

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012266

APPLICANT REQUESTS: in effect, reversal of the denial decisions by the U.S. Army Human Resources Command that denied him Combat-Related Special Compensation (CRSC) pay for his disabling conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Diagnostic Polysomnography Report, 21 May 2018
- DA Form 2947 (Medical Evaluation Board (MEB) Proceedings), 22 Jun 2018
- Department of Veterans Affairs (VA) Disability Evaluation System Proposed Rating, 13 August 2018
- DA Form 199 (Physical Evaluation Board (PEB) Proceedings, 15 August 2018
- Letter from VA Rating Decision, 1 November 2018
- DA Form 199, 1 September 2020
- Orders D254-09 Permanent Disability Retirement, 10 September 2020
- Letter from U.S. Army Human Resources Command (AHRC), 8 September 2021
- CRSC Reconsideration Form, 13 August 2023
- Medical Documents
- Letter from Army Review Boards Agency, 27 October 2023

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 indicates on his application he suffers from post-traumatic stress disorder (PTSD). The applicant states he is requesting an adjustment to his CRSC pay as the documentation states his injuries are combat related and/or simulation of war. Many of his conditions were caused during combat as well as a result of deployments, seeing his battle buddies die in combat and from being under mortar and rocket attacks in Iraq in 2007 and 2010.

3. The applicant provides the following documents:

a. Diagnostic Polysomnography Report, 21 May 2018, shows the applicant has obstructive sleep apnea and increased wakefulness after sleep onset. The entire report is available for the Board's consideration.

b. VA Disability Evaluation System Proposed Rating, 13 August 2018, shows proposed ratings for:

- PTSD and major depressive disorder 70 percent
- migraine headaches inducing migraine variants 30 percent
- degenerative arthritis of the thoracolumbar spine with vertebral disc disease and strain 20 percent
- left elbow strain (injury) 10 percent
- right hand strain, first digit 10 percent
- right hand strain, second digit 10 percent
- right hand strain, third digit 10 percent
- right knee patellofemoral pain syndrome 10 percent
- left knee patellofemoral pain syndrome 10 percent
- left ankle strain/sprain with instability 10 percent
- right ankle strain/sprain with instability 10 percent
- tinnitus 10 percent
- polycythemia vera 10 percent
- painful scar, left elbow 10 percent
- lumbar radiculopathy, left lower extremity with sciatic nerve involvement 10 percent
- lumbar radiculopathy, right lower extremity with sciatic nerve involvement 10 percent

c. VA Rating Decision, 1 November 2018, shows some of the VA's rating decisions concerning the applicant's service related disabilities. The entire document is not available for the Board's consideration.

d. CRSC Reconsideration Request Form, 13 August 2023, wherein the applicant is requesting reconsideration of CRSC for PTSD, lumbar degenerative disc disease, left knee, right knee, hearing loss, radiculopathy, and migraines.

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the U.S. Army Reserve (USAR) on 15 December 2013 and remained in the USAR through an immediate reenlistment.

b. DD Forms 214 (Certificate of Release or Discharge from Active Duty) show:

(1) The applicant was in the Regular Army from 5 February 2004 through 16 January 2014. He had service in Iraq from 29 April 2007 through 19 November 2007 and 3 January 2010 through 25 August 2010.

(2) The applicant was ordered to active duty as a member of the USAR on 24 June 2016 and was honorably released on 23 June 2017. He was ordered to active duty in support of Operation Enduring Freedom.

(3) The applicant was ordered to active duty as a member of the USAR on 5 November 2017 and was honorably released on 26 October 2018. He was ordered to active duty in support of Operation Enduring Freedom.

c. DA Forms 199 show the applicant received a PEB on:

(1) 15 August 2018, he was found unfit for duty and the board recommended a rating of 80 percent and that he be placed on the TDRL. The applicant concurred with the board's recommendation and waived a formal hearing in his case and did not request reconsideration of his VA rating. The applicant's ratings were as follows:

- PTSD major depressive disorder, 70 percent
- Lumbar degenerative disc disease with epidural lipomatosis, 20 percent
- Left knee patella tendon lateral femoral condyle friction syndrome with cartilage loss, 10 percent
- Right knee patella tendon lateral femoral condyle friction syndrome, 10 percent

(2) 1 September 2020, he was found unfit for duty and the board recommended a rating of 70 percent and that he be permanently retired due to disability. The applicant concurred with the board's recommendation and waived a formal hearing in his case. The applicant's ratings were as follows:

- PTSD major depressive disorder, 50 percent
- Lumbar degenerative disc disease with epidural lipomatosis, 20 percent
- Left knee patella tendon lateral femoral condyle friction syndrome with cartilage loss, 10 percent
- Right knee patella tendon lateral femoral condyle friction syndrome, 10 percent

d. Letter from AHRC, 9 March 2019, states the CRSC program office had completed processing the applicant's initial claim. AHRC was unable to award the applicant's bilateral PTSD and major depressive disorder and degenerative disc disease of the thoracolumbar spine with intervertebral disc disease and strain.

