

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20230014261

APPLICANT REQUESTS: in effect, approval of his application for Combat-Related Special Compensation (CRSC) for his combat related disabilities to include post-traumatic stress disorder (PTSD) conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Afghanistan Campaign Medal, Certificate
- DA Form 638 (Recommendation for Award)
- two Department of Veterans Affairs (VA), Disability Evaluation System Proposed Ratings (17 Pages and 3 Pages)
- VA Fact Sheet
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 2 March 2022
- Orders 067-0024
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Enlisted Record Brief
- VA Ratings Decision and Service Connection Disability Compensation Certification Letter
- two CRSC, Decision Letters
- CRSC Request for Reconsideration
- two Monthly Compensation Invoices
- Memorandum For Record (Chain of Command letter verifying deployment of (Applicant) being in a Combat Zone and rendering Damage Control Resuscitation and Damage Control Surgery to Casualties), 3 May 2023

FACTS:

1. The applicant states, he deployed to Afghanistan in 2021 with the 42D Forward Resuscitative Surgical Detachment as a 68W (Healthcare Specialist) and served as part of base defense. They were responsible for treating critically injured casualties, and at one point, he had brain matter on his shoes. There was unexploded ordinance inside the compound. He could hear and see gunfire and explosions, and now lives with

constant nightmares and little sleep due to his deployment. He has several documents noting his combat related disabilities, that he was part of a combat deployment, and served in an imminent danger area.

2. The applicant provides documents showing his deployment, his PEB, his VA disability ratings decisions, and two CRSC denial letters.

3. The applicant's service record show:

a. The applicant enlisted in the Regular Army on 2 April 2014. He deployed to Afghanistan on 27 March 2021 through 9 July 2021.

b. DA Form 199 shows the applicant underwent a PEB on 2 March 2022 and the board found him physically unfit for duty, recommended a rating of 70 percent (%) for PTSD and 10% for recurring ankle sprain for a combined rating of 70%. They recommended his disposition be place on the temporary disability retirement list (TDRL) with a reexamination during November 2022. The PEB further found that the applicant's disability did result from combat related injury as defined in Title 26 United States Code (U.S.C.) section 104. The board advise him that although his condition(s) had been determined to be combat related under the provisions of 26 U.S.C. 104 or 10 U.S.C. 10216, they may not qualify for CRSC under DoD 7000.14-R, Volume 7b, Chapter 63. He concurred with the findings and did not request reconsideration of his VA ratings.

c. Orders 067-0024, 8 March 2022, shows he was being released from assignment and duty because of physical disability incurred while entitled to basic pay under conditions which placed him on the TDRL. His date for retirement read 26 April 2022.

d. On 26 April 2022, the applicant was honorably retired from active duty. His DD Form 214 (Certificate of Release or discharge from Active Duty), shows he completed 7 years, 7 months, and 25 days, and the narrative reason for separation was "DISABILITY, COMBAT RELATED."

e. The applicant applied for CRSC on 3 June 2022, for: Tinnitus (6260); PTSD, Major Depressive Disorder and Alcohol Use Disorder (9434-9411); and Erectile Dysfunction (7522).

(1) The U.S. Army Human Resources Command (HRC) informed the applicant on 15 August 2022 that they were only able to partially approve a portion of his claim.

(A) His condition of "Tinnitus (6260)" received a total combat-related disability rating of 10%, effective May 2022, with a combat code "IN" meaning, Instrumentality of War.

(B) The applicant's remaining conditions were denied because the documents submitted and available military records, did not find confirms his conditions were caused by a specific combat-related event.

