

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240001321

APPLICANT REQUESTS: Reversal of the U.S. Army Human Resources Command's (HRC) denial of Combat Related Special Compensation (CRSC).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4187 (Personnel Action), 1 May 2006
- AF Form 3899 (Aeromedical Evacuation Patient Record), 8 November 2006
- DA Form 2823 (Sworn Statement), 8 March 2013
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 27 August 2013
- HRC CRSC Branch Letter with supporting documents, 17 June 2021

FACTS:

1. The applicant states he was denied CRSC for lack of proof he was injured in the theater of war. He is submitting a copy of the aeromedical evacuation record for the Board's consideration. AF Form 3899, March 1995, Section 18, clearly states he was a battle casualty. He is submitting this appeal with the hope his record is corrected and he becomes eligible for CRSC. He believes the error results from oversight on the evaluator's part while assessing his claim.

2. A review of the applicant's official records show:

a. Having prior service in U.S. Army Reserve (USAR) and Regular Army, the applicant enlisted in the USAR for an indefinite period on 24 February 2005.

b. On 11 May 2006, the 208th Regional Support Group published Orders Number 06-131-00004, which ordered the applicant to active duty in support of Iraqi Freedom with a report date on 11 May 2006.

c. On 9 June 2009, DD Form 214 shows he was released from active duty and was transferred to his USAR unit [REDACTED]. Item 18 (Remarks) shows he served in Iraq:

- 15 August 1990 – 15 March 1991
- 11 February 2003 – 2 June 2004
- 18 March 2007 – 15 November 2007

d. On 26 July 2010, the 4th Sustainment Command (Expeditionary), San Antonio, TX, published Orders Number 10-207-00017, which ordered the applicant to active duty in support of Operation Iraqi Freedom with a report date of 18 August 2010.

e. On 24 March 2011, Headquarters, 63D Regional Support Command, Mountain View, CA, published Orders Number 11-083-00102, which promoted the applicant to the rank/grade of sergeant first class (SFC)/E-7, effective 1 April 2011.

f. On 21 March 2013, DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows an Informal PEB found the applicant physically unfit and recommended a disability rating of 60 percent and that the applicant's disposition be placed on Temporary Disability Retired List (TDRL) and with a reexamination during December 2013. He concurred and waived a formal hearing of his case. The following medical conditions were determined to be unfitting:

- Post-Traumatic Stress Disorder (PTSD) rated 50 percent
- Left shoulder condition status post supraspinatus tendon tear repair rated 20 percent
- Lumbar postlaminectomy syndrome rated 10 percent

g. On 27 August 2013, the applicant was retired by reason of disability, temporary (enhanced). DD Form 214 item 18 (Remarks) shows he served in Kuwait from 15 October 2010 through 30 July 2011 and was ordered to active duty in support of Operation Iraqi Freedom.

h. On 28 August 2014, by letter, the HRC, CRSC Branch notified the applicant that his claim for CRSC was approved in accordance with (IAW) current program guidance. PTSD and unspecified depressive disorder were verified as combat-related and rated 50 percent.

i. On 18 March 2015, DA Form 199 shows an Informal PEB found the applicant physically unfit and recommended a rating of 60 percent and that the applicant's disposition be permanent disability retirement. He concurred and waived a formal hearing of his case. The following medical conditions were determined to be unfitting:

- PTSD rated 50 percent
- Left shoulder condition status post supraspinatus tendon tear repair rated 20 percent
- Lumbar postlaminectomy syndrome rated 10 percent

j. On 23 April 2015, the U.S. Army Physical Disability Agency published Orders Number D 113-79, which removed the applicant from the TDRL because of permanent physical disability, effective 23 April 2015, and placed him on the Permanent Disability Retired List, effective 24 April 2015.

k. A Department of Veterans Affairs (VA) Rating Decision dated 22 October 2020 lists the applicant's multiple disabilities and rated percentages. It also shows he has a combined disability rating of 100 percent. The VA Rating Decision can be reviewed in its entirety in the supporting documents.

l. On 5 January 2021, the HRC CRSC Branch notified the applicant that his reconsideration request for CRSC was approved IAW current program guidance. PTSD and unspecified depressive disorder were verified as combat-related and rated 50 percent, and Tinnitus rated 10 percent. Cervicalgia, degenerative arthritis of the cervical spine, and Left shoulder osteoarthritis S/P shoulder arthroplasty were unable to be verified as a combat-related disability (second disapproval; no new medical evidence provided to show combat-related event caused condition).

m. On 17 June 2021, the Chief, Special Compensations Branch, HRC, notified the applicant that:

(1) The CRSC program office had completed processing his appeal. After carefully reviewing the available documentation, he was unable to award the applicant's Cervicalgia (5237), Degenerative Arthritis of the Cervical Spine (5242), Left Shoulder Osteoarthritis S/P Shoulder Arthroplasty (5051) claims.

