

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240002630

APPLICANT REQUESTS: through counsel-

- his post-traumatic stress disorder (PTSD) and Traumatic Brain Injury (TBI) be found to be "combat-related"
- approval of his application for Combat-Related Special Compensation (CRSC) for PTSD and TBI retroactive to 24 October 2014
- personal appearance before the board via video/telephone

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

- DD Form 149, Application for Correction of Military Record
- Legal Brief
- 3 DD Forms 214, Certificate of Release of Discharge from Active Duty
- DA Form 2173, Statement of Medical Examination and Duty Status and Determination
- DA Form 7652, Disability Evaluation System (DES)-Commander's Performance and Functional Statement
- DA 3349, Physical Profile
- Line of Duty Determination
- Integrated DES-Narrative Summary
- Medical Evaluation Board (MEB) Proceedings
- Informal Physical Evaluation Board (PEB) Proceedings with allied documents
- Request for Rating
- Order D-134-05, Permanent Disability Retirement List
- CRSC Applications, Request for Reconsideration, Denial Letter, and Approval Letters
- U.S. Army Combat Related Determinations Summary
- Relevant excerpts from the Promise to Address Comprehensive Toxics Act (PACT Act) 2022
- Medical Records
- Department of Veterans Affairs (VA) Documents
- Miscellaneous military orders, memorandums, and pay documents

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. Counsel states, in summary, the applicant, a retired noncommissioned officer, applied for CRSC under Title 10, U.S. Code, section 1413a, from the Department of Army, CRSC Board due to various injuries, including PTSD, a TBI, and chronic obstructive pulmonary disease (COPD) he suffered in connection with his service in Afghanistan. The CRSC Board erroneously denied the applicant's request for CRSC and erroneously denied in part two subsequent requests for reconsideration of the PTSD/TBI and COPD injuries for CRSC. The applicant respectfully requests the ABCMR correct his military record to indicate he qualifies for CRSC.

a. The applicant served honorably as a member of the United States Army and Army National Guard with active service in the Army National Guard from 7 July 1999 to 29 October 1999, and 24 December 2018 to 18 June 2019, and active service in the Regular Army from 5 November 2001 to 4 November 2002 and from 7 March 2005 to 11 June 2006.

b. On 9 July 2019, the applicant applied for CRSC. On 20 August 2019, the CRSC Board denied his application on the grounds that while the evidence contained the Physical Evaluation Board (PEB) proceedings, there was no other supporting documentation "to verify combat exposure or any other CRSC qualifying criteria" that caused the applicant's PTSD, TBI, or COPD.

c. On 15 April 2021, the applicant filed a request for reconsideration. On 10 May 2021, the CRSC Board denied his request for reconsideration, noting no new evidence was submitted.

d. On 23 June 2022, he filed a second request for reconsideration, which argued the Medical Evaluation Board's (MEB) report, which linked his PTSD and TBI as combat-related and connected to his service in Afghanistan, and this evidence should be considered persuasive. This second request for reconsideration also described the combat-related events he experienced in his service.

e. On 31 August 2022, the CRSC Board denied the applicant's request for reconsideration for the PTSD and TBI claims but granted CRSC in part for his tinnitus and allergic rhinitis injuries.

f. The applicant's deployment history includes a tour in Afghanistan. He was assigned to 141st Infantry Battalion at Bagram Air Force Base and various location in theatre. In December 2005, he was on patrol at Bagram Airfield with a squad clearing anti-tank mines. During the patrol, an anti-tank mine exploded approximately 80 meters from his location which sent debris and the bodies of Soldiers disarming the mine flying. The applicant was thrown back from the explosion and felt the heat from the blast. He also came under small arms fire from enemy combatants and was pinned down in his location. After this event, he reported his injuries to the medical officer on base which were documented in sick call slips generated at that time. During his time in Afghanistan, he was also under constant mortar and small arms fire which caused him to suffer stress and anxious feelings during his tour of duty in Afghanistan. Additionally, the applicant was exposed to the environment of Afghanistan and burn bits while serving in Afghanistan which contributed to his COPD. For his combat service in Afghanistan during this time as a specialist squad automatic weapon gunner, the applicant received the Army Commendation Medal. After being released from active duty on 11 June 2006, he filed a disability claim for his injuries with the VA on 12 June 2006. Through a series of rating decisions, he has been granted service connection for a variety of medical conditions. He was honorably discharged on 18 June 2019.

