

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230014630

APPLICANT REQUESTS: payment of Combat Related Special Pay (CRSC).

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Doctor
- DD form 214 (Certificate of Release or Discharge from Active Duty)
- Letter from Department of Veterans Affairs (VA)
- VA rating Decision
- CRSC Reconsideration Form
- CRSC Letter
- Combat Status Codes
- Excerpt from Book *In the Company of Soldiers*

FACTS:

1. The applicant states, in effect, he submitted his VA decision memorandum, 6 April 2023, a supporting VA combat status chode sheet, medical doctors' assessments of combat injuries in Iraq, and an excerpt from the book *In the Company of Soldiers* which describes the helicopters downed in Iraq, during the start of the 2003 invasion. He requests recording of three service connected conditions as combat connected and sustained in Operation Iraqi Freedom (OIF) 1/invasion/deployment. These three conditions are clearly combat related to the helicopter downing/impact of the OIF invasion in March 2003. Approval will increase his current CRSC rating, which he elected to receive over Concurrent Retirement and Disability Pay compensation.

2. The applicant provides the following documents:

a. Letter from his doctor, 15 August 2005, states in pertinent part, the applicant gave a long history of intermittent low back pain and episodic, bilateral, variable sciatica. He is known to have a lumbosacral spondylolisthesis. He had been in the Army for 27 years. He had been on active combat in Iraq. He had jumped from helicopters on numerous occasions. He had right sided neck pain radiating into the shoulders. His MRI showed there were spondylotic changes at C6/7 with some narrowing of the right C7

neural exit foramen. There was spondylolisthesis of L5 upon S1, equating to less than 25 percent. There were defects in the pars interarticulars. The letter is available for the Board's review.

b. Letter from his VA doctor, 21 December 2022, states in pertinent part, the service conditions cervical spine spondylosis with left upper radicular group involvement, and cervical spine spondylosis are of similar nature to lumbar spine degenerative disc disease, bilateral lumbosacral radiculitis and sciatica of the left and right nerve. As such, there is a strong likelihood that the aforementioned service conditions are also related to combat related duties.

c. VA rating decision, 6 April 2023, shows he received service connected disability for cervical spine spondylosis at 20 percent; radiculopathy, right upper extremity, lower radicular group at 20 percent; and C5-C6, C7, and C8-T1 radiculopathy, left upper extremity at 20 percent.

(1) Evaluation of cervical spine spondylosis, the VA received his claim to recode his neck disability. After review of his lay statement, service treatment records, and his DD Form 214, they conceded his neck disability originated during combat missions. Therefore, the condition had been updated to reflect that the injury occurred, during combat in Iraq.

(2) Evaluation of radiculopathy, right upper extremity, lower radicular group, the VA received his claim to recode his neck disability with residual upper extremity radiculopathy. After review of his lay statement, service treatment records, and his DD Form 214, they conceded his neck disability originated during combat missions. Therefore, the condition had been updated to reflect that the injury occurred, during combat in Iraq.

(3) Evaluation of C5-C6, C7, and C8-T1, radiculopathy, left upper extremity, the VA received his claim to recode his neck disability with residual upper extremity radiculopathy. After review of his lay statement, service treatment records, and his DD Form 214, they conceded his neck disability originated during combat missions. Therefore, the condition had been updated to reflect that the injury occurred, during combat in Iraq.

d. Document entitled Combat Status Codes shows in pertinent part, definition combat disability applies to any injury incurred in action against the enemy of the United States or as a result of an act of such an enemy. The injuries include diseases directly attributable to exposure to the elements as a result of action against the enemy or by the enemy, such as exposure following an airplane crash or shipwreck. Code 2 is one or more combat disabilities, all of which are compensable. He includes a VA rating decision, which shows combat code 2.

e. Except from *In the Company of Soldiers* which states in pertinent part, more than a dozen helicopters had been forced down by the weather, and two more made emergency landings after running low on fuel. Blackhawks and Chinooks littered the southern desert. Among those marooned were division battle staff officers, the G-3 and [the applicant]. The applicant told the author their helicopter landed so hard that one dozing passenger believed they had been hit by a missile.

