

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20230011480

APPLICANT REQUESTS:

- reversal of the decision by the U.S. Army Human Resources Command (HRC) to deny his combat-related special compensation (CRSC), effective 21 December 2018
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in support of application
- HRC Letter to Applicant, 5 April 2019
- Counsel Letter to HRC, 16 October 2020
- CRSC Reconsideration Request Form
- DD Form 2860 (Claim for CRSC, 16 October 2020)
- Brief in Support of Request for Reconsideration of Claim for CRSC, 8 September 2020
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, 17 October 2018)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 20 December 2018
- Two Department of Veterans Affairs (VA) Rating Decisions, 17 January 2019 and 8 October 2019
- Audiology Examination Consult, 21 August 2018
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), 24 September 2018
- Disability Evaluation System Medical Narrative Summary, Medical Evaluation Board Clinic, 24 September 2018
- Character Letter
- HRC CRSC Denial, 4 January 2021
- Counsel Letter to HRC, 24 September 2021
- CRSC Reconsideration Request Form, 20 September 2021

- Brief in Support of Request for Reconsideration of Claim for CRSC, 20 September 2021
- Army Commendation Medal Certificate, 20 March 2009
- DA Form 638 (Recommendation for Award), Army Commendation Medal, 20 March 2009
- Character Letter
- HRC CRSC Denial, 20 October 2021
- Headquarters, III Corps and Fort Hood Orders 317-0137, 13 November 2018
- HRC Excerpt of Combat Related Determinations Summary
- HRC Excerpt of Armed Conflict – Instrumentality of War Summary
- HRC Excerpt of CRSC Criteria
- HRC Excerpt of Combat – Relatedness Differences
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20190015543

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 is requesting, reversal of the decision by the HRC to deny his CRSC for post-traumatic stress disorder (PTSD), he incurred in Afghanistan and Iraq, as a direct result of armed conflict and/or while engaged in hazardous service. In addition, he requests correction of his medical records to reflect his PTSD was incurred in Afghanistan as a direct result of armed conflict and/or while engaged in hazardous service, and retroactive CRSC benefits for PTSD, with an effective date of 21 December 2018.

a. The applicant served honorably from 10 September 2007 to 20 December 2018. On 18 October 2018, the Physical Evaluation Board (PEB) concluded that the applicant suffered from combat-related PTSD. On 20 December 2018, the applicant was medically retired from the Army due to PTSD.

b. On 18 January 2019, the VA determined the applicant's PTSD to be service-connected with a disability rating of 70 percent.

c. Toward the beginning of 2019, the applicant applied for CRSC and was denied because although his application included the PEB proceedings, it did not include any other supporting documentation to verify combat exposure or any other CRSC qualifying criteria.

d. The applicant developed PTSD as a direct result of his traumatic experiences while serving in Iraq and Afghanistan. In both theaters, he was exposed to direct and indirect fire.

3. The applicant provides:

a. A letter by the applicant's counsel, dated 16 October 2020, addressed to the commander of HRC, which includes his CRSC reconsideration request, shows his previous request was rejected because his initial request did not include sufficient supporting documentation to verify combat related qualifying criteria. However, the reconsideration request includes a testimonial regarding his combat exposure as well as other corroborating evidence.

b. The Army Commendation Medal, awarded to the applicant on 20 March 2009, for exceptional meritorious service during Operation Iraqi Freedom (OIF) 08-10, and his contributions to the success of the unit's wartime mission.

c. An audiology examination, conducted 21 August 2018, which will be reviewed and discussed by the Medical staff at the Army Review Boards Agency (ARBA).

d. DA Form 3947, dated 24 September 2018, shows:

(1) Diagnoses:

- PTSD, combat related. Approximate date of origin 10 January 2018, does not meet retention standards, and did not exist prior to his service
- Major Depressive Disorder, Unspecified. Approximate date of origin 22 January 2016, does not meet retention standards, and did not exist prior to his service

(2) The board recommended that the Service Member be referred to a PEB.

(3) Service Member Action:

- He has been Informed of the decision made by the MEB
- He understands that he has five calendar days to make an election on his MEB
- He has been advised to seek legal counselling from the Soldiers' MEB Counsel Office or counsel of his choice at no expense to the government
- He has received a copy of the DA Form 3947 MEB Proceedings NARSUM, DA Form 3349 (Physical Profile), and DA Form 7652 (Disability Evaluation System Commander's Performance and Functional Statement)

- He has been Informed of his right to an Impartial Medical Review (IMR) and opportunity to submit a written rebuttal to the MEB
- In regard to issues relating to fitness for duty and disability compensation, he understands that the PEB will consider and review only those diagnosed conditions listed on the DA Form 3947
- All documentation of military and civilian medical care in his possession was provided to the Physical Evaluation Board Liaison Officer (PEBLO) for Inclusion In this MEB

(4) The applicant did not concur with the board's decision, and he did not request an Impartial Medical Review (IMR).