g. Two sets of requirements have been promulgated for a veteran to qualify for CRSC: (1) the preliminary requirements issued by the Department of Defense (DOD) and (2) the statutory requirements found under Title 10, U.S. Code, section 1413a. The applicant fulfills both sets of requirements.

h. The DOD issued guidelines in 2004 and 2008 detailing the preliminary qualifications for CRSC. According to these guidelines, an applicant must meet each of the following conditions to meet the preliminary CRSC eligibility requirements:

- the applicant has been medically retired;
- the applicant is in military retired status;
- the applicant is entitled to military retired pay; notwithstanding that such retired pay may be reduced due to receipt of VA disability compensation; and
- the applicant is entitled to VA disability compensation for a disability that is rated by the VA of at least 10% disabling as provided under Title 38 of the U.S. Code

i. The applicant meets all of these requirements.

- he was permanently medically retired from the U.S Army effective 18 June 2019, under Title 10, U.S. Code, section 1202, as the result of being found unfit for continued military service;

- he is in military retired status, currently on the Permanent Disability Retirement List (PDRL);
- he is entitled to military retired pay;
- he is entitled to VA disability compensation for service-connected disabilities with ratings of 10% or greater, including: PTSD/TBI at 100%, COPD (previously rated as restive lung disease with reactive airway disease and bronchitis under DC 6600) at 100%, degenerative joint disease of the lumbar spine at 40%, degenerative disc disease of the lumbar spine, lumbosacral strain, low back pain (claimed as lumbago) at 20%, costochondritis at 10%, tinnitus at 10%, migraine at 50%, allergic rhinitis (claimed as sinusitis) at 10%

j. He meets the requirements for CRSC under Title 10, U.S. Code, section 1413a. The title states:

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 determined under amount for the combat-related disability of the retiree determined under subsection (b) ... an eligible combat-related disabled uniformed services retiree ... is a member of the uniformed services who - (1) is entitled to retired pay (other than by reason of section 12731b of this title), and (2) has a combat-related disability.

k. As demonstrated above with his military service records, the applicant was permanently medically retired from the U.S Army effective 18 June 2019 and is entitled to retired pay.

l. Pursuant to Title 10, U.S. Code, section 1413a(e)(2)(A)), a combat-related disability includes a disability that is compensable under the laws administered by the Secretary of VA and was incurred as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war or by means of instrumentality of war. The applicant incurred his PTSD, TBI and COPD as a direct result of armed conflict and through an instrumentality of war.

m. The DOD's 2004 Program Guidance defined "Direct Result of Armed Conflict" as (i) the disability was incurred in the line of duty as the direct result of armed conflict and (ii) there must be a definite causal relationship between the armed conflict and the resulting disability. "Armed conflict" was further defined 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 Service members are engaged with a hostile or belligerent nation, faction, force, or terrorists."

n. The applicant's PTSD/TBI is a disability that was incurred as a direct result of armed conflict. His medical records identify several causes of his disabilities that satisfy the definition of combat-related disabilities. First, his medical records tie his PTSD/TBI to a scout mission outside the wire of Bagram Air Force Base in December 2005. As noted in the MEB Narrative Summary, 30 April 2019, he did not experience PTSD prior to his military service. However, during his deployment in support of Operation Enduring Freedom, the applicant was in close contact to an explosion from an anti-tank mine that caused the death of other Soldiers. The PEB found that his PTSD/TBI was combat-related due to traumatic events including being engaged with direct fire and exposed to the mine explosion. His tinnitus and migraine injuries are also traceable to this event as the explosion affected his hearing.

o. Second, the applicant's medical records also tie his PTSD/TBI to his experiences in Afghanistan. In particular, he was part of a team that acted as reinforcements to the 13th Marines in Kandahar. As they were escorting troops from the airfield, the column of Humvees, including the vehicle the applicant was in, came under enemy fire and he witnessed the destruction of those vehicles and casualties from the attack. This caused him to have a reoccurrence of PTSD and to remain at a hyper vigilant state since he had a flashback of the mine explosion from the December 2005 incident.