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

a. DA Form 71 (Oath of Office - Military Personnel) shows he took the oath of office in the Regular Army Military Intelligence Corps on 1 March 1983.

b. DD Form 214 shows he was honorably discharged on 31 March 2013. He had completed 30 years and 1 month of active duty service. He had service in Iraq from 16 February 2003 through 6 February 2004 and in Afghanistan from 25 July 2011 through 1 August 2012. His type of separation was retirement.

c. CRSC, U.S. Army Human Resources Command (AHRC) letter, 26 September 2013, shows the following conditions were verified as combat related:

- Lumbar spine degenerative disc disease, spondylolisthesis and lumbosacral spondylosis, 20 percent
- Bilateral, lumbosacral radiculitis and sciatica with left sciatica nerve involvement, 10 percent
- Bilateral, lumbosacral radiculitis and sciatica with right sciatica nerve involvement, 10 percent
- Total combat related disability 40 percent

CRSC, AHRC, was unable to verify the following as combat related disabilities:

- Gastroesophageal reflux disease and constipation
- Hypothyroidism
- Cervical spine spondylosis
- Cervical spine spondylosis with left upper radicular group involvement
- Chronic frontal/maxillary sinusitis

d. CRSC, AHRC letter, 16 November 2021, states they had reviewed his reconsideration request for CRSC and approved his claim in accordance with program guidance. They added the following conditions as combat related:

- Obstructive sleep apnea, 50 percent
- Chronic frontal/maxillary sinusitis, 30 percent

- Allergic rhinitis, 0 percent
- Total combat related disability 80 percent

They did not change their decision regarding the disabilities that were not combat related.

e. CRSC, AHRC letter, 16 May 2022, changed his rating for allergic rhinitis to 10 percent. They did not change their decision regarding the disabilities that were not combat related.

f. CRSC, AHRC letter, 8 August 2023, states after reviewing all documentation in support of his claim, they were unable to overturn the previous adjudication(s). The documentation which he had submitted still showed no new evidence to link his requested conditions to a combat related event. This disapproval was considered final. He could appeal the decision to the Board.

4. On 30 April 2014, the Chief, CRSC Branch, AHRC provided an advisory opinion, which states:

a. The applicant submitted CRSC applications on 26 September 2013, 16 November 2021, 16 May 2022, and 8 August 2023. He was approved for a total of 80 percent. He requested consideration for Cervical Spine Spondylosis, C5-C6, C7, and C8-T1 Radiculopathy, left upper Extremity; Gastroesophageal Reflux Disease and Constipation; and Hypothyroidism; however, AHRC was unable to verify a combat related event in relation to these conditions. His claim has now been reviewed at the initial and reconsideration level and denied due to insufficient evidence.

b. He served in Iraq in 2003 and Afghanistan in 2011. He stated his cervical spine spondylosis and C5-C6, C7, and C8-T1 radiculopathy, left upper extremity were due to a hard landing of a helicopter, while on deployment. However, upon review of military documents in the Interactive Personnel Electronic Records Management System, Military Health System Genesis, and submitted documentation, there is no medical evidence of these conditions being combat related as defined by CRSC guidance.

c. AHRC acknowledged letters and the book insert he submitted but they are unable to accept these items. Medical documents must be from the time of the injury. Per program guidance, these are not accepted. The burden of proof is on the servicemember to provide the required documents.

d. He states his injuries are listed as combat by the VA on the code sheet, while the VA can find a condition to be combat related it might [not] be combat related for CRSC. The CRSC program is managed under the provisions of Title 10 U.S. Code (USC) 1413a and the Department of Defense FMR 7000.14-R Volume 7b, chapter 63. Due to

the differences in program guidance, AHRC must verify his condition is combat related independent from the VA findings.