(2) The applicant was informed he had the right to apply for reconsideration if he disagreed with this decision.

f. On 20 December 2022 HRC reconsidered the applicant's CRSC request for Tinnitus (6260); PTSD, Major Depressive Disorder and Alcohol Use Disorder (9434-9411); and Erectile Dysfunction (7522). HRC determined "Tinnitus (6260)" was previously awarded, had a verified percentage, and had an effective date of May 2022. His remaining conditions were again denied because no new evidence provided to show combat-related event caused the conditions. He was informed he had the right to apply for reconsideration if he disagreed with this decision.

g. On 30 August 2023 HRC reconsidered the applicant's CRSC request for Tinnitus (6260); PTSD, Major Depressive Disorder and Alcohol Use Disorder (9434-9411); and Erectile Dysfunction (7522). HRC noted as a final disapproval, they were unable to overturn the previous adjudication(s). The documentation he submitted did not provide new evidence to link his requested conditions to a combat-related event. He could appeal the decision to the Army Review Boards Agency by submitting a Notice of Disagreement.

h. DA Form 199 shows the applicant underwent a PEB on 26 October 2023 and the board found him physically unfit for duty, recommended a rating of 30% for PTSD and 10% for recurring ankle sprain for a combined rating of 40% and recommended his disposition be permanent disability retirement. The PEB further found that the applicant's disability did result from combat related injury as defined in Title 26 United States Code (U.S.C.) section 104. He concurred with the findings and did not request reconsideration of his VA.

i. Orders D300-0014, 27 October 2023, removed the applicant from the TDRL and retired him by reason of permanent physical disability effective 27 October 2023 and placed him on the Retired List effective 27 October 2023.

4. On 1 May 2024, the HRC provided an advisory opinion.

a. The CRSC office carefully reviewed all documentation submitted with the applicant's DD Form 149 and all available personnel files. They did not find evidence the applicant 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. The

applicant's CRSC application has been reviewed at the initial, reconsideration, and appeal levels and his claim has been denied due to insufficient documentation.

b. The applicant 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 a disability is combat related under 26 U.S.C. 104 or 10 U.S.C. 10216, the disability does not automatically qualify for CRSC. The CRSC program is managed under the provisions of 10 U.S.C. 1413a and DoD Financial Management Regulation 7000.14-R Volume 7B, Chapter 63. Due to the differences in program guidance, their office must verify the condition is combat-related independent from the PEB's findings.

c. The applicant stated his PTSD was caused by treating casualties, unexploded ordnance inside the compound, seeing and hearing gunfire and explosions; however, his military record provides no supporting documentation which verifies his exposure to armed conflict. An uncorroborated statement in a record that a disability is combat-related will not, in and of itself, be considered determinative for purposes of meeting combat-related standards.

d. The applicant submitted as evidence a statement from Master Sergeant K____ L. R____. While we were able to show Master Sergeant R____ was an acting Sergeant Major for 4 months during the deployment, the letter does not explain the combat the applicant was exposed to. While providing care to patients after a combat incident is traumatic; it does not qualify for combat related.

e. The applicant submitted his Afghanistan Campaign Medal Certificate; however, being deployed to a combat area does not qualify for CRSC by program guidance. He also submitted a copy of his DA Form 638 for his Army Commendation Medal while deployed; that also does not show his personal exposure to combat.