e. Letter from AHRC, 1 April 2020, states the CRSC program office had completed processing the applicant's reconsideration claim and was able to partially approve a portion of his claim. The applicant's tinnitus was verified as combat-related due to an instrumentality of war at 10 percent effective November 2018. AHRC was unable to award the applicant's claim for:

- PTSD and major depressive disorder
- Degenerative arthritis of the thoracolumbar spine with intervertebral disc syndrome and strain
- Lumbar radiculopathy, left lower extremity with sciatic nerve involvement
- Lumbar radiculopathy, right lower extremity with sciatic nerve involvement
- Erectile dysfunction

f. Letter from AHRC, 23 December 2020, states the CRSC program office had completed processing the applicant's reconsideration claim and was unable to award his claim for major depressive disorder, migraine headaches, lumbosacral strain, and erectile dysfunction.

g. Order D254-09, published by U.S. Army Physical Disability Agency, 10 September 2020, removed the applicant from the Temporary Disability Retired List (TDRL) and permanently retired the applicant with a 70 percent disability rating. The disability is based on injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war as defined by law.

h. Letter from AHRC, 8 September 2021, states the CRSC program office had completed processing the applicant's reconsideration claim. AHRC considered this the final determination. The applicant could apply to the Board if he disagreed with the determination. AHRC was unable to award the applicant's claim for:

- PTSD and major depressive disorder
- Migraine headaches, including migraine variants
- Degenerative arthritis (degenerative disc disease) of the thoracolumbar spine with intervertebral disc syndrome and strain
- Lumbar radiculopathy, left lower extremity with sciatic nerve involvement
- Lumbar radiculopathy, right lower extremity with sciatic nerve involvement
- Male erectile dysfunction

i. Letter from AHRC, 16 January 2024, states the CRSC program office had reviewed the applicant's reconsideration claim and made the following determination. The applicant's tinnitus was previously awarded. AHRC verified the 10 percent and effective date. AHRC made a final disapproval decision of the applicant's claim for:

- PTSD and major depressive disorder
- Migraine headaches, including migraine variant
- Degenerative arthritis (degenerative disc disease) of the thoracolumbar spine with intervertebral disc syndrome and strain
- Left knee patellofemoral pain syndrome (PEB states not combat related)
- Right knee patellofemoral pain syndrome (PEB states not combat related)
- Lumbar radiculopathy, left lower extremity with sciatic nerve involvement
- Lumbar radiculopathy, right lower extremity with sciatic nerve involvement
- Male erectile dysfunction

5. On 11 January 2024, the Chief, Special Compensation Branch, AHRC provided an advisory opinion, which states:

a. The applicant submitted CRSC applications on 9 March 2019, 1 April 2020, 23 December 2020, and 8 September 2021. He was approved for tinnitus for 10 percent with an approval date of November 2018. He requested consideration for PTSD and major depressive disorder; migraine headaches, including migraine variants; degenerative arthritis (degenerative disc disease) of the thoracolumbar spine with intervertebral disc disease and strain; lumbar radiculopathy, left lower extremity with sciatic nerve involvement; lumbar radiculopathy, right lower extremity with sciatic nerve involvement; and male erectile dysfunction; however, AHRC was unable to verify a combat related event in relation to these conditions. The applicant's claim has been reviewed at the initial and reconsideration levels and denied due to insufficient evidence.

b. The applicant served in Iraq in 2007 and 2010. He stated on his CRSC application that his PTSD is due to witnessing dead battle buddies and being under rocket and mortar attacks. While AHRC acknowledged the applicant's deployments to IRAQ, serving in a combat zone is not sufficient, by itself, to award CRSC. Additionally, the events described by the applicant do not meet the CRSC criteria for armed conflict. To qualify under armed conflict, there must be evidence which confirms the applicant's personal exposure to armed conflict. To award mental health conditions, the applicant must provide AHRC with official military documentation that establishes a direct causal relationship between a qualifying combat-related event and the disability. Some examples of document are, but not limited to, award recommendations, combat badges, and award certificates; evaluation reports; or wartime chain of command statement corroborating exposure to armed conflict. Wartime chain of command must be first sergeant and/or company commander or higher.

c. The applicant stated his migraines, degenerative arthritis. Left and right lower lumbar radiculopathy, erectile dysfunction, and bilateral knee conditions were due to combat while on deployment. However, upon review of the military documents in the Interactive Personnel Electronic Records Management System, Military Health System

Genesis, and submitted documentation, there is no medical evidence of these conditions being related as defined by CRSC guidance.

d. AHRC reviewed the documentation submitted by the applicant and did not find documentation which confirms his personal exposure to armed conflict, as required by the program guidelines. He submitted as evidence the DA Form 199 that found his condition to be combat related due to armed conflict, however, Physical Disability Agency determinations are in reference to other laws than CRSC. This means that although the PEB states disability is combat related under Title 26 U.S. Code (USC) 104 or Title 10 USC 10216, the disability does not automatically qualify for CRSC. Due to the differences in program guidance, AHRC must verify the condition is combat-related independent from the PEB's findings.

