

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230013462

APPLICANT REQUESTS: reconsideration of his previous request to receive Combat-Related Special Compensation (CRSC) for post-traumatic stress disorder (PTSD)

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Attorney
- Memorandum in Support of Reconsideration for CRSC
- Exhibit List
- Exhibit A - Psychiatric Medical Evaluation Board Summary
- Exhibit B - Physical Evaluation Board Summary
- Exhibit C - U.S. Army Physical Disability Agency (USAPDA) Order D287-04
- Exhibit D - CRSC Branch Memorandum
- Exhibit E - Record of Proceedings (ROP) AR20200007523
- Exhibit F - Consult Request, Psychological Assessment PTSD
- Exhibit G - Department of Veterans Affairs (VA) Rating Decision
- Exhibit H - Statement in Support of Claim
- Exhibit I - DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Exhibit J - SECNAVCORB Policy Letter
- Exhibit K - AR20190015543 (different applicant)
- Exhibit L - Review of Naval Record

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200007523 on 9 February 2022.
2. The applicant states he should be granted CRSC because he meets the preliminary eligibility for CRSC and his chronic PTSD was incurred as a direct result of armed conflict through the instrumentality of war. He defers to his attorney.
3. Memorandum in Support of Reconsideration for CRSC states:

a. This case involves the applicant, retired, who was medically retired from the U.S. Army due to PTSD, with a current disability rating of 50 percent. On 5 October 2022, his claim for CRSC was denied by the ABCMR. New evidence is submitted in support of reconsideration for this claim. This evidence demonstrates his chronic PTSD was incurred as a direct result of armed conflict and/or through an instrumentality of war.

b. Title 10 U.S. Code (USC) 1413a provides for CRSC for military retirees with a combat-related disability. Since 2008, Title 10 USC 1412a(b)(3)(B) has allowed for CRSC for those with fewer than 20 years of service. A "combat related disability" is defined as a disability that is "attributable to an injury for which the member was awarded the Purple Heart" or was incurred "as a direct result of armed conflict," "through an instrumentality of war," "while engaged in hazardous service," or "in the performance of duty under conditions simulating war."

c. On 1 April 2002, the applicant enlisted in the Regular Army for a period of four years. He held the military occupational specialty (MOS) 42A (Human Resources Specialist). He served in Iraq, during Operation Iraqi Freedom from 3 April 2003 to 5 April 2004 in an imminent danger pay area. He also served in Iraq from 27 February 2005 to 8 November 2005 in an imminent danger pay area. He extended his enlistment by two months on 2 February 2006. On 31 May 2006, he was honorably released from active duty by reason of completion of required active service and was transferred to control of the U.S. Army Reserve (USAR) Control Group (Reinforcement).

d. His records contain a Psychiatric Medical Evaluation Board Summary, Fox Army Medical Center, 17 September 2010, showing diagnosis of: (a) chronic PTSD in line of duty (LOD) with date of onset of 2003, (b) major depressive disorder, in LOD, with date of onset of 2003, and (c) panic disorder without agoraphobia, in LOD, with a date of onset of 2005.

e. On 4 October 2010, a Physical Evaluation Board (PEB) found him physically unfit by reason of PTSD attributed to combat stressors encountered, during his Iraq deployment. The PEB recommended a combined disability rating of 70 percent (which included his PTSD disability) and that he be placed on the Temporary Disability Retired List (TDRL) because his disability was not sufficiently stable for final adjudication from the disability percentage perspective, and that a TDRL reevaluation occur within six months. The PEB's recommended findings included that his PTSD was "based on disability for injury or disease received in the line of duty, as a direct result of armed conflict or caused by an instrumentality of war and incurring in the line of duty, during a period of war as defined by law" and that "the disability did result from a combat related injury as defined in Title 26 USC 104." On 14 October 2010, the USAPDA issued order D287-04 placing him on the TDRL effective 8 November 2010. A VA rating decision was later issued on 26 August 2011 granting him VA disability benefits of 30 percent based on PTSD.

f. On 29 September 2011, an informal TDRL PEB reconsidered his conditions described in the records and found him unfit for duty in his MOS by reason of PTSD, major depressive disorder, and panic disorder. The PEB recommended a new combined disability of 50 percent and that his disposition be permanent disability retirement.

g. On 1 November 2011, the USAPDA notified him of his removal from the TDRL and that he was being permanently retired and on 2 November 2011, the USAPDA issued order 306-08 removing him from the TDRL and permanently retiring him effective 2 November 2011.

h. Prior to his permanent retirement, in a letter dated 21 October 2011, the CRSC Branch, U.S. Army Human Resources Command (AHRC), denied his 3 October 2011 claim for CRSC based on left shoulder strain (10 percent disability) and PTSD (30 percent disability), finding it was unable to verify his disabilities as a combat related disability. This letter further states that the "VA has not conceded a stressor caused by a specific combat related, simulating war, or instrumentality of war event."

