

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230014461

APPLICANT REQUESTS: reconsideration of his previous request to reverse the U.S. Army Human Resources Command (HRC) denial of Combat Related Special Compensation (CRSC).

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

- Army Board for Correction of Military Records (ABCMR) Docket Number AR20220010990 in lieu of DD Form 149 (Application for Correction of Military Record)
- Medical documents

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220010990 on 10 May 2023.

2. A review of the applicant's available service records reflects the following:

a. After serving in the Regular Army and U.S. Army Reserve, on 6 May 2003, the applicant enlisted in the Army National Guard (ARNG).

b. On 20 November 2003, the NHARNG issued Orders Number 324-536 ordering the applicant to active duty in support of Operation Iraqi Freedom, effective 7 December 2003 for a period of 365 days.

c. On 28 July 2006, Headquarters, 10th Mountain Division (Light Infantry) and Fort Drum issued Orders Number 209-1028 reassigning the applicant to the U.S. Army transition point pending separation processing.

d. On 8 August 2006, the applicant was honorably discharged from active duty due to a disability with entitlement to severance pay.

e. On 26 September 2006, the NHARNG issued Orders Number 269-002 discharging the applicant from the ARNG, effective 8 August 2006.

f. On 23 August 2018, the NHARNG issued Orders Number 253-003 amending Orders Number 269-002 to reflect the applicant being permanently medically retired.

g. On 11 September 2018, a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) was completed for the DD Form 214 period ending on 8 August 2006 to reflect the deletion of his severance pay entitlement and the addition of the applicant being permanently medically retired.

h. On 29 November 2018, the U.S. Army Human Resources Command (AHRC) denied the applicant's request for entitlement to CRSC based upon his failure to meet the eligibility requirements. He was further advised that to be eligible for CRSC, he must meet all of the following requirements:

- Receiving military retired pay
- Have 10 percent or greater Veterans Administration (VA) rated injury
- Military retired pay is reduced by VA disability payments

i. On 17 December 2018, AHRC denied the applicant's request for entitlement to CRSC based upon his failure to meet the eligibility requirements.

j. On 17 September 2019, AHRC denied the applicant's claim for CRSC based on the following 3 conditions: Anxiety Disorder (9413), Reflex Sympathetic Dystrophy - Left leg (8620) and Residuals Left Ankle Fusion with Screw Fixation (5271) noting that the conditions were either noncombat related (5271 and 8620) or there was no military documentation that established his personal exposure to armed conflict in accordance with CRSC guidelines.

k. On 11 May 2021, AHRC awarded the applicant CRSC for Tinnitus and Hearing loss. However, they disapproved the applicant's second submission for CRSC based on Anxiety Disorder (9413) Reflex Sympathetic Dystrophy - Left leg (8620) and Residuals Left Ankle Fusion with Screw Fixation (5271) noting that there was no new evidence provided to show that a combat related event caused the condition. The applicant's request for CRSC based on Chronic Neuropathic Pain Syndrome with Left Paracentral Disc Herniation, Foraminal Stenosis and Dorsal Column Stimulator Implantation for Chronic Pain (5243) and Right Great Toe Distal Phalanx Ossicle Removal with Mild Degenerative Changes (5284) was also denied due his failure to provide documentation that established his personal exposure to armed conflict in accordance with CRSC guidelines.

l. On 8 September 2021, AHRC denied the applicant's claim for CRSC based on Anxiety Disorder (9413) Reflex Sympathetic Dystrophy - Left leg (8620) and Residuals Left Ankle Fusion with Screw Fixation (5271) noting that there was no new evidence provided to show that a combat related event caused the condition. This was the applicant's final disapproval for these conditions. AHRC also again denied the applicant's request for CRSC for the following conditions: Chronic Neuropathic Pain Syndrome with Left Paracentral Disc Herniation, Foraminal Stenosis and Dorsal Column Stimulator Implantation for Chronic Pain (5243) and Right Great Toe Distal Phalanx Ossicle Removal with Mild Degenerative Changes (5284) noting that there was no new evidence provided to show that a combat related event caused the condition. This was the second disapproval for these conditions.

m. On 28 December 2021, AHRC denied the applicant's appeal for entitlement to CRSC based on all of the aforementioned conditions because the submitted documentation made no mention of a combat-related event in relationship to these conditions. The applicant was advised that since this was a final decision, future request would need to be addressed by the Army Review Boards Agency.

3. The applicant provides medical documents reflective of health care (Mental Health Consult) that he received between March – July 2011 for cognitive processing therapy for Post Traumatic Stress Disorder. This documentation is void of evidence reflective of a specific combat-related event as the cause of this condition. However, page 29 of the PDF shows 5x improvised explosive device attacks in the first two weeks, saw wounded, saw people killed in an accident, and was exposed to mortars at Balad/Anaconda daily. No psychiatric care on active duty or pre-military civilian experience reported.

4. On 10 May 2023, in ABCMR Docket Number AR20220010990 the Board denied the applicant's requested relief noting that the evidence presented does not demonstrate the existence of a probable error of injustice. Upon review of his petition, available military records and the previous AHRC decisions, the Board concurred with the advising official finding the applicant's record lacked sufficient details to show a causative 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 Anxiety Disorder, Reflex Sympathetic Dystrophy, Left leg, Chronic Neuropathic Pain Syndrome with Left Paracentral Disc Herniation L5-S1, Foraminal Stenosis at L5-S1 and Dorsal Column Stimulator Implantation for Chronic Pain and his Residuals Left Ankle Fusion with Screw Fixation.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, Human Resources Command (HRC) CRSC branch advisory opinions, the Board determined there is insufficient evidence to support reversal of the previous Board determination. The Board determined the applicant's record is absent sufficient details to show a casual event.

2. Furthermore, during deliberation the Board agreed with the CRSC, HRC findings that they were unable to verify his disabilities as combat- related disability for his Anxiety Disorder, Reflex Sympathetic Dystrophy, Left leg, Chronic Neuropathic Pain Syndrome with Left Paracentral Disc Herniation L5-S1, Foraminal Stenosis at L5-S1 and Dorsal Column Stimulator Implantation for Chronic Pain and his Residuals Left Ankle Fusion with Screw Fixation. The Board noted the HRC CRSC reconsideration request and reviewed the additional supporting documentation provided by the applicant. The Board found the applicant failed to provide substantiating evidence that established his personal exposure to armed conflict in accordance with CRSC guidelines. Based on the preponderance of evidence the Board determined there was insufficient evidence for reversal of the U.S. Army Human Resources Command decision to deny him combat related special compensation (CRSC) for his stated claims. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220010990 on 10 May 2023.



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.

REFERENCE:

Department of Defense Financial Management Regulation, Volume 7B:

a. Section 630301 states a member may not be paid CRSC unless he or she has applied for and elected to receive compensation under the CRSC program by filing an application on DD Form 2860 (Claim for CRSC), with the Military Department from which he or she retired. 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.

b. 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

c. 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.

d. 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.

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

(2) While Engaged in Hazardous Service. Hazardous service is service that includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of such 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) 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.

(4) 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.

//NOTHING FOLLOWS//