

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230012844

APPLICANT REQUESTS: reversal of the decision by the U.S. Army Human Resources Command (HRC) to deny his combat-related special compensation (CRSC).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Decision Letter, dated 25 April 2023
- HRC Letter, dated 5 September 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 states his injuries are both service connected and combat related, as they are the result of a jeep accident in Vietnam in July 1971. While on official business, the jeep was struck by a train between Biem Hoa and Long Binh, Vietnam. In his original decision letter, the denial was due to error, which described the vehicle he was in at the time of the incident as a privately owned vehicle (POV) instead of a jeep, POVs were not available as a mode of transportation in Vietnam. He further explains that his medical records should show the date and place of the accident.
3. The applicant provides:
 - a. A VA Decision Letter, dated 25 April 2023, which shows:
 - Evaluation of residuals avulsion fracture proximal right ulna; radius and ulna, nonunion of, flail false joint (dominate) (previously rated as residuals avulsion fracture proximal right ulna), which is currently 0 percent (%) disabling, is increased to 50% effective October 20, 2022

- Evaluation of left knee chondrocalcinosis, limitation of extension (previously rated as chondrocalcinosis of the left knee), which is currently 0 % disabling, is increased to 10 % effective October 20, 2022
- Service connection for left knee chondrocalcinosis, limitation of flexion is granted with an evaluation of 30 % effective October 20, 2022
- Service connection for right elbow, limitation of flexion (dominate) is granted with an evaluation of 30 % effective October 20, 2022
- Service connection for right elbow, limitation of pronation (dominate) is granted with an evaluation of 20 % effective October 20, 2022
- Service connection for left knee chondrocalcinosis, instability is granted with an evaluation of 10 % effective October 20, 2022
- Service connection for right hip, limitation of abduction is granted with an evaluation of 10 % effective October 20, 2022
- Service connection for right hip, limitation of flex ion is granted with an evaluation of 10 % effective October 20, 2022
- Service connection for right elbow, limitation of extension (dominate) is granted with an evaluation of 0 % effective (undated)

b. A CRSC decision letter issued to the applicant by HRC on 5 September 2023, which states “After reviewing all documentation in support of your claim, we are unable to overturn the previous adjudication(s). The documentation which you have submitted still shows no new evidence to link your requested conditions to a combat-related event. This disapproval is now considered final. If you choose to appeal this decision, you must submit your Notice of Disagreement (NOD) to the Army Review Boards Agency ARBA).” He was however awarded a total combat rated disability rating of 90%, from a previous application, effective May 2022, this document provides the summary of that decision:

- Status post (S/P) arteriosclerotic heart disease (CAD) percutaneous coronary intervention (PCI) with congestive heart failure: 60% disability, verified as combat related, effective May 2022. Previously awarded; verified percentage and effective date
- Bilateral. Peripheral vascular disease of the left lower extremity: 20% disability, verified as combat related, effective May 2004 – August 2007. Previously awarded; verified percentage and effective date
- Bilateral. Peripheral vascular disease of the left lower extremity: 40% disability, verified as combat related, effective September 2007. Previously awarded; verified percentage and effective date
- Bilateral. Peripheral vascular disease of the right lower extremity: 20% disability, verified as combat related, effective May 2004. Previously awarded; verified percentage and effective date
- Diabetes Mellitus With Nephropathy: 20% disability, verified as combat related, effective May 2004. Previously awarded; verified percentage and effective date

- Right hip, limitation of extension: 10% disability, unable to verify as a combat-related disability. Final disapproval; no new evidence provided to show combat-related event cause condition

4. The Board's jurisdiction under Title 10, U.S. Code, section 1552, extends to any military record of the Department of the Army. The Army Review Boards Agency (ARBA) does not have jurisdiction to grant the requested relief on the applicant's VA benefits and disability ratings. Therefore, this issue will no longer be discussed in these proceedings.