i. On 14 December 2011, the CRSC Branch, AHRC, denied his appeal for CRSC by letter based on left shoulder strain and PTSD, finding again that it was unable to verify his disabilities as combat related.

j. On 27 February 2012, the CRSC Branch, AHRC, denied his appeal for CRSC by letter based on left shoulder strain and PTSD, finding they were unable to overturn the previous adjudications. He was informed that if he elected to appeal this decision, he must submit a notice of disagreement to the ABCMR.

k. As directed, he applied to the ABCMR by submitting a DD Form 149, 4 August 2020. The ABCMR reviewed his DD Form 149 and supporting documents and issued an ROP under docket number AR20200007523 (board date 9 February 2022). In such ROP, the ABCMR found that "relief was not warranted." Specifically, the ABCMR found "the applicant's record lacked sufficient details to show a causal event" and "they were unable to verify his disabilities as combat related disability for his left shoulder strain and PTSD."

l. As a result of his service in Iraq, he earned various awards and service decorations including the Army Achievement Medal, the Army Good Conduct Medal, the National Defense Service Medal, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal, the Army Service Ribbon, the Overseas Service Ribbon, and the Iraq Campaign Medal.

m. During his tour of duty in Iraq, he was exposed to repeated mortar fire on his bases. He experienced constant anxiety and fear related to the mortar fire. His human

resources team had to form a gun team, and he anticipated death every time he went out on the road, he was shot at multiple times, and encountered rocket fire across the river targeting in his direction.

n. As a result of these combat stressors, he has exhibited various PTSD related mental health and physical issues since returning from Iraq, including depression, and inability to cope in social settings, intrusive and recurrent memories, nightmares of explosions and dead bodies, and an inability to sleep.

o. His military records expressly support the link between his PTSD and combat stressors. First, in the PEB 2010, the examiner specifically linked the onset of his PTSD to "combat stressors encountered, during Iraq deployment".

p. Also, the 2011 VA decision that identified the service connection for his PTSD stated "the PEB, dated October of 2010, indicated his PTSD with associated major depressive disorder and panic disorder is due to his combat stressor encountered, during his Iraq deployment" and further stated that his "stressor is therefore conceded."

q. In addition, Department of the Army Order D287-04 specifically states his disability was a "combat related injury" as defined in Title 26 USC 104 and "based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war" and is "a direct result of armed conflict or caused by an instrumentality of war."

r. He fulfills the requirements of combat related injury or disease as defined by Department of Defense (DoD) 7000.14-R. He has provided ample documentation from authoritative sources and requests CRSC based on PTSD, as the direct result of armed conflict and/or instrumentality of war. He was placed on the TDRL by orders stating his disability was based on an injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war. His disability resulted from a combat related injury as defined in Title 26 USC 104. A PEB awarded him disability for PTSD, which was directly related to armed conflict in Iraq. He continues to receive treatment for his combat related PTSD and both the PEB and VA acknowledged such causal link, as certified by medical professionals.

s. The DoD has issued CRSC Title 10 USC 1413a as Amended and Revised Program Guidance (the Program Guidance), which defined CRSC preliminary eligibility criteria. According to the Program Guidance, an applicant must satisfy each of the following conditions to meet the preliminary CRSC eligibility requirements:

- The retiree has been medically retired
- The retiree is in military retired status
- The retiree is entitled to military retired pay

- The retiree is entitled to VA compensation benefits for a disability that is rated by the VA as at least 10 percent disabling
- t. The applicant is eligible for CRSC as he meets all four of the CRSC preliminary eligibility requirements: (1) he was medically retired from the Army on 2 November 2011 due to permanent disability; (2) he is in military retired status; (3) he is entitled to military retired pay; and (4) he is entitled to VA disability compensation for service connected injuries including PTSD at a current disability rating of 50 percent.
- u. The DoD Guidelines require CRSC determinations to be "based on the preponderance of available documentary information where quality of information is more important than quantity." Under this analysis, "[a]ll 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." DoD guidance and law related specifically to PTSD claims require that "liberal consideration" be given such that a "veteran's testimony alone, oral or written, may establish the existence of a condition or experience, [or] that the condition or experience existed during or was aggravated by military service." Further, the ABCMR cannot disregard evidence that goes contrary to its conclusion instead, "[f]or the Board's decision to be supported by substantial evidence, 'all of the competent evidence must be considered...and whether or not it supports the challenged conclusion.'"
- v. This memorandum is attached to the applicant's DD Form 149 and is the supporting brief cited in Section 4, Item 19, thereof. This memorandum presents for the Board's review new evidence substantiating the combat relationship to his PTSD. Such new evidence consists of the 2007 Psychological Consult report and the legal analysis and arguments set forth herein.
- w. The CRSC Statute, passed originally in the Fiscal Year 2003 National Defense Authorization Act, provides compensation to eligible veterans who have "combat related" disabilities. This statute defines a combat related disability as a disability "attributable to an injury for which the member was awarded the Purple Heart" or was incurred "as a direct result of armed conflict," "through instrumentality of war," "while engaged in hazardous service," or "in the performance of duty under conditions simulating war."
- x. Separate from the CRSC statute, Title 26 USC 104 governs military services' PEB's evaluation as to whether active duty servicemembers are unfit for service due to a disability and whether such a disability is "combat related" under Title 26 USC 104. Similar to the CRSC statute, Title 26 USC 104 defines injuries as "combat related" if they are incurred (1) "as a direct result of armed conflict"; (2) "while engaged in extra hazardous service"; (3) "under conditions simulating war"; or if the disabilities were (4)