5. On 8 May 2024, the Army Review Boards Agency provided the applicant a copy of the advisory opinion for review and the opportunity to submit a statement or additional evidence on her own behalf; the applicant did not submit a response.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting to receive Combat-Related Special Compensation (CRSC) for his combat related disabilities, to include 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 2 April 2014.
- He deployed to Afghanistan on 27 March 2021 through 9 July 2021.
- DA Form 199 shows the applicant underwent a PEB on 2 March 2022 and Medical Evaluation Board (MEB) Narrative Summary, dated 11 January 2022, the board found him physically unfit for duty, recommended a rating of 70% for PTSD and 10% for recurring ankle sprain for a combined rating of 70%. They recommended his disposition be place on the temporary disability retirement list (TDRL) with a reexamination during November 2022. The PEB further found that the applicant's disability did result from combat related injury as defined in Title 26 United States Code (U.S.C.) section 104. The board advised him that although his condition(s) had been determined to be combat related under the provisions of 26 U.S.C. 104 or 10 U.S.C. 10216, they may not qualify for CRSC under DoD 7000.14-R, Volume 7b, Chapter 63. He concurred with the findings and did not request reconsideration of his VA ratings.
- Orders 067-0024, 8 March 2022, shows he was being released from assignment and duty because of physical disability incurred while entitled to basic pay under conditions which placed him on the TDRL. His date for retirement reads 26 April 2022.
- On 26 April 2022, the applicant was honorably retired from active duty. His DD Form 214 (Certificate of Release or discharge from Active Duty), shows he completed 7 years, 7 months, and 25 days, and the narrative reason for separation was "DISABILITY, COMBAT RELATED."
- On 20 December 2022 HRC reconsidered the applicant's CRSC request for Tinnitus (6260); PTSD, Major Depressive Disorder and Alcohol Use Disorder (9434-9411); and Erectile Dysfunction (7522). HRC determined "Tinnitus (6260)" was previously awarded, had a verified percentage, and had an effective date of May 2022. His remaining conditions were again denied because no new evidence provided to show combat-related event caused the conditions. He was informed he had the right to apply for reconsideration if he disagreed with this decision.
- On 30 August 2023 HRC reconsidered the applicant's CRSC request for Tinnitus (6260); PTSD, Major Depressive Disorder and Alcohol Use Disorder (9434-9411); and Erectile Dysfunction (7522). HRC noted as a final disapproval, they were unable to overturn the previous adjudication(s). The documentation he submitted did not provide new evidence to link his requested conditions to a combat-related event. He could appeal the decision to the Army Review Boards Agency by submitting a Notice of Disagreement.
- Orders D300-0014, 27 October 2023, removed the applicant from the TDRL and retired him by reason of permanent physical disability effective 27 October 2023 and placed him on the Retired List effective 27 October 2023.
- On 1 May 2024, the HRC provided ARBA an advisory opinion. The CRSC office carefully reviewed all documentation submitted with the applicant's DD Form 149 and all available personnel files. They did not find evidence the applicant 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. The applicant's CRSC application has been reviewed at the initial, reconsideration, and appeal levels and his claim has been denied due to insufficient documentation. The applicant stated his PTSD was caused by treating casualties, unexploded ordinance inside the compound, seeing and hearing gunfire and explosions; however, his military record provides no supporting documentation which verifies his exposure to armed conflict. An uncorroborated statement in a record that a disability is combat-related will not, in and of itself, be considered determinative for purposes of meeting combat-related standards.

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 deployed to Afghanistan in 2021 with the 42D Forward Resuscitative Surgical Detachment as a 68W (Healthcare Specialist) and served as part of base defense. They were responsible for treating critically injured casualties, and at one point, he had brain matter on his shoes. There was unexploded ordinance inside the compound. He could hear and see gunfire and explosions, and now lives with constant nightmares and little sleep due to his deployment. He has several documents noting his combat related disabilities, that he was part of a combat deployment, and served in an imminent danger area.

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 shows a Medical Evaluation Board (MEB) Narrative Summary, dated 11 January 2022, indicating the following conditions failed to meet retention standards, PTSD and Major Depressive Disorder. However, his diagnosis of Alcohol Use Disorder met retention standards. Consistent with the HRC advisory opinion, the MEB states the applicant experienced, "indirect fire including mortar attacks and witnessing and treating casualties in his role as a medic....," not that he was directly exposed to armed conflict.

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: Medical Evaluation Board (MEB) Narrative Summary, dated 11 January 2022, his service-connection for PTSD, C and P examinations, and letters of support. 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 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 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 available documentation, the findings and recommendation outlined in the HRC advisory opinion and in the medical review, as well as the lack of any rebuttal from the applicant related to the HRC advisory opinion, the Board concluded there was insufficient evidence showing the applicant had personal exposure to armed conflict.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.
2. Department of Defense (DoD) 7000.14-R, Financial Management Regulation (FMR) Volume 7B, Chapter 63, (Combat-Related Special Compensation (CRSC)), dated May 2022, and currently in effect, provides for 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. CRSC is not military retired pay. It is payable from funds appropriated for pay and allowance payable by the Secretary of the Military Department concerned.
 - a. Paragraph 6.0 (Determinations of Combat-Relatedness) states the following criteria, terms, definitions, and explanations will apply to making combat-related determinations in the CRSC Program.