(2) Unfortunately, the documentation the applicant submitted makes no mention of a combat-related event in relationship to his disabilities listed in the paragraph above. The applicant's claim has previously been processed at the initial, reconsideration, and appeal levels. During each review, our staff has made every effort to consistently and fairly review all available documentation and accurately adhere to this program's standards. We now consider this determination final. If the applicant disagreed with this determination, he has the right to appeal to the Department of the Army Review Boards Agency in accordance with the CRSC Procedures Guide.

3. In support of his case the applicant provides:

a. DA Form 4187 dated 1 May 2006, which shows he requested to be awarded the Combat Action Badge for personally being engaged and engaging the enemy. It also shows the date, time, location and a description of the encounter supporting the request.

b. AF Form 3899 dated 8 November 2006, which states, in part, the applicant was lifting chairs when he felt a sharp pain in his back. The battle casualty block was checked.

c. DA Form 2823 dated 8 March 2013, wherein, SFC [REDACTED] stated:

(1) "SFC [REDACTED] (applicant) and I served together in Iraq in 2003-2004. On many occasions, while Staff Sergeant (SSG) [REDACTED] was the Convoy Commander, our convoys came under both direct and indirect fire, and we had to engage in fire fights. We had more than one ambush attack on our convoys with small arms fire and mortars which required us to shoot back. Additionally, on many occasions, our convoys were attacked with Improvised Explosive Device's (IED) that damaged vehicles and injured personnel."

(2) "On one particular occasion, in November 2003, SFC [REDACTED] was leading a convoy on Main Supply Route Tampa from Camp Taji to Baghdad. Because the insurgents were constantly hitting the first truck in which the convoy commander was riding, we were switching out lead vehicle on a regular basis. As we got to Baghdad, my vehicle took the lead from SFC [REDACTED] vehicle. Shortly after this change out, my vehicle was hit by an IED, and we were disabled. Both me and my truck commander were injured in this blast. SSG [REDACTED] vehicle was in the blast zone since he was right behind us, but none of his occupants were hurt."

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board found insufficient evidence showing the applicant's diagnoses of cervicgia, degenerative arthritis of the cervical spine, or left shoulder osteoarthritis were combat related as defined under the regulatory guidance for CRSC, i.e., incurred 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. Based on a preponderance of the evidence the Board determined HRC's denial of CRSC for the three conditions listed above was not in error or unjust.

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.

3/31/2025

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, United States Code (USC), section 1413a, "CRSC," states, in pertinent part, that the Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree. The monthly amount to be paid to an eligible retiree is the amount of compensation to which the retiree is entitled under Title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability. The amount paid to an eligible combat-related disabled uniformed services retiree for any month may not exceed the amount of the reduction in retired pay that is applicable to the retiree for that month under sections 5304 and 5305 of Title 38.

2. Title 10, USC, section 1414, "Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation" states, in pertinent part, a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans' disability compensation for a qualifying service-connected disability is entitled to be paid both for that month without regard to sections 5304 and 5305 of Title 38. A person who is a qualified retiree under this section and is also an eligible combat-related disabled uniformed services retiree under section 1413a of this Title may receive special compensation in accordance with that section or retired pay in accordance with this section, but not both. The Secretary concerned shall provide for an annual period (referred to as an open season) during which a qualified retiree shall have the right to make an election to change from receipt of special compensation in accordance with section 1413a of this Title to receipt of retired pay in accordance with this section or the reverse, as the case may be. Any such election shall be made under regulations prescribed by the Secretary concerned subject to approval by the Secretary of Defense.

3. The Department of Defense Financial Management Regulation, Volume 7B, Chapter 63: Combat-Related Special Compensation (CRSC), paragraph 6303 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. The law states that a member eligible for both CRSC, under Title 10, United States Code (USC), section 1413a, and Concurrent Retirement Disability Pay, under Title 10, USC, section 1414, may not receive both, but must elect which compensation to receive.

a. 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

b. 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.

c. 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.

4. Title 38, USC, sections 1110 and 1131, permits the Department of Veterans Affairs (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.

//NOTHING FOLLOWS//