"caused by an instrumentality of war." Moreover, the services' policies for "combat related" determinations under Title 26 USC 104 provide substantially the same criteria for each of these four definitions as the DoD's policy for "combat related" determinations under the CRSC statute. As noted in the DoD's CRSC policy, the Armed Forces Tax Council has also determined that all CRSC payments are exempt from federal income tax under Title 26 USC 104, further demonstrating that Title 26 USC 104 and the CRSC statute have essentially identical definitions of "combat related" injuries/disabilities.

Under the presumption of administrative regularity, the determination PEB 2010 that his PTSD was combat related should be treated as an objective determination to be adopted unless it can be rebutted by specific, substantial, and credible evidence to the contrary. There is no contrary evidence, and therefore the combat related determination is an objective determination to be followed.

y. Other military branches have adopted policies to ensure that there is no inconsistent finding by the PEB and the CRSC board on the causes of veteran's disabilities, stating that: in the absence of clear and convincing evidence the PEB's determination was in error, the CRSC board will adhere to previous PEB determinations that a disability is [combat related] in the adjudication of CRSC applications.

z. Because prior decisions by the CRSC board and the ABCMR disregarded the objective determination by the PEB 2010 that the applicant's PTSD was combat related, such disregard resulted in error and injustice related to his military record that should be corrected.

aa. The reasonable doubt doctrine set forth in 38 Code of Federal Regulations 3.102 provides that "[w]hen, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant." Furthermore, "[t]he reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships."

ab. Pursuant to Title 10 USC 1413a(e)(2)(A), a combat related disability includes a disability that is compensable under the laws administered by the Secretary of the VA and that was incurred as a direct result of armed conflict. Combat related disability is defined in section 1413a(e) as a disability "attributable to an injury for which the member was awarded the Purple Heart" or was incurred "as a direct result of armed conflict," "through an instrumentality of war," "while engaged in hazardous service," or "in the performance of duty under conditions simulating war."

ac. The applicant's PTSD is a disability that was incurred in the LOD as a direct result of armed conflict. According to the Program Guidance, "[t]here must be a definite causal relationship between the armed conflict and the resulting disability." The

Program Guidance further defines "armed conflict" as "a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which servicemembers are engaged with a hostile or belligerent nation, faction, force, or terrorists."

ad. As evidenced by both his personal account of his combat experiences and confirmed by his military and VA medical records, there is a definite causal relationship between his service in armed conflict, during his tour of duty in Iraq, and his resulting PTSD.

ae. In his statement in support of claim, 12 January 2010, he recounted what caused his injuries in his own words, he reported that, during his time serving in Operation Iraqi Freedom in 2003 and 2004, he feared for his life due to being shot at, during convoy outings, and he witnessed many horrific events including the death of his fellow Soldiers. Furthermore, his experiences on the gun team for his convoy and the frequent attacks on his base, during 2005 deepened his mental and emotional trauma.

af. His personal statements are corroborated by his initial psychiatric assessment on 18 June 2007, conducted by J- C. C-, Ph.D, where he noted that he served at a base that took consistent mortar fire and that he was shot at five or six times and that every time he went out on the road he anticipated his death. The 2007 Psychological Consult medical record is new evidence not submitted or considered in the 2022 ABCMR proceedings.

ag. The clearest evidence that his PTSD incurred as a direct result of the armed conflict is that his Department of the Army Order D287-04, explicitly states that his disability diagnosis (i.e. PTSD) "is based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law" and "resulted from a combat related injury as defined in Title 26 USC 104." The order echoes the exact language used when determining whether or not a veteran is entitled to CRSC.

ah. In addition to the order of the Department of the Army, he was in a war environment where he faced constant hostility and belligerence. In his 2007 Psychological Consult, where he was diagnosed with PTSD, the licensed psychologist determined that his trauma was "combat related, while serving in Iraq." The traumatic events in Iraq included persistent mortar attacks and fit squarely in the definition of armed conflict as being constantly threatened with rocket attacks and being engaged with a "hostile or belligerent nation, faction, force, or terrorists."

ai. Therefore, his PTSD occurred in the LOD as a direct result of armed conflict. Not only did a direct order of the Department of the Army confirm this, but various sources including military and medical records have clearly linked the dangerous conditions he

faced in Iraq to the development of his PTSD and the crippling consequences of the disease that have left him permanently disabled.

