

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20230012077

APPLICANT REQUESTS: in effect,

- that his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 17 October 2018 be updated to reflect that asthma is combat related
- establish eligibility for Combat Related Special Compensation (CRSC) for asthma
- increase of physical disability rating
- back date his original eligibility to or the PACT Act implementation date whichever is earlier
- back pay if any

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- NGB Memorandum, Subject: Line of Duty (LOD) Determination
- DA Form 199
- Army review Boards Agency (ARBA) Letter
- Congressional Email and ARBA Emails
- Congressional Liaison and Inquiries Letter

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 the PACT Act makes one of the conditions listed on his DA Form 199 as combat related (asthma). This provides relief to him because this potentially makes the condition both CRSC eligible and potentially changes the retirement to tax exempt. The applicant previously submitted information regarding another application.

3. The applicant provides:

a. A self-authored letter, undated, states asthma is now a presumptive condition making it combat related and also CRSC eligible. He also requests that the condition of asthma be changed to be listed as combat related and eligible for tax-free retirement compensation. Section V: Administrative Determinations under 1 and 3 of the DA Form 199. Both 1 and 3 need to be updated to reflect the asthma as combat related. The PACT Act greatly expands the list of medical conditions that qualify at the Veterans Administration (VA) and therefore also the Army for presumptive service connection. A retired veteran already service connected for these conditions is now eligible for CRSC based upon the PACT Act's presumption that the conditions are associated with burn pit exposure. If not, already service connected for these conditions, retired veterans may take advantage of the PACT Act by applying for and receiving a VA award of presumptive service connection. The VA's award of presumptive service connection then makes the veteran eligible for CRSC in addition to a possible increase in VA disability compensation. As this was the primary condition for his medical retirement and the condition is clearly related to service in a combat zone as well as now PACT Act presumptive this would make his retirement nontaxable for 60% and taxable for the remaining 15%.

(1) When he received a rating for asthma the line of duty (LOD) stated "SM has developed a case of Asthma from being around burn pits during his deployment with the KS National Guard". This paperwork was previously provided to the CRSC board and denied however now the PACT Act by adding this as a presumptive condition makes asthma now CRSC eligible. His asthma LOD clearly states that the asthma was related to his service on a deployment and exposure to burn pits. Other related documents are very likely in his file.

(2) He believes this can be backdated to the date of his original eligibility or possibly the PACT Act implementation date whichever is earlier and send to Defense Finance and Accounting Service (DFAS) for processing for applicable backpay if any.

b. DA Form 2173, 21 January 2016 reflects accident information, date 30 June 2010 in Djibouti Africa. The nature and extent of disease, unspecified asthma, uncomplicated. The applicant has developed a case of asthma from being around burn pits during his deployment with the KS National Guard. The applicant was on active duty. A formal LOD was not required. The injury is considered to have been incurred in LOD.

c. NGB Memorandum, Subject: Line of Duty (LOD) Determination, 22 March 2016 reflects the applicant's asthma as shows on his DA Form 2173 occurred during Operation Enduring Freedom is approved "In Line of Duty."

d. ARBA letter, 4 October 2023 shows the applicant request to the Army Disability Rating Review Board (ADRRB), 31 July 2023 shows the ADRRB determined that his request must be directed to the Army Board for Correction of Military Records (ABCMR).

e. Congressional Email and emails inquiring regarding the status of the applicant's application.

4. Review of the applicant's service records show:

a. Having had prior enlisted service in the Kansas Army National Guard (KSARNG).

b. NGB Form 22 (Report of Separation and Record of service) shows the applicant was honorably discharged from the ARNG on 6 March 2008.

c. DA Form 71 (Oath of Office-Military Personnel) shows he was appointed as a U.S. Army Reserve commissioned officer and executed an oath of office on 7 March 2008 in the grade of second lieutenant and in the Oklahoma ARNG (OKARNG). He entered active duty on 2 August 2008.

d. Orders 075-072, 16 March 2010 ordered to active duty in support of Operation Enduring Freedom.

e. He was honorably released from active duty on 14 January 2009 and transferred to the 45th Infantry Signal Network Support Corps, Oklahoma City, OK. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 months and 13 days net active service this period.

f. He entered active duty on 7 May 2010. His DD Form 214 shows he was released from active duty on 9 May 2011 and transferred to the ARNG. He completed 1 year and 3 days net active service.

g. He entered active duty on 7 March 2014. His DD Form 214 shows he was honorably released from active duty on 24 October 2014 and transferred to the ARNG. He completed 7 months and 18 days net active service.

h. The Memorandum, Subject: Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years), 6 July 2017, shows the applicant had completed the required years of service and will be eligible for retired pay upon his applicant at age 60.

i. A Physical Evaluation Board (PEB) an informal PEB, convened on 10 October 2018 and the board found he was physically unfit and recommended a rating of 80% and that the applicant's disposition be permanent disability retirement. It was

administratively corrected on 17 October 2018, found the applicant physically unfit for duty for three medical conditions which included asthma rated at 60%, rotator cuff tendonitis, right rated at 40% and right hand and fingers regional pain syndrome, rated at 10 percent disabling. In order for this condition be included on his PEB and rated there would have to have been a determination the condition was In the Line of Duty (ILOD). He was fit for post-traumatic stress disorder (PTSD).

j. Orders 323-702, 19 November 2018 honorably separated the applicant from the ARNG and transferred him to the U.S. Army Reserve (USAR). Effective date 26 November 2018.

k. Order D 296-15, 23 October 2018 released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability.