(5) The MEB decision was approved on 3 October 2018.

e. On 24 September 2018, he was referred into the Integrated Disability Evaluation System (IDES) Medical NARSUM, for Major Depressive Disorder, Recurrent Moderate. This document is available in its entirety for the Board's review.

f. A Department of Veterans Affairs (VA) Rating Decision dated 17 January 2019, lists the applicant's multiple disabilities and rated percentages. It also shows he has a combined disability rating of 90 percent (%), with a 70% disability rating for PTSD with Major Depressive Disorder. The VA Rating Decision can be reviewed in its entirety in the supporting documents.

g. Two character references, which state, in pertinent part:

(1) On 28 October 2019, Sergeant First Class (SFC) F. C. states he served with the applicant in a combat zone, when they were exposed to indirect fire from mortars and rockets. During Ramadan in September of 2008, the applicant was removing cargo nets from the supplies on top of a truck when indirect fire hit within 100 meters from the warehouse buildings. It hit with enough impact to shake the buildings but did not explode: the war heads were recovered after the incident. The applicant was there to provide logistical support, however he was also assigned to keep the perimeter of the airfield secured, as part of the Quick Reaction Force (QRF). The indirect overhead fire continued consistently through Ramadan and during the sandstorms which routinely exposed them to indirect fire and distant exposures within 200 meters.

(2) On 12 July 2021, Sergeant (SGT) M. A. states she was assigned to the same unit as the applicant. He was a young, happy, outgoing Soldier with impeccable behavior and a great sense of humor. She did not deploy with the unit, but she is aware of the constant indirect fire their unit was exposed to from rocket and mortar attacks all within 100 to 200 meters from the applicant's place of duty. Once the applicant returned, he was not the same Soldier she had met before the deployment. He was now a more

mature, serious Soldier, constantly on guard, with some episodes of distractions, irritability, anger outbursts, excessive worrying, depression, and a significant change in personality.

h. Brief in support of a second CRSC reconsideration request, dated 8 September 2020 shows the applicant served honorably from 10 September 2007 and 20 December 2018.¹ He was medically retired from the U.S. Army due to PTSD and is therefore entitled to retired pay. The VA determined his PTSD to be service-connected and incurred in combat, with a disability rating of 70%, along with service-connected tinnitus, with a disability rating of 10%. As a service member who has less than 20 years of military service with combat related disability, he meets CRSC requirement. His PTSD was incurred as the direct result of his service in Iraq and Afghanistan, and his Tinnitus was incurred through an instrumentality of war or under conditions simulating war, and therefore qualifies for CRSC benefits.

i. A second letter by the applicant's counsel, dated 24 September 2021, addressed to the commander of HRC, shows:

(1) His previous request was rejected because his initial request did not include sufficient supporting documentation to verify combat related qualifying criteria. However, the reconsideration request included a testimonial regarding his combat exposure as well as other corroborating evidence.

(2) Upon his request for reconsideration, CRSC granted his claim for tinnitus, but denied his claim for PTSD.

(3) The applicant requested a second reconsideration of the prior decision by CRSC, that he be granted benefits with respect to his PTSD. Additional evidence concerning the applicant's combat exposure were also included.

j. A letter by the applicant's counsel, dated 16 October 2020, addressed to ARBA, shows CRSC erroneously denied the applicant's request for CRSC with respect to PTSD and erroneously denied two subsequent requests for reconsideration. He requests that ABCMR correct his military record to indicate that he qualifies for CRSC benefits due to his PTSD, effective as of 21 December 2018.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 10 September 2007, followed by multiple reenlistments.

b. The applicant served in:

- Iraq from 15 June 2008 to 16 June 2009
- Afghanistan from 17 June 2010 to 17 June 2011
- Qatar from 24 September 2015 to 15 June 2016

c. DA Form 199, shows the PEB convened on 17 October 2018, wherein the applicant was found physically unfit with a recommended disability rating of 70%, and that the disposition be placement on the Temporary Disability Retired List (TDRL), and reexamined during July of 2019, due to PTSD combat related and major depressive disorder, unspecified. Onset of this condition is 2009. The condition was attributed to the loss of a fellow Soldier in his unit, and the direct and indirect fire while deployed to Iraq in 2008 and Afghanistan in 2010, as a direct result of armed conflict. Despite being treated at behavioral health, limiting profile, and medications there is no improvement of symptoms. Functional activity limitations associated with this condition make this Soldier unable to reasonably perform required duties. The applicant concurred with the findings, waived a formal hearing of his case, and did not request reconsideration of his VA rating. This document further shows the PEB made the following administrative determinations:

(1) This condition:

- Was incurred or aggravated in the line of duty in a duty status
- It was not due to intentional misconduct, willful neglect, or unauthorized absence
- It is not permanent and stable

(2) The disability disposition is based on disease or injury incurred in the line of duty In combat with an enemy of the United States and as a direct result of armed conflict or caused by an Instrumentality of war and Incurred Jn the line of duty during a period of war (5 USC 8332, 3502, and 6303). This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.