aj. He has experienced insomnia, anxiety, irritability, depression, nightmares, and dissociative flashbacks as a result of his PTSD and has been treated with a variety of medications to manage his symptoms.

ak. The combat related trauma he experienced has had a detrimental effect on his life, including, among other things, intra- and inter-personal turmoil, marital and familial conflict, social discomfort, occupational difficulties, situational anxiety, and disquiet.

al. The Program Guidance specifies four different categories of combat related disabilities for CRSC will be awarded as follows: "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." Furthermore, the Program Guidance directs the military departments to determine whether a disability is combat related under a, b, c, or d, above, using the definitions and criteria set forth in Attachment 1-1 to the Program Guidance. These categories align with those presented in Title 10 USC 1413a(3)(2)(A-D).

am. Section E of this memorandum discusses the applicant's qualification for CRSC under the armed conflict category set forth in item a. of the Program Guidance cited above (with its corollary in Title 10 USC 1413a(3)(2)(A)). But he also qualifies for CRSC because his disability incurred through an instrumentality of war - the category set forth in item d. of the Program Guidance cited above (with its corollary in Title 10 USC 1413a(3)(2)(D)). Attachment 1-1 to the Program Guidance contains a discussion paragraph titled "Instrumentality of War." Under that discussion, two requirements are imposed for awarding CRSC under the instrumentality of war provision: (1) There must be a direct causal relationship between the instrumentality of war and the disability; and (2) The disability must be incurred incident to a hazard or risk of the service. The attachment goes on to define an instrumentality of war 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." It further explains 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 material."

an. He satisfies the criteria for a disability incurred through an instrumentality of war because he lived through repeated mortar/rocket shell attacks on his base, during his deployment and a mortar/rocket shell is an instrumentality of war because it is a device exclusively designed for military service and intended for use in such service. There is no other reasonable use for a combat mortar/rocket shell other than for a military

purpose. The repeated mortar attacks were a primary cause of his mental and emotional trauma and resulting PTSD, such attacks being directly responsible for the fear experienced by him and the death he witnessed. This trauma forms the basis for his PTSD diagnosis. As the mortar/rockets are an instrumentality of war, and such instrumentality was the cause of the PTSD, the requirement of a direct causal relationship between the instrumentality of war and his PTSD is met.

ao. Further, the requirement that the servicemember's PTSD must be incurred incident to a hazard or risk of service is also met based on the fact his disability was incurred, while deployed to Iraq in support of combat operations.

ap. Finally, applying the guidance contained in the third paragraph of the instrumentality of war discussion in Attachment 1-1, CRSC may be awarded under the instrumentality of war provision if the disability was incurred in any period of service as a result of "wounds caused by a military weapon." Based on medial evidence his PTSD was causes, in part, by his exposure to a military weapon i.e. mortar/rocket fire, he qualifies for CRSC under the instrumentality of war provision. Because PTSD is considered a mental health disability caused by trauma within a servicemember's mind, it qualifies as an "invisible wound" under the instrumentality of war discussion. Accordingly, he also qualifies for CRSC arising from a disability incurred through an instrumentality of war.

aq. The Board's decision in the case at docket number AR20190015543 is instructive. There the Board concluded that the veteran's "PTSD is a result of exposure to rocket and mortar attacks during her service in Afghanistan, which meets the criteria for CRSC." The ABCMR based its finding on the medical advisor's conclusion that "[f]requent rocket and mortar attacks (i.e. instrumentality of war) establishes a causal relationship between combat related event(s) and subsequent PTSD, even when her PTSD was not diagnosed until after her deployment." Given the corroborated and undisputed evidence that the applicant was directly exposed to mortars, the same result should follow here.

ar. In addition to the supporting precedents and documents set forth above, the 31 August 2022 cover letter from the Department of the Army attached to Army Review Boards Agency (ARBA) Record 2022 explicitly stated that "the Deputy Assistant Secretary of the Army (DASA) (Review Boards) found there is sufficient evidence to grant partial relief." To date, no such relief has been awarded to the applicant.

as. The applicant meets the preliminary requirement for CRSC eligibility and has the service connected disability of PTSD, which is combat related under Title 10 USC 1413a(e). His PTSD, which was incurred as a direct result of armed conflict and as a direct result of an instrumentality of war, is a disability compensable under the laws administered by the Secretary of the VA. In addition, the precepts of the presumption of

administrative regularity and the doctrine of reasonable doubt should have been used to resolve any ambiguity or doubt during the consideration of his claims. Therefore, the CRSC Board and ARBA applied the incorrect standards when determining his CRSC award, and this injustice should be corrected by awarding him CRSC for his PTSD (current disability rating of 50 percent)

