

6. On 21 June 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

7. Based on the applicant's assertion he suffered medically and mentally from a combat related experience, the ARBA Medical Section provided a medical review for the Board's consideration

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting reversal of the United States Army Physical Disability Agency's (USAPDA) and the United States Army Human Resources Command's (USAHRC) determination that none of his service-connected conditions meet the criteria for a finding of combat related or qualify for Combat Related Special Compensation (CSRC). The applicant states he has applied to USAHRC for CRSC more than 6 times and "denied every single time."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the Regular Army on 7 January 2008 and was permanently retired for physical disability effective 3 May 2016 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012). It shows none of his disabilities had been determined combat related. He Served in Iraq from 12 August 2009 thru 29 July 2010.

d. The applicant's Physical Evaluation Board (PEB) Proceedings (DA Form 199) dated 19 January 2016 shows the board determined he had two conditions which were unfitting conditions for continued military service: "Chronic back pain with L5-S1 degenerative disc disease, degenerative arthritis, and left leg radicular symptoms" and "Left leg radicular symptoms." The PEB made the administrative determination that neither condition was combat related: They found no evidence that one of these disabilities was the direct result of armed combat; was related to the use of combat devices (instrumentalities of war); the result of combat training; incurred while

performing extra hazardous service though not engaged in combat; incurred while performing activities or training in preparation for armed conflict in conditions simulating war; or that he was a member of the military on or before 24 September 1975.

e. The PEB determined the remaining eleven conditions were not unfitting for continued service. They then applied the VA derived ratings of 20% and 10% respectively and recommended the applicant be permanently retired for physical disability with a combined military disability rating of 30%. On 1 February 2016, after being counseled on the PEB's findings and recommendation by his PEB liaison officer, he concurred with the board's findings, waived his right to a formal hearing, and declined to request a VA reconsideration of his disability ratings.

f. CRSC as described on the United States Army Human Resources Command website:

"Combat-Related Special Compensation (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 Department of Veterans Affairs (VA) for a disability or condition that can be attributed to a combat-related event as defined by the Department of Defense (DoD) 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."

g. Combat-related disability for CRSC is defined in 10 U.S.C. § 1413a(e) as a disability that is "attributable to an injury for which the member was awarded the Purple Heart" or was incurred "as a direct result of armed conflict," "through an instrumentality of war," "while engaged in hazardous service," or "in the performance of duty under conditions simulating war."

h. Combat related is defined in Section b(3) of 26 U.S. Code § 104, and requires there be a direct cause and effect relationship:

(3) Special rules for combat-related injuries: For purposes of this subsection, the term "combat-related injury" means personal injury or sickness—

(A) which is incurred—

(i) as a direct result of armed conflict,

(ii) while engaged in extra-hazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

i. Paragraph 631001A of Department of Defense Financial Management Regulation 7000.14-R Volume 7B Chapter 63 "Combat-Related Special Compensation (CRSC)" defines the basis for determining combat related for the purposes of awarding CRSC:

"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, or conjecture."

j. Paragraph 630601A of Department of Defense Financial Management Regulation 7000.14-R, Volume 78, Chapter 63:

"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, or 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 liability."

k. The applicant's EMR was reviewed with particular attention paid to his period of Service in Iraq from 12 August 2009 thru 29 July 2009 and the EMR for this period was reviewed. His only encounter during this period was for a rash in 2010.

l. The majority of the EMR encounters were related to his lumbar spine condition, a left hand fracture he sustained in a motor vehicle accident, and PTSD delayed expression.

m. Finally, the PEB case file and the Disability Benefits Questionnaires (aka VA C&P) for all referred and claimed conditions were reviewed. The questionnaires note the onset of the condition under review. Most were of insidious onset. His low back pain started after lifting a Christmas present. The VA mental health examiner determined the applicant did not meet all the criteria for PTSD and he was diagnosed with "Chronic Adjustment Disorder with Anxiety and Depressed Mood."

n. No substantiating medical documentation or command endorsements were submitted, nor are there any EMR encounters or other evidence to support an

affirmative combat related finding for any of these VA service-connected conditions for the purpose of awarding CRSC.

o. The applicant is not in receipt of a Purple Heart, Combat Action Badge, and no corroborating documentation was found. A note in paragraph 630502 of DoD FMR 7000.14-R Volume 7B Chapter 63 CRSC notes the requirement for documentation, stating in part:

“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 based on the program criteria.”

p. It is the opinion of the ARBA Medical Advisor there is insufficient probative evidence upon which to reverse the United States Army Physical Disability Agency's and/or the United States Army Human Resources Command's previous non-combat related determinations and thus the conditions remain ineligible for CRSC.

#### BOARD DISCUSSION:

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 carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical advisor's review, the Board concurred with the advising official finding insufficient evidence to reverse the U.S. Army Physical Disability Agency or the U.S. Army Human Resources Command's previous non-combat related determinations and thus remaining ineligible for CRSC.

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.

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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. 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. Title 10, USC, section 1413a (Combat Related Special Compensation (CRSC) (c) (Eligible Retirees), an eligible combat related disabled uniformed services retiree is a member of the uniformed services who: is entitled to retired pay (other than by reason of section 12731b of this title); and has a combat-related disability. Effective date shall take effect not later than 180-days after the date of the enactment of this act of 2 December 2002. (e) (Combat-Related Disability), "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that: (1) is attributable to an injury for which the member was awarded the Purple Heart; or (2) was incurred (as determined under criteria prescribed by the Secretary of Defense); as a direct result of armed conflict; while engaged in hazardous service; in the performance of duty under conditions simulating war; or through an instrumentality of war.
3. Title 10, USC, chapter 61, section 1201 (Regulars and members on active duty for more than 30 days: retirement), (a) Retirement - upon a determination by the Secretary concerned that a member is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b). (b) Required Determinations of Disability - determinations by the Secretary that: (1) based upon accepted medical principles, the disability is of a permanent nature and stable; (2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and (3) either; (A) the member has at least 20 years of service; or (B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either (i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service); (ii) the disability is the proximate result of performing active duty; (iii) the disability was incurred in line of duty in time of war or national emergency; or (iv) the disability was incurred in line of duty after 14 September 1978.
4. Department of Defense Financial Management Regulation 7000.14-R, Volume 7B, (Military Pay Policy – Retired Pay), provides information for the specific qualifications

and entitlement for military retired pay, describes the basic types of retirement (regular, non-regular, and disability), discusses voluntary and involuntary retirements, and explains basic qualifications for the differing military retired pay programs.

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

b. Paragraph 1.1.1.3, for an eligible member who is retired under Title 10, USC, Chapter 61 (Title 10, USC, Chapter 61) with less than 20 years of active duty or with less than sufficient service and age to qualify for retirement under Title 10, USC, section 12731, compensation is effective 1 January 2008.

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

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

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

e. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to

only state the fact that a member incurred the disability during a period of war, in an area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

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

(2) In the Performance of Duty Under Conditions Simulating War. In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

(3) Instrumentality of War:

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

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

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

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

struck the member, then the injury would be considered the result of an instrumentality of war.

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

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

7. 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//