(1) Paragraph 6.1 (Direct Result of Armed Conflict) –

(A) Paragraph 6.1.1. states 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) Paragraph 6.1.2. states 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) Paragraph 6.1.3. states 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.

(2) Paragraph 6.2 (While Engaged in Hazardous Service) states, 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.

(3) Paragraph 6.3 (In the Performance of Duty Under Conditions Simulating War) states, 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.

(4) Paragraph 6.4 (Instrumentality of War) –

(A) Paragraph 6.4.1. states 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) Paragraph 6.4.2. states 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) Paragraph 6.4.3. states 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) Paragraph 6.4.4. states, for example, if a member is engaging in a sporting activity while on a field exercise and falls and strikes an armored vehicle, the injury would not be considered the result of an 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.

b. Paragraph 10.2 (Processing of Applications) states, each Military Department will receive, and process applications submitted by members retired from that Military Department on DD 2860, Claim for Combat-Related Special Compensation (CRSC). Applications will be reviewed, and an application will be approved only if the applicant satisfies both preliminary and final CRSC criteria. An application must be received by the military department prior to the member's death in order to be considered. An application for CRSC submitted by a member's survivors will not be considered. The DFAS-Cleveland site will be notified of each approved application for payment.

(1) Paragraph 10.2.1. (Initial Review) states, each Service Department will review the member's application to determine if the member meets the preliminary criteria in section 4.0. If a member does not satisfy each of the preliminary CRSC criteria, then the application will be denied, and no further consideration is necessary. The member may reapply when his or her ratings satisfy the specified thresholds and meet all four preliminary CRSC criteria in section 4.0.

(2) Paragraph 10.2.2. (Final Review) states, if the member meets all four preliminary criteria in section 4.0, then the Military Department will determine whether the member's disabilities are qualifying combat-related disabilities, as prescribed in section 6.0. The Military Department will record each disability determined to be combat related with assigned medical diagnosis code from VASRD. The Military Department will

forward the approved claims with VASRD codes categorized as either combat or Purple Heart to the DFAS-Cleveland site for payment.

c. Paragraph 10.3 (Denial and Appeal) –

(1) Paragraph 10.3.1. (Denial) states, when a Military Department denies a CRSC application, they will provide a letter to the member specifying the reasons(s) for the denial. The Military Department will inform the member that he or she may seek reconsideration by submitting additional, clarifying, or new documentary information to the Military Department in support of his or her claim. The Military Department will review the additional or new information and will inform the member of the results of the review. The Military Department will also inform the member that CRSC is subject to the same appeals and correction processes applicable to military pay and allowances, including application to the appropriate Board for Correction of Military Records (BCMR) under the provisions of 10 U.S.C. § 1552.

(2) Paragraph 10.3.2. (Appeal) states, the Military Department will provide the member a DD Form 149, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, section 1552, and the address of the BCMR, including its website.

2. Title 10, U.S. Code, section 1413a, as amended, established CRSC. CRSC provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it were not for the statutory prohibition for a military retiree to receive a VA disability pension. Payments under this section are not retired pay. Payment is made by the Military Department, not the VA, and is tax free. Eligible retirees are those who have combat related disabilities and are entitled to retired pay. The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense. A combat-related disability means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that is attributable to an injury for which the member was awarded the Purple Heart; or was incurred (as determined under criteria prescribed by the Secretary of Defense) as a direct result of armed conflict, engaged in hazardous service, in the performance of duty under conditions simulating war or through an instrumentality of war.

//NOTHING FOLLOWS//