4. The applicant provides:

- a. Psychiatric Medical Evaluation Board Summary, which states in pertinent part, during the daily mortar attacks, he remained calm and unresponsive to the events around him. Mortars were fired, everyone around him hit the ground, but he kept on typing, they were in a plastic tent. He became unresponsive to the mortar attacks. He was numb and detached. They were ordered to continue with their physical fitness test as mortars were incoming. He was diagnosed with PTSD, chronic, LOD, onset in 2003; major depressive disorder, LOD, onset 2003; and panic disorder without agoraphobia, LOD, onset in 2005. The entire document is available for the Board's review.
- b. Letter from DASA, ARBA, 31 August 2022, states the DASA found there was sufficient evidence to grant partial relief. The approved ROP had been forwarded to AHRC. They would take action to correct the applicant's records and would provide him with official notification as soon as the directed correction had been made. The entire letter is available for the Board's review.
- c. ROP to AR20200007523, 9 February 2022, states in pertinent part, the Board found relief was not warranted. The Board found the applicant's record lacked sufficient details to show a causal event. During deliberation the Board agreed with the CRSC, AHRC findings that they were unable to verify his disabilities as combat related disability for his left shoulder strain and PTSD. The entire document is available for the Board's review.
- d. Consult Request, Psychological Assessment PTSD, states in pertinent part, the applicant's mood was depressed with restricted affect, appropriate to topic. Speech was normal in rate, volume, and productivity. Thoughts were logical and goal directed, without evidence of thought disorder or delusion. No suicidal/homicidal ideation. No auditory/visual hallucination. He was not considered to be a danger to self or a danger to others. Combat related while serving in Iraq. Received mortar fire. He was shot at. During his first deployment, he received mortar fire and was shot at five or six times. During one night shift, rockets flew across the river in his direction. Every time he went out on the road he anticipated his death. His unit had to form a gun team even though he was in human resources. He was diagnosed with PTSD and migraines. The entire document is available for the Board's review.

e. VA Rating decision, 26 August 2011, shows he had service connected for PTSD at 30 percent effective 19 September 2008. A review of the PEB dated October 2010, indicated his PTSD with associated major depressive disorder and panic disorder was due to his combat stressors encountered, during his Iraq deployment. His stressor was therefore conceded. The entire document is available for the Board's review.

f. Statement in Support of Claim, states:

(1) He served in Operation Iraqi Freedom from April 2003 to April 2004. His MOS was Human Resources Specialist. His job consisted of going out on convoys at least three times a week to deliver supplies and administrative paper work and pick up American personnel that were going on Rest and Recuperation leave.

(2) Every time they went out on a convoy, he feared for his life because often times, they would be shot at by the enemy. During this tour of duty in Iraq, he witnessed many horrific events of the war, to include the death to fellow comrades and others. Once incident that he particularly remembers is sometime in 2003 they were lined up in a convoy, getting ready to leave out the gate. He was in the second vehicle from the front and starting out the gate when they were ordered to stop and turn around to go back into camp. As they were turning around, he saw to his right two destroyed military vehicles, three bodies in body bags, and two other bodies lying next to them.

(3) This incident has haunted him to this day because if their convoy had gone out at an earlier time, they could have been the victims of the enemy. Also during this tour of duty, two friends and fellow comrades were killed in Iraq.

(4) He served a second tour of duty in Iraq from February 2005 to November 2005. His MOS was Human Resources Specialist but the majority of the time his job consisted of being assigned to the gun team. They had to ride on the gun truck in support of convoys.

(5) Every time they went out on a convoy, he feared for his life because they could have been attacked by the enemy at any time. Also numerous times their base came under enemy attack. To this day, he still has frequent nightmares about what he witnessed and experienced when he was in Iraq. He is being treated for PTSD.

g. Letter from Sergeant (SGT) L- L-, 12 January 2010, which gives a synopsis of their time in Iraq together, including going on convoys, and seeing horrific events. He discusses the mortar attacks on the base and being in fear of their lives when they went on convoys. The entire letter is available for the Board's review.

h. SECNAVCORB Policy Letter 2012-5, 7 March 2012, which was to ensure the compatibility of PEB and CRSC combat related determinations. The PEB and CRSC

boards were required to make combat related determinations in their respective adjudications. Typically, the CRSC board reached an independent combat related determination. This had frequently resulted in an individual having differing combat related determinations from two distinct Council of Review Boards. This result could be viewed as inequitable and indicative of a lack of uniform standards within Counsel of Review Boards. The entire document is available for the Board's review.

- i. ROP from AR20190015543, wherein the Board found the applicant's PTSD, in that case, was a result of exposure to rocket and mortar attacks during her service in Afghanistan, which met the criteria for CRSC. The Board determined the applicant's records should be corrected to show her CRSC claim for PTSD was approved. The entire document is available for the Board's review.
- j. Review of Naval Record, shows the Assistant Secretary of the Navy for Manpower and Reserve Affairs approved the board's recommendation for corrective action to award the Sailor CRSC for his service connected PTSD. The entire document is available for the Board's review.