(3) Evidence of record reflects the Soldier was not a member or obligated to become a member of an armed force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(4) The disability did result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.

d. Orders 317-0137, dated 13 November 2018, show the applicant was to be retired because of a physical disability incurred while entitled to basic pay and under conditions that permit his placement on the Temporary Disability Retired List. The percentage of disability is 70, with an effective date of retirement of 20 December 2018.

e. His DD Form 214, shows he was honorably retired from active duty on 20 December 2018, due to disability, temporary (enhanced). He completed 11 years, 3 months, and 11 days of active service and 3 years, 8 months, 24 days of foreign service.-5.

f. DA Form 199, shows the PEB convened on 24 April 2021, wherein the applicant was found physically unfit with a recommended disability rating of 70%, and that the disposition be permanent retirement, due to PTSD combat related and major depressive disorder, unspecified. The applicant concurred with the findings, waived a formal hearing of his case. This document further shows the PEB made the following administrative determinations:

(1) This condition:

- Was incurred or aggravated in the line of duty in a duty status
- It was not due to intentional misconduct, willful neglect, or unauthorized absence
- It is not permanent and stable

(2) The disability disposition is based on disease or injury incurred in the line of duty In combat with an enemy of the United States and as a direct result of armed conflict or caused by an Instrumentality of war and Incurred Jn the line of duty during a period of war (5 USC 8332, 3502, and 6303). This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.

(3) Evidence of record reflects the Soldier was not a member or obligated to become a member of an armed force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(4) The disability did result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.

g. Order D124-14, dated 4 May 2021, show the applicant was to be removed from TDRL on 21 December 2018 because of permanent physical disability, and permanently retired 4 May 2021, in his current grade of rank. The percentage of disability is 70.

5. On 5 April 2019, the HRC, CRSC Branch notified the applicant that after carefully reviewing the available documentation, they are unable to award PTSD with Major Depressive Disorder claim. While his claim contained his PEB proceedings, it did not include any supporting documentation to verify combat exposure or any other CRSC qualifying criteria. Therefore, they are unable to award the condition(s) requested

within his application.

6. In a CRSC decision letter issued to the applicant by HRC on 4 January 2021, shows only partial approval of his reconsideration claim. No new evidence was provided to show a combat-related event caused his conditions, and no details on how his injury occurred as a result of a combat-related event, and he was not awarded Combat Action Badge. He was however, awarded a total combat rated disability for tinnitus, with a rating of 10 %, effective January of 2019, which was combat-related due to an Instrumentality of War.

7. On 20 October 2021, the HRC, CRSC program office notified the applicant that the processing of his appeal was complete, and it is not possible to award his claim. The documentation submitted makes no mention of a combat-related event in relationship to his disabilities. His claim has previously been processed at the initial, reconsideration, and appeal levels. During each review, their staff has made every effort to consistently, and fairly review all available documentation and accurately adhere to this program's standards, this determination was now final.

8. Army Regulation 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the HRC previous decision related to the CRSC claim submitted by the applicant and the lack of any substantiative new evidence submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting the reversal of the previously issued decision by HRC related to the applicant's CRSC claim.

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, United States Code (USC) (Armed Forces), 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)), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or

opinions. 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.

3. The Under Secretary of Defense, Military Personnel Policy has provided policy guidance on the processing of combat-related special compensation (CRSC) appeals. This guidance states that 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 or caused by an instrumentality of war.

4. Title 26, United States Code (USC) (Armed Forces), section 104, states the term "combat-related injury" means personal injury or sickness that is incurred as a direct result of armed conflict; while engaged in extra hazardous service, under conditions simulating war; or which is caused by an instrumentality of war.

5. Title 10, United States Code (USC) (Armed Forces), § 1413a - Combat-related special compensation.

a. Authority. The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b). CRSC, as established by 10 USC, 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 was 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), eligible combat-related disabled uniformed services retirees who retired with fewer than 20 years of creditable service and who have disabilities that are the direct result of armed conflict, especially hazardous military duty, training exercises that simulate war, or caused by an instrumentality of war. Such disabilities must be compensated by the VA and rated at least 10 percent disabling. Eligible members are retired veterans with combat-related injuries who meet certain criteria.

b. Sub-section e. Combat-Related Disability - In this section, the term "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.

(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
- through an instrumentality of war

6. Army Regulation 15-185 (ABCMR), states the Army, by law, may pay claims for amounts due to applicants as a result of correction of military records. The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant and settle claims on the basis of the corrected military record. The applicant's acceptance of a settlement fully satisfies the claim concerned.

//NOTHING FOLLOWS//