I. ARNG Current Annual Statement, 2 December 2018 shows the applicant had 21 years of creditable service for retired pay.

m. On 2 April 2019, the ABCMR determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the applicant be corrected by changing the LOD determination of 2016 concerning the incident occurring on 27 June 2010, in Djibouti, Africa to ILOD.

n. Army CRSC Decision letter, 5 March 2019 shows the applicant's asthma was unable to be verified as a combat related disability.

o. Army CRSC Decision letter, 13 December 2019 shows the applicant's request for CRSC was reconsidered and approved his claim. Verified as combat related disability are PTSD, right hand and finger syndrome, bilateral tinnitus, and bilateral hearing loss. Asthma with bronchitis and obstructive sleep apnea referred as asthma was unable to be verified as a combat related disability.

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

6. 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%. 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%.

7. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.
8. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.
9. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.
10. By law, the CRSC criteria are specifically for those military retirees who have combat-related disabilities. Incurring disabilities while in a theater of operations or in training exercises is not, in and of itself, sufficient to grant a military retiree CRSC. The military retiree must show the disability was incurred while engaged in combat, while performing duties simulating combat conditions, or while performing especially hazardous duties such as parachuting or scuba diving. CRSC determinations require evidence of a direct, causal relationship to the military retiree's VA rated disabilities to war or the simulation of war.

11. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:
 - b. The applicant has applied to the ABCMR requesting they apply "The Sergeant First Class (SFC) Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act to reverse the United States Army Physical Disability Agency's determination that his asthma was non-combat related. He states:

"This letter is to request an administrative change to my DA Form 199 dated 20181018. On the prior form the conditions were not listed as combat eligible however one of the conditions is now considered combat related under the PACT ACT. Asthma is now a presumptive condition making it combat related and also CRSC eligible.

I am requesting that the condition of Asthma is changed to be listed as combat related and eligible for tax-free retirement compensation. This is in SECTION V: ADMINISTRATIVE DETERMINATIONS under 1 and 3. Both 1 and 3 need to be updated to reflect the asthma as combat related ...

When I received a rating for asthma the line of duty (LOD) stated "SM has developed a case of Asthma from being around burn pits during his deployment with the KS National Guard". This paperwork was previously provided to the CRSC board and denied however now the PACT ACT by adding this as a presumption condition makes asthma now CRSC eligible."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published 23 October 2018 by the United States Army Physical Disability Agency show permanently retired for physical disability with an 80% rating effective 27 November 2018 under provision in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (17 January 2017). They show that none of his unfitting disabilities was combat related as defined by 10 USC 104.

d. Section b(3) of 26 U.S. Code § 104 governs combat related findings by the Department of Defense and requires there be a cause-and-effect relationship in order to establish the finding that a medical condition is combat related:

(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.

e. Passed in 2022, the PACT Act expanded health VA health care and benefits to Veterans. Part of this was by adding more than twenty conditions to a list of conditions, including burn pit exposure, for which the VA bases service connection on possible toxic exposure during service, i.e., a presumptive connection of diseases based on service in an area of potential exposure. Presumptive VA service connection of diseases for possible exposure to agent orange is probably the best-known example.

f. However, the PACT Act is not applicable to the Department of Defense: A VA presumption of service connection does not make a condition in line of duty for compensation from the Services and it is not in any way related to a finding of combat related, only service connection by the VA.

g. Within the Services, exposure to burn pits and the materials they released into the air has not been found combat related due instrumentality of war or other criteria. An instrumentality of war is defined as 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. They may also include such instrumentalities not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service.

h. Neither the fire nor the burning of refuse is an instrumentality of war designed primarily for a military purpose. While there has been much study into the effects of burn pit smoke on Soldiers and smoke in general is hazardous, the smoke is not an instrumentality of war nor is exposure to smoke from burning refuse, equipment, or structures uniquely military and different from the use or occurrences in similar circumstances in civilian pursuits.

i. It is the opinion of the Agency medical advisor the PACT Act is not applicable to The Department of Defense and there is no evidence the applicant's asthma due to burn pit exposure is not combat related.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the medical review the Board concurred with the advising official finding that the PACT Act is not applicable to the Department of Defense and a VA presumption of service connection does not make a condition in line of duty for compensation from the Services and it is not in any way related to a finding of combat related.

2. The Board determined there is insufficient evidence to support the applicant's contentions that his DA Form 199 should be updated to reflect that asthma is combat related, establish eligibility for Combat Related Special Compensation (CRSC) for asthma nor an increase of physical disability rating. The Board determined based on the medical review, documentation provided by the applicant and regulatory guidance the applicant's contention to back date his original eligibility to or the PACT Act implementation date whichever is earlier is without merit and therefore, relief is denied.

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.

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. Section 1556 of Title 10, USC, 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.
3. Title 38 USC, 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.
4. Title 38 USC, 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.
5. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states 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. Chapter 3-4 states Soldiers who sustain or aggravate physically unfitness 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. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitness, 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, USC, 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.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by a Military Occupational Specialty

Medical Retention Board; 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 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.

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.

7. Title 38, USC, permits 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 medically unfitting 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. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

8. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 completed by the medical treatment facility and annotated by the unit

commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. Paragraph 1-7a states the worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty was considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. Paragraph 2-6 states an injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

9. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

10. 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 DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; 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 to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

11. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless

of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

12. 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.

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

14. Combat Related Special Compensation (CRSC), as established by section 1413a, Title 10, U.S. Code, 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) 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% disabling. Military retirees who are approved for CRSC must have waived a portion of their military retired pay since CRSC consists of the Military Department returning a portion of the waived retired pay to the military retiree.

//NOTHING FOLLOWS//