5. The applicant's service record shows:

- a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 1 April 2002. He remained in the Regular Army through an Oath of Extension of Enlistment.
- b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably transferred to USAR Control Group (Reinforcement) on 31 May 2006. He had completed 4 years and 2 months of active duty service. He had service in Iraq from 3 April 2003 through 5 April 2004 and from 27 February 2005 through 8 November 2005. He was discharged for completion of required active service.
- c. The applicant's DA Form 199 (PEB Proceedings) for 2010 is not available for the Board's consideration. Orders D287-04, published by USAPDA, 14 October 2010, released him from duty because of physical disability incurred as a result of injury and placed him on the TDRL effective 18 November 2010 with a disability percentage of 70 percent. Disability was based on injury or disease received in LOD as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law. Disability resulted from a combat related injury.
- d. DA Form 199, 29 November 2011, shows his disabilities as PTSD, with a 50 percent disability rating. Based on review of the TDRL examination, the PEB found he remained unfit to reasonably perform his duties required by previous grade and military specialty. His current condition was considered sufficiently stable from a disability perspective for final adjudication. The board found him physically unfit and

recommended a combined rating of 50 percent and that he be permanently retired due to disability.

e. Memorandum from USAPDA, 1 November 2011, informed the applicant he was removed from the TDRL and permanently retired. Order 306-08, published by USAPDA, 2 November 2011, removed him from the TDRL and permanently retired him due to disability with a 50 percent disability rating effective 2 November 2011. Disability was based on injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war period as defined by law was not applicable. Disability resulted from a combat related injury was not applicable.

f. CRSC, HRC letter, 21 October 2011, shows they were unable to verify combat related disability for PTSD and left shoulder strain. CRSC letters, 14 December 2011, 27 February 2012, and 8 February 2019 showed CRSC, AHRC reconsidered his requests for CRSC and could not verify combat-related disability for PTSD or left shoulder strain.

g. CRSC, HRC letter, 5 October 2022, states:

(1) The CRSC office carefully reviewed all documents submitted with the applicant's DD Form 149 and his available personnel files. Unfortunately, they did not find evidence he was personally exposed to armed conflict. Program guidelines require the applicant to submit official military documentation that establishes a direct causal relationship between a qualifying combat related event and the disability claimed. CRSC, AHRC reviewed his CRSC application at the initial, reconsideration, and appeal level and have denied his claim due to insufficient documentation.

(2) To date, the applicant had not submitted official military documentation that shows evidence of his direct and personal exposure to armed conflict. To approve his claim for PTSD, he must provide AHRC with official documentation that shows how his condition is combat related by CRSC program guidance. For mental health conditions, official documentation includes wartime chain of command endorsements which confirms exposure to armed conflict (wartime chain of command must be first sergeant/company commander or higher), copies of combat decorations (certificates, combat badges, and DA Forms 638 (Recommendation for Award)), and evaluation reports which support exposure to armed conflict.

6. On 9 February 2022, the Board in AR20200007523 found relief was not warranted. On 29 August 2022, the DASA (Review Boards) stated he reviewed the evidence presented, findings, conclusions, and Board member recommendations. He found there was sufficient evidence to grant partial relief. Therefore, under Title 10 USC 1552, he directed that the Department of the Army records of the applicant be corrected by

forwarding his record to AHRC for further consideration in granting him CRSC for his PTSD.

7. On 14 February 2024, Special Compensations Branch, HRC, provided an advisory opinion, which states:

a. The CRSC office has carefully reviewed all documentation submitted with the applicant's DD Form 149 and all available personnel files. Unfortunately, they did not find evidence that he was personally exposed to armed conflict. Program guidelines require the applicant to submit official military documentation that establishes a direct causal relationship between a qualifying combat related event and the disability claimed. His CRSC application has been reviewed at the initial, reconsideration, and appeal levels and his claim has been denied due to insufficient documentation.

b. HRC has reviewed all documentation submitted by the applicant and did not find documentation, which confirms his personal exposure to armed conflict, as required by program guidelines. He submitted as evidence the DA Form 199 that found his condition to be combat related due to armed conflict, however USAPDA determinations are in reference to other laws than CRSC. This means although the PEB states a disability is combat related under Title 26 USC 104 or Title 10 USC 10215, the disability does not automatically qualify for CRSC. The CRSC program is managed under the provisions of Title 10 USC 1413a and DoD FMR 7000.14-R Volume 7B, Chapter 63. Due to the differences in program guidance, AHRC must verify the condition is combat related independent from the PEB's findings.

c. The applicant states that his PTSD is caused by exposure to repeated mortar fire, being shot at multiple times, and encountering rocket fire in his direction; however, his military record provides no support documentation which verifies his exposure to armed conflict. An uncorroborated statement in a record that disability is combat related will not, in and of itself, be considered determinative for purposes of meeting combat related standards. Additionally, the psychological consults submitted as evidence are based on the servicemember's uncorroborated statements and are not supported by the military record.

d. The applicant submitted as evidence a statement from SGT L- L-. Only statements from servicemember's direct wartime chain of command (first sergeant, company commander, or higher) which corroborate exposure to armed conflict, duties, or actions will be reviewed as official evidence. SGT L- was not part of the applicant's official wartime chain of command, therefore his statement is considered a "buddy statement". Buddy statements cannot be used as official evidence to support a combat related determination.

e. To date, the applicant has not submitted official military documentation that shows evidence of his direct and personal exposure to armed conflict. To approve his claim for PTSD, he must provide CRSC, AHRC with official documentation that shows his condition is combat related as defined by CRSC program guidance. For mental health conditions, official documentation includes wartime chain of command endorsements which confirms exposure to armed conflict, copies of combat decorations, and evaluation reports which support exposure to armed conflict.