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

6. Based on the applicant's medical documents and request for CRSC, the ARBA Medical Section provided a medical review for the Board's consideration

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting they reverse the United States Army Human Resources Command's (USA HRC) previous determinations that his cervical spine spondylosis, cervical radiculopathies, gastroesophageal reflux disease (GERD), and hypothyroidism were not combat related and therefore not eligible for Combat Related Special Compensation (CRSC). He states:

"These 3 conditions are clearly combat related to the helicopter downing/impact in in OIF I invasion, March 2003. Approval will increase my current CRSC rating which I elected to receive over CRDP compensation.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 1 March 1983 and was retired for length of service on 31 March 2013 under the authority provided in paragraph 6-13c(1) of AR 600-8-24, Officer Transfers and Discharges (12 April 2006).

d. The applicant has applied to and appealed twice to the USAHRC for CRSC. Their final results to the applicant dated 8 August 2023 show they have found justification for awarding CRSC for eight conditions while the four conditions under consideration could still not be verified as combat related with the same Justification/Comment for each: "FINAL DISAPPROVAL: no new medical evidence provided to show combat-related event caused the condition."

e. A 15 August 2006 clinical encounter states “He has been in the Army for some 27 years. He has been on active combat duty in Iraq. He has jumped from helicopters on numerous occasions. More recently, he has had right sided neck pain radiating into the shoulders.” This suggests these issues arose sometime after the jumps and that there was no inciting injury at the time of the jumps, a requirement for a CRSC combat related determination.

f. In a 21 December 2022 “To Whom It May Concern” statement addressing his cervical spondylosis and radiculopathies, a physician states “ ... there is a strong likelihood that the aforementioned conditions are also related to combat related duties.”

g. Finally, a 6 April 2023 VA ratings decision states for both his cervical spondylosis and radiculopathies: “After review of your lay statement, service treatment records, and your DD 214, we have conceded that your neck disability originated during combat missions.

h. This was considered by USAHRC in their 8 August 2023 response to the applicant:

“After reviewing all documentation in support of your claim, we are unable to overturn the previous adjudication(s). The documentation which you have submitted still shows no new evidence to link your requested conditions to a combat-related event.”

i. Combat-related disability for CRSC is defined in 10 U.S.C. § 1413a(e) 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."

j. Chapter 63, Volume 7B of DoD 7000.14R, Financial Management Regulation, is titled “Combat-Related Special Compensation (CSRC)”. Paragraph 630201 defines the criteria for finding a medical condition combat related as a direct result of armed conflict:

“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, or in an area of armed conflict or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.”

k. Paragraph 631001 of DoD FMR 7000.14R provides the documentary requirements and criteria for determining a condition as combat related for the purposes of CRSC entitlement:

“631001. Basis for Determination

A. Determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where quality of information is more important than quantity. All relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation, or conjecture.

B. The burden of proof that a disability is combat-related rests with the applicant and the member is required to provide copies of documents in his or her possession to the best of his or her ability. A record submitted by a member may be used in support of his or her application if that record appears regular on its face and is consistent with Military Service documents and procedures in use at the time, based on the best information available. Military Departments may compile a list of typical documents used in various time periods. If necessary, the Military Departments, under agreement with VA may request copies of certain documents (i.e., DD 214 “Certificate of Release or Discharge From Active Duty”, medical records, final VA ratings) from VA to support CRSC determinations.

I. From a note in paragraph 630502 of DoD FMR 7000.14R:

“An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made based on the program criteria.”

m. It is the opinion of the ARBA Medical Advisor there is insufficient probative documentation upon which to support reversals of USA HRC’s determinations these four conditions are not combat related under DoD FMR 7000.14R for the purpose of entitlement to CRSC.

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 and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the previously issued HRC decision related to the applicant’s request for CRSC related to the four identified medical conditions.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

:                :                :                GRANT PARTIAL RELIEF

:                :                :                GRANT FORMAL HEARING

█                █                █                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

1/6/2025

X

CHAIRPERSON

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

REFERENCES:

1. 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//