5. The applicant's service record reflects the following documents:

a. DD Form 4 (Enlistment Contract – Armed Forces of the United States) shows he enlisted in the Regular Army on 24 November 1967.

b. On 10 March 1989, the applicant was approved for retirement for length of service.

c. Orders 046-107, dated 10 March 1989 show the applicant was reassigned to the U.S. Army Transition Point for separation processing, with a reporting date of 31 May 1989.

d. DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service), the applicant served in Far East Pacific Area (FEPA) – Vietnam from 8 August 1970 until 12 August 1971.

e. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably retired from active duty on 31 May 1989, pursuant to Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 12 for length of service. He received a separation code of "RBD" and a reentry code of "4R". He completed 10 years, 4 months, and 28 days of net active service this period with 11 years, 1 month, and 9 days of total prior active service. His grade at the time of discharge was master sergeant MSG/E-8.

6. A summary of correspondence for the applicant's requests to HRC was received in the processing of this case from the Soldier Programs and Services Division of HRC, which shows:

a. On 18 February 2005, the applicant was awarded CRSC benefits under CRSC-II Program Guide. He received a total combat rated disability rating of 20%. His application was approved with the summary of the final decisions under CRSC as follows:

- Diabetes mellitus: 20% disability, combat related determination, effective May 2004
- Degenerative arthritis: 10% disability, non-combat related determination

b. A CRSC decision letter (Claim Number 92678) issued to the applicant by HRC on 7 September 2007, shows his request for CRSC reconsideration was approved and he received a total combat rated disability rating of 50%. This document further reflects the summary of the decisions under CRSC as follows:

- Diabetes mellitus body: 20% disability, combat related determination, effective 20040501
- Circulatory condition (bilateral, right lower extremity) right leg: 20% disability, combat related determination, effective 20040501
- Circulatory condition (bilateral, left lower extremity) left leg: 20% disability, combat related determination, effective 20040501
- Degenerative arthritis: 10% disability, non-combat related determination

c. On 2 October 2007, in a CRSC decision letter (Claim Number 104599) issued to the applicant by HRC, shows his request for reconsideration was denied. This document further explains that they were unable to find any additional evidence which allowed for a change in their previous determination.

d. A CRSC decision letter (Claim Number 9886) issued to the applicant by HRC on 19 January 2023, shows his request for CRSC reconsideration was approved and he received a total combat rated disability rating of 90%. This document further reflects the summary of the decisions under CRSC as follows:

(1) Status post (S/P) arteriosclerotic heart disease (CAD) percutaneous coronary intervention (PCI) with congestive heart failure: 60% disability, verified as combat related, effective May 2022. Previously awarded; verified percentage and effective date.

(2) Bilateral. Peripheral vascular disease of the left lower extremity: 20% disability, verified as combat related, effective May 2004 – August 2007. Previously awarded; verified percentage and effective date.

(3) Bilateral. Peripheral vascular disease of the left lower extremity: 40% disability, verified as combat related, effective September 2007. Previously awarded; verified percentage and effective date.

(4) Bilateral. Peripheral vascular disease of the right lower extremity: 20% disability, verified as combat related, effective May 2004. Previously awarded; verified percentage and effective date.

(5) Diabetes mellitus with nephropathy: 20% disability, verified as combat related, effective May 2004. Previously awarded; verified percentage and effective date.

(6) Right hip, limitation of extension: 10% disability, unable to verify as a combat-related disability. Final disapproval; no new evidence provided to show combat-related event cause condition.

7. The record does not reflect, and the applicant does not provide medical documents in support of his injury claim that he sustained while serving in Vietnam.

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 applicant's statement that his injuries were a result of vehicle accident and not directly related to combat with an armed enemy, the Board concluded there was insufficient evidence of an error or injustice warranting the reversal of the applicant's CRSC decision from the 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.

1/7/2025

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, United States Code, § 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) 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; or (2) was incurred (as determined under criteria prescribed by the Secretary of Defense)— (A) as a direct result of armed conflict; (B) while engaged in hazardous service; (C) in the performance of duty under conditions simulating war; or (D) through an instrumentality of war.

3. The Under Secretary of Defense, Military Personnel Policy has provided policy guidance on the processing of 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, U.S. Code, 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.

//NOTHING FOLLOWS//