6. On 20 January 202[4], the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

#### 7. 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 Human Resources Command's (USAHRC) administrative determinations that none of his military disabilities were related to combat as defined by law. He states: "Many of conditions were created during combat as well as a result of deployments, seeing battle buddies die in combat and being under mortar & rocket attacks in Iraq 2007 & 2010."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published 10 September 2020 by the United States Army Physical Disability Agency show the former USAR Soldier was removed from the temporary disability retirement list and permanently retired for physical disability with a 70% military disability rating effective 10 September 2020 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (17 January 2017). It shows that one or more of his disabilities had been determined combat related.

d. On 15 August 2018, the applicant's informal physical evaluation board (PEB) determined he had four conditions which were unfitting for continued military service: Posttraumatic stress disorder major depressive disorder, Lumbar degenerative disc disease with epidural lipomatosis, Left knee patella tendon lateral femoral condyle friction syndrome with cartilage loss, and Right knee patella tendon lateral femoral condyle friction syndrome. They determined his PTSD was combat related: "This condition is attributed to the following stressors: being engaged with indirect fire and witnessing casualties."

e. As is standard procedure, the PEB did not reevaluate the combat related determination as the time of his TDRL reevaluation.

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. The combat related evidentiary requirements used in the disability process are different from those for awarding CRSC, and these determinations come under different sections of US Code. While the United States Army Physical Disability Agency (USAPDA) determinations are made under 26 USC 104 or 10 USC 10216, combat related determinations for the purpose of CRSC are made under the provisions of 10 USC 1413a and Department of Defense Financial Management Regulation 7000.14R, Volume 78, Chapter 63. Thus, a combat related determination made by the USAPDA does not automatically qualify a disability for CRSC the disability. Due to the difference in program guidance, CRSC must independently verify a condition is combat related for the purpose of entitlement to CRSC.

h. In addition, the evidentiary requirements for CRSC are higher / more rigorous. CRSC combat related requirements for determining a condition combat related are defined in Chapter 63, Volume 7B of DoD 7000.14R, Financial Management Regulation, is titled "Combat-Related Special Compensation (CSRC)". Those for the Disability Evaluation System are defined in Department of Defense Instruction 1332.18, SUBJECT: Disability Evaluation System (DES) (5 August 2014).

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. For the purpose of granting CRSC, combat related is defined in paragraphs 630601, 630602, 630603, and 630604 respectively of Department of Defense Financial Management Regulation 7000.14-R, Volume 78, Chapter 63:

“630601. 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.

C. Armed conflict may also include incidents involving a member while interned as a prisoner of war, while detained against his or her will in the custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

630602. While Engaged in Hazardous Service

Hazardous service is service that includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of hazardous service requires that the injury or disease be the direct result of actions taken in the performance of such service. Travel to and from such service, or actions incidental to a normal duty status not considered hazardous, are not included.”

630603. 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.”

#### 630604. 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.”

k. The applicant claims his PTSD was the direct result of armed conflict. To award CRSC for PTSD under the category of armed conflict, the claimant must submit official documentation that shows how the condition is combat related as defined by CRSC program guidance. Official documentation includes wartime chain of command endorsements which confirms exposure to armed conflict (Wartime chain of command must be First Sergeant and/or Company Commander or higher), copies of combat decorations (certificates, combat badges, and DA Form 638s), and evaluation reports which support exposure to armed conflict.

l. The USAHRC’s 11 January 2024 advisory opinion does an excellent reviewing the evidence and the reasons why these conditions are not combat related for the purposes of receiving CRSC.

m. No evidence supporting a combat related determination IAW with DoD FMR 7000.14-R, Volume 78, Chapter 63 was submitted with the application or found in a review of the electron records.

n. 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.”

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. That these conditions were incurred in the line of duty during his service to his country is unquestioned. However, it is the opinion of the ARBA Medical Advisor there is insufficient probative evidence upon which to reverse the previous non-combat related determinations of the United States Army Human Resources Command.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant was retired from active duty due to disability due to the following unfitting conditions: PTSD major depressive disorder, Lumbar degenerative disc disease with epidural lipomatosis, Left knee patella tendon lateral femoral condyle friction syndrome with cartilage loss, and Right knee patella tendon lateral femoral condyle friction syndrome. He applied for CRSC for various conditions and was awarded a 10% for tinnitus. AHRC was unable to verify a combat related event in relation to his other claimed conditions. His claim was reviewed at the initial and reconsideration levels and denied due to insufficient evidence.

b. In order to be awarded CRSC compensation, there must be evidence that establishes a direct causal relationship between a qualifying combat-related event and the disability. Although a member's PEB states disability is combat related under Title 26 USC 104 or Title 10 USC 10216, the disability does not automatically qualify for

CRSC. The Board also reviewed and agreed with the medical reviewer's finding no evidence supporting a combat related determination was submitted with the application or found in a review of the electron records. While the applicant's combat service is not in question, the Board found insufficient probative evidence upon which to reverse the previous non-combat related determinations of the United States Army Human Resources Command.

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. 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.

3. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records (ABCMR)) paragraph 2-9 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.

4. 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.

5. 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.

6. 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.

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//