p. The MEB's Report indicates that the applicant's PTSD symptoms initially surfaced during his service in Afghanistan and his experiences of direct combat. According to the MEB's Report, the PTSD symptoms returned and worsened during his further deployment in Afghanistan, where he experienced several combat-related traumatic incidents that were related to the December 2005 mine-explosion incident which caused the initial PTSD injury. Accordingly, his disabilities are a combat-related disabilities incurred as a direct result of armed conflict.

q. The applicant's PTSD/TBI was incurred through an Instrumentality of war. Pursuant to Title 10, U.S. Code, section 1413a(e)(2)(D), a combat-related disability includes a disability that: was incurred through an instrumentality of war. As noted above, the applicant experienced a traumatic and violent event when he witnessed and was in close contact to the explosion of an anti-tank mine while on patrol at Bagram Air Force Base in December 2005. His injuries resulting from his proximity to the anti-tank mine were incurred through an instrumentality of war. The anti-tank mine that exploded near him and triggering his PTSD/TBI, tinnitus and migraines including as other symptoms satisfies the definition of an "instrumentality of war." Pursuant to DOD CRSC Program Guidance, "instrumentalities of war" include "instrumentalities not designed primarily for Military Service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to Military Service." There must be a direct causal relationship between the instrumentality of war and the disability."

r. While the anti-tank mine weapon was not designed primarily for military service, it was hidden in a combat zone in Afghanistan and was used as a weapon to inflict casualties on Soldiers in the applicant's squad. The anti-tank mine, as an instrumentality of war, exploded less than 80 meters away from where he stood, killing several Soldiers. The explosion caused him to experience symptoms of PTSD directly related to the anti-tank mine's use as an instrumentality of war. Moreover, the Army approved his CRSC claim for tinnitus as being incurred through instrumentalities of war. Because it already acknowledged his exposure to instrumentalities of war, the Army should also approve his CRSC claim for PTSD/TBI as being incurred through the same instrumentalities of war (i.e., anti-tank mine).

s. There was a definite causal relationship between the armed conflict and the PTSD/TBI and the PEB's findings should be controlling. The traumatic combat-related experiences described above led directly to the applicant's PTSD/TBI. He experienced nightmares from witnessing the land mine explosion that killed several coalition Soldiers. The PEB found that his PTSD/TBI is a "direct result of armed conflict," confirming the MEB's conclusion that the PTSD did not exist prior to the applicant's military service and was incurred in the line of duty. The PEB's conclusions are objective determinations which should be afforded the presumption of administrative regularity and thus adopted unless there is specific, substantial, and credible evidence to the contrary, and no such contrary evidence exists. As discussed below, although the CRSC Board is not bound by the PEB's conclusions, the PEB's conclusions are objective determinations which should be afforded the presumption of administrative regularity and thus adopted unless there is specific, substantial, and credible evidence to the contrary.

t. Although the CRSC Board is not bound by the PEB determination, the PEB's findings should be considered presumptively valid absent clear evidence to the contrary. Federal courts, including the U.S. Supreme Court, have long held and continue to hold that, "in the absence of clear evidence to the contrary, courts presume that [government officials] have properly discharged their official duties." The presumption that government officials have properly performed their duties extends to federal agency decision making bodies and is regularly cited in administrative decisions by numerous agency adjudicative boards. The United States Court of Appeals for the Federal Circuit has further held that the presumption of regularity entitles the Board of Veterans' Appeals to presume the adequacy of VA examiners' medical opinions.

u. Separate from the CRSC Statute, Title 26, U.S. Code, section 104 governs military services PEB's evaluations of whether active-duty servicemembers are unfit for service due to a disability and whether such a disability is "combat-related" under Title 26, U.S. Code, section 104. Similar to the CRSC Statute, Title 26, U.S. Code, section 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, U.S. Code, section 104 provided substantially the same criteria for each of these four definitions as DOD's policy for "combat-related" determinations under the CRSC statute. As noted in 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, U.S. Code, section 104, further demonstrating that Title 26, U.S. Code, section 104 and the CRSC statute have essentially identical definitions of "combat-related" injuries/disabilities. Under the presumption of administrative regularity, the PEB's determination that his PTSD and TBI conditions are combat-related should be treated as an objective determination to be adopted by the CRSC Board unless it can be rebutted by specific, substantial, and credible evidence to the contrary. There is no contrary evidence, and therefore the PEB's combat-related determination should be followed.

v. Moreover, the Adjutant General is tasked with reviewing any CRSC finding that is contrary to the PEB findings. The Adjutant General should note that historically, PEB findings have been used to approve claims by a near 100-1 approval ratio.

w. On 10 August 2022, President Joe Biden signed into law the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (the PACT Act). In passing the PACT Act, Congress recognized the critical need to expand healthcare services and disability benefits for veterans who were exposed to burn pits and other toxins during their course of service to the country, but, like the applicant, have no possible way to establish direct causation to a medical certainty.

x. Among other things, the PACT Act establishes a presumption of service-connection with respect to a number of diseases, including COPD, which became manifest in "covered veterans." Title 38, U.S. Code, section 112. For purposes of the presumption, "covered veterans" include any veteran who: (1) on or after 2 August 1990, performed active military, naval, air, or space service while assigned to a duty station in, including airspace above, Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia or the United Arab Emirates, or (2) on or after 11 September 2001, performed active military, naval, air, or space service while assigned to a duty station in, including airspace above, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan or any other country determined relevant by the Secretary. Title 38, U.S. Code, section 1119(c)39. Furthermore, guidance issued by the DOD regarding CRSC eligibility makes clear that conditions carrying a VA presumption of "service-connection" shall be presumed by the Military Department to be "combat-related," and therefore eligible for CRSC.

y. The applicant plainly meets the definition of "covered veteran" under the PACT Act. It is undisputed that the applicant performed active military service during his deployment to Afghanistan in 2005. He was diagnosed with chronic obstructive pulmonary disease following his return to the United States from Afghanistan. COPD is specifically covered by the presumption set out in Title 38, U.S. Code, section 1120. Therefore, his COPD must be treated as presumptively service-connected by the VA under the PACT Act, and is, in turn, presumptively combat-related for purposes of CRSC eligibility.

z. As an exemplary service member, the applicant is precisely the type of service member that the VA sought to compensate by making such condition presumptively service-connected and that Congress sought to compensate through the implementation of the CRSC program and passage of the PACT Act. He meets the preliminary requirements for CRSC eligibility and benefits from the presumption established by the PACT Act that his COPD is service related by virtue of his deployment to Afghanistan and exposure to burn pits during that time. The applicant's CRSC should be retroactive to 24 October 2014, the effective date of his qualifying VA disability award for COPD.

aa. All of the evidence and documentation described above overwhelmingly shows that the applicant's PTSD and TBI injuries disability were caused by at least the specific combat-related event in which he was in the proximity of a land mine explosion while on patrol at Bagram Air Force Base in December 2005. Additionally, his COPD injury is connected to his exposure to burn pits during his service in Afghanistan and as such is covered by the PACT Act. The CRSC Board's basis for denying his requests for CRSC due to lack of sufficient documentation, is not only unjustified in light of the voluminous evidence described above, but a grave injustice because any perceived deficiencies in his record are solely attributable to the Army's own record maintenance procedures, which creates and maintains the documents in the applicant's military record, not the applicant.

bb. For all the reasons stated above, the applicant respectfully requests that the ABCMR correct his military record to indicate that he qualifies for CRSC.

3. The applicant's record shows the applicant enlisted in the Army National Guard on 31 December 1998.

4. On 30 April 2019, an Informal PEB convened at Fort Gordon, Georgia to consider the applicant's PTSD, major depressive disorder, recurrent episode, mild and his lumbosacral strain, degenerative arthritis of the lumbar spine. The PEB found the applicant was physically unfit. The recommended a combined rating of 70% and that he

be permanently retired due to disability. The DA Form 199 (Informal PEB Proceedings) further shows:

a. In Section V, Administrative Determinations, that the disability did result from a combat related injury under the provisions of Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216.

b. In Section VI, Instructions and Advisory Statements -

(1) The case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

(2) Although his conditions have been determined to be combat related under the provisions to Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216, they may not qualify for CRSC under DOD Financial Management Regulation (FMR) 7000.14, Volume 7b, chapter 63.

5. The applicant was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that allowed his retirement for permanent physical disability, effective 17 June 2019.

6. He placed on the Retired List effective 18 June 2019.

7. The applicant applied for CRSC on three occasions for numerous conditions.

a. On 20 August 2019, his claim was denied. The Army Personnel Records Division, AHRC, stated the current program guidelines did not authorize compensation for COPD and Allergic Rhinitis. Those conditions were not recognized as being caused by combat-related events or environments. For the remaining disabilities according to program guidelines, he must show a documented direct causal relationship between the disability claimed and a CRSC qualifying event. While his claim contained his PEB proceedings, it did not include any supporting documentation to verify combat exposure or any other CRSC qualifying criteria. Therefore, their office was unable to award the condition(s) requested within his application.

b. On 10 May 2021, the Soldier Programs and Services Division approved his claim for tinnitus and granted him a 10% rating. Unfortunately, no new evidence was provided to show a combat-related event caused the remaining conditions. He provided no details on how his injury occurred as a result of a combat-related event and he was not awarded the Combat Action Badge. Therefore, a portion of his claim did not qualify for the award of CRSC under the guidelines set forth in DOD FMR7000.14-R, Volume 7B, chapter 63, CRSC.

c. On 31 August 2022, the CRSC Branch informed the applicant that he had been awarded CRSC for his tinnitus (10%), allergic rhinitis (10%), and sinusitis, maxillary and ethmoid (0%). His other numerous conditions could not be verified as a combat-related disability. This official noted that the CRSC program is managed under the provisions of Title 10, U.S. Code, section 1413a and DOD FMR 7000.14-R, Volume 7B, Chapter 63. Due to the differences in program guidance, their office must verify his condition was combat-related independent from the PEB's findings. They reviewed his DD Form 214, Certificate of Release or Discharge from Active Duty, and available military service record; however, they did not find documentation which confirmed his personal exposure to armed conflict.

d. On 20 May 2024, the CRSC Branch informed the applicant that after reviewing his request for reconsideration, that had approved his claim in accordance with current program guidance. His COPD was verified as combat-related and awarded a 100% rating as a presumptive condition under the PACT Act.

8. The applicant provides:

a. DD Forms 214 from the period 7 July 1999 to 29 October 1999, 5 November 2001 to 4 November 2002, and 7 March 2006 to 11 June 2006.

b. Documents related to his IDES processing which include a Line of Duty investigation which shows he had a history of PTSD systems since 2006 and a diagnosis in 2009. Other documents include his Physical Profile, Narrative Summary, MEB Proceedings, IPEB proceedings, and PDRL retirement orders.

c. His CRSC applications with personal statement, reconsiderations, denials, approvals, and CRSC Reference Guide.

d. Medical records which include his entrance physical examination, a sick call sick that state he experienced anxiety, restlessness helping to extract mine casualties, and treatment records for his lower back, PTSD, severe depression, sinus congestion, headache, and TBI.

e. Numerous VA records which include rating decisions and disability questionnaires which show the applicant submitted a disability claim for PTSD and TBI. He is currently receiving disability compensation from the VA at the 100%.

f. Military personnel records which include his Notification of Eligibility for Retired Pay for Non-Regular Service (20 Year Letter), Personnel Qualification Record, and a Leave and Earning Statement.

9. The U.S. Army Human Resources Command (AHRC), provided an advisory opinion in this case on 30 May 2024. The AHRC official stated in effect -

a. The applicant submitted his original CRSC application on 31 July 2019. He requested consideration for COPD (Veterans Affairs Schedule of Rating Disabilities (VASRD) Code 6604), TBI with chronic traumatic encephalopathy, PTSD and major depressive disorder (VASRD Code 8045-9411), migraines (VASRD Code 8100), degenerative disc disease of the lumbar spine (VASRD Code 5242-5243), costochondritis (VASRD Code 5399-5321) tinnitus (VASRD Code 6260), allergic rhinitis (VASRD Code 6522), right lower extremity radiculopathy (femoral nerve) (VASRD Code 8526), and left lower extremity radiculopathy (femoral nerve)(VASRD Code 8526). At the time of this application, the applicant did not submit official military documentation to verify his conditions as combat-related as mandated by program guidance. His original claim was denied due to lack of evidence. Upon submission of his reconsideration claim, he was approved 10 percent CRSC for Tinnitus (VASRD Code 6260), while the remaining conditions remained disapproved due to lack of evidence. Upon his second reconsideration, he was approved for Allergic Rhinitis (VASRD Code 6522), and Sinusitis, Maxillary and Ethmoid (VASRD Code 6511-6513) as the VA had recently determined these conditions presumptive to service in specific areas of operation. The remaining conditions remained denied due to lack of evidence.

b. Effective 20 May 2024, the applicant was approved for 100% CRSC. Due to the passage of the VA's PACT ACT, the applicant's condition of COPD now qualifies for the award of CRSC as a Gulf War Presumptive condition. His remaining conditions remain denied due to lack of evidence.

c. The applicant claimed his TBI and PTSD conditions are due to being in close proximity to an anti-tank mine explosion while on patrol at Bagram Airfield, Afghanistan, being exposed to direct and indirect fire, IEDs, hazardous service and exposure to casualties. To date, the applicant has not submitted official military documentation which verifies his claim. While we recognize that the U.S. Army Physical Disability Agency (USAPDA) has determined that this condition is combat-related due to armed conflict, please recognize that USAPDA determinations are in reference to laws other than the CRSC laws. This means that although the PEB states a disability is combat related under Title 26, U.S. Code, section 104 or Title 10, U.S. Code 10216, the disability does not automatically qualify for CRSC. The CRSC program is managed under the provisions of Title 10, U.S. Code 1413a and DOD FMR 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. The applicant submitted as evidence a DA Form 2173, Statement of Medical Examination and Duty Status. However, this form does not verify his personal exposure to armed conflict. Additionally, he submitted a DD Form 689, Individual Sick Slip, which states that he was

involved in the extraction of mine casualties. Please note that the witnessing of a combat-related event or casualties of war does not qualify for the award of CRSC. For the event to qualify, the Soldier must have been directly and personally exposed to armed conflict. To award these conditions as combat-related, the applicant must submit official military documentation that establishes a direct causal relationship between a qualifying combat-related event and the claimed disability. Some examples of documentation are, but not limited to, DA Forms 638, Award Recommendations, combat badges, and award certificates; evaluation reports; or wartime chain of command statements corroborating exposure to armed conflict. Wartime chain of command must be first sergeant and/or company commander or higher. Alternatively, he may submit military medical treatment records from the time of the event which show that his TBI was caused by exposure to direct or indirect fire, IEDs, or anti-tank mines.

d. The applicant claimed his migraine condition was caused by weapons discharge, not having proper ear protection, exposure to loud mine blasts, and combat service. To date, he has not submitted official military medical documentation which verifies the condition was directly caused by a specific combat-related event, as required by program guidance. To approve this condition as combat-related, the applicant must provide official military medical documentation that establishes a direct causal relationship between a qualifying combat-related event and the disability.

e. The applicant claimed his degenerative joint disease of the lumbar spine, bilateral lower extremity radiculopathy, and costochondritis conditions are due to performing combat patrols while wearing/carrying an additional 90-100 pounds of gear. Improved Outer Tactical Vest (IOTV), Individual Body Armor (IBA), and other military gear are organizational clothing and individual equipment (OCIE) and injuries caused by the wearing of such, even while performing patrols, does not meet the criteria of CRSC.

f. This advisory opinion was provided to the applicant and his counsel. They did not provide a response.

10. Title 10, U.S. Code, section 1413a, CRSC, defines combat-related disability as a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that (1) is attributable to an injury for which the member was awarded a Purple Heart; or (2) was incurred (as determined under criteria prescribed by the Secretary of Defense) 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.

11. 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.

12. The burden of proof that a disability is combat-related rests with the applicant, who is required to provide copies of documents in their possession to the best of their ability. A record submitted by a member may be used in support of their 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.

13. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. Additionally, applicants may be represented by counsel at their own expense.