8. On 16 February 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

9. Based on the applicant's documents showing he was diagnosed with PTSD, the ARBA Medical Section provided a medical review for the Board's consideration

**10. MEDICAL REVIEW:**

a. Background: The applicant is requesting reconsideration of his previous request to receive Combat-Related Special Compensation (CRSC) for post-traumatic stress disorder (PTSD).

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the Regular Army on 1 April 2002.
- He served in Iraq during Operation Iraqi Freedom from 3 April 2003 to 5 April 2004 in an imminent danger pay area.
- He served in Iraq from 27 February 2005 to 8 November 2005 in an imminent danger pay area. He extended his enlistment by 2 months on 2 February 2006.
- On 31 May 2006, he was honorably released from active duty by reason of completion of required active service, and he was transferred to control of the U.S. Army Reserve Control Group (Reinforcement). He completed 4 years and 2 months of net active service this period. His grade/pay grade was shown as specialist/E-4.
- His records contain a Psychiatric Board Summary, Fox Army Medical Center, 17 September 2010, showing diagnosis of:
  - chronic PTSD, 17 September 2010, in LOD with a date of onset of 2003
  - major depressive disorder, in LOD, with a date of onset of 2003
  - panic disorder without agoraphobia, in LOD, with a date of onset of 2005
- On 4 October 2010, a Physical Evaluation Board (PEB) found him physically unfit by reason of PTSD attributed to combat stressors encountered, during his Iraq deployment. The PEB recommended a combined disability rating of 70 percent (which included his PTSD disability) and that he be placed on the Temporary Disability Retired List (TDRL) because his disability was not sufficiently stable for

final adjudication from the disability percentage perspective, and that a TDRL reevaluation occur within six months. The PEB's recommended findings included that his PTSD was "based on disability for injury or disease received in the line of duty, as a direct result of armed conflict or caused by an instrumentality of war and incurring in the line of duty, during a period of war as defined by law" and that "the disability did result from a combat related injury as defined in Title 26 USC 104." On 14 October 2010, the USAPDA issued order D287-04 placing him on the TDRL effective 8 November 2010. A VA rating decision was later issued on 26 August 2011 granting him VA disability benefits of 30 percent based on PTSD.

- On 29 September 2011, an informal TDRL PEB reconsidered his conditions described in the records and found him unfit for duty in his MOS by reason of PTSD, major depressive disorder, and panic disorder. The PEB recommended a new combined disability percentage of 50% and that his disposition be permanent disability retirement.
- On 1 November 2011 the USAPDA notified him of his removal from the TDRL and that he was being permanently retired and on 2 November 2011, USAPDA issued order 306-08, removing him from the TDRL, and permanently retiring him, effective 2 November 2011.
- Prior to his permanent retirement, in a letter dated 21 October 2011, the CRSC Branch, U.S. Army Human Resources Command (AHRC), denied his 3 October 2011 claim for CRSC based on left shoulder strain (10 percent disability) and PTSD (30 percent disability), finding it was unable to verify his disabilities as a combat related disability. This letter further states that the "VA has not conceded a stressor caused by a specific combat related, simulating war, or instrumentality of war event."
- On 14 December 2011, the CRSC Branch, AHRC, denied his appeal for CRSC by letter based on left shoulder strain and PTSD, finding again that it was unable to verify his disabilities as combat related.
- On 27 February 2012, the CRSC Branch, AHRC, denied his appeal for CRSC by letter based on left shoulder strain and PTSD, finding they were unable to overturn the previous adjudications. He was informed that if he elected to appeal this decision, he must submit a notice of disagreement to the ABCMR.
- As directed, he applied to the ABCMR on 4 August 2020. The ABCMR reviewed his application and supporting documents and issued an ROP under docket number AR20200007523 (board date 9 February 2022). In such ROP, the ABCMR found that "relief was not warranted." Specifically, the ABCMR found "the applicant's record lacked sufficient details to show a causal event" and "they were unable to verify his disabilities as combat related disability for his left shoulder strain and PTSD."

- On 14 February 2024, Special Compensations Branch, AHRC, provided an advisory opinion, which states, the CRSC office has carefully reviewed all documentation submitted by the applicant. Unfortunately, they did not find evidence that he was personally exposed to armed conflict. Program guidelines require the applicant submit official military documentation that establishes a direct causal relationship between a qualifying combat related event and the disability claimed. His CRSC application was reviewed at the initial, reconsideration, and appeal levels and his claim was denied due to insufficient documentation. AHRC reviewed all documentation submitted by the applicant and did not find documentation, which confirms his personal exposure to armed conflict, as required by program guidelines. He submitted as evidence the DA Form 199 that found his condition to be combat related due to armed conflict, however USAPDA determinations are in reference to other laws than CRSC. This means although the PEB states a disability is combat related under Title 26 USC 104 or Title 10 USC 10215, the disability does not automatically qualify for CRSC. The CRSC program is managed under the provisions of Title 10 USC 1413a and DoD FMR 7000.14-R Volume 7B, Chapter 63. Due to the differences in program guidance, AHRC must verify the condition is combat related independent from the PEB's findings. The applicant states that his PTSD is caused by exposure to repeated mortar fire, being shot at multiple times, and encountering rocket fire in his direction; however, his military record provides no support documentation which verifies his exposure to armed conflict. An uncorroborated statement in a record that disability is combat related will not, in and of itself, be considered determinative for purposes of meeting combat related standards. Additionally, the psychological consults submitted as evidence are based on the servicemember's uncorroborated statements and are not supported by the military record.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he should be granted CRSC because he meets the preliminary eligibility for CRSC and his chronic PTSD was incurred as a direct result of armed conflict through the instrumentality of war. The applicant submits a Psychiatric Medical Evaluation Board Summary, dated 17 Sep 2010 indicating, "the diagnosis of PTSD fails to meet psychiatric retention standards," as was the case with Major Depressive Disorder and Panic Disorder. It was deemed his PTSD and Major Depressive Disorder were "Line of Duty" with onset date 2003, and his Panic Disorder was also "Line of Duty" with onset date 2005. The U.S. Army Physical Disability Agency, determined on 14 October 2010, "you are released from duty because of physical disability and placed on Temporary Disability Retirement List. Disability is based on injury or disease received in line of duty as a direct result of Armed Conflict or caused by an instrumentality or war and incurred in the line of duty during a war period as defined by law." The Physical Evaluation Board, dated 29 September 2011 further

noted, "the Board finds the soldier is physically unfit and recommends a combined rating of 50% and the soldier's disposition be permanent disability retirement." On 2 November 2011 he was permanently retired. However, prior to his permanent retirement, correspondence dated 21 October 2011, denied his claim for CRSC disability, since it was unable to verify his disabilities as combat related. On 27 February 2012 the applicant was informed, "the documentation which you have submitted still shows no new evidence to link your requested condition to a combat related event." Further correspondence from HRC, dated 08 February 2019 noted, "we have received your application for reconsideration. Records in our database indicated that you received a final CRSC determination letter dated February 27, 2012. That decision was final and CRSC cannot process your reconsideration request." It was suggested in the letter he could seek redress by contacting the Army Review Boards Agency. The current review is the applicant's third time requesting reconsideration by the Board. On 14 February 2024, the Special Compensations Branch, AHRC, provided an advisory opinion to the Board in relation to the applicant's most recent request, which states, the CRSC office has carefully reviewed all documentation submitted with the application. Unfortunately, they did not find evidence that he was personally exposed to armed conflict. Program guidelines require the applicant submit official military documentation that establishes a direct causal relationship between a qualifying combat related event and the disability claimed.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and shows the applicant is 100% service-connected, including 70% for PTSD. The VA electronic medical record includes the following problem list, PTSD, Alcohol Abuse, Anxiety Disorder, Major Depressive Disorder. The applicant has participated intermittently in behavioral health services and his most recent mental health contacts only reference his service-connection for PTSD and indicate his symptoms as mild.

e. Based on the available information and in accordance with Combat Related Special Compensation criteria, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient military documentation which confirms his personal exposure to armed conflict, as required by program guidelines. There are supporting medical documents including: the Psychiatric Medical Evaluation Board Summary (17 Sep 2010), his service-connection for PTSD, C and P examinations, and a buddy statement. However, the available medical documents are based on the applicant's self-report of his combat exposure and clinical opinion, not on official military documentation that establishes a direct personal exposure to armed conflict.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

- (2) Did the condition exist or experience occur during military service? Not applicable.
- (3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical advisor's review, the Board concurred with the advising official finding the determination from the Special Compensation Branch for the U.S. Army Human Resources Command deemed the applicant ineligible for combat related special compensation citing they were unable to find evidence to show the applicant was personally exposed to armed conflict as required by law. The Board noted the applicant's contention his post-traumatic stress disorder was incurred as a direct result of armed conflict and through an instrumentality of war; however, found no documentation to support his contention. The Board also concurred with the medical reviewer's opinion finding no documentation to support personal exposure to armed conflict.

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. 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.
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. 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.

4. 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.
5. 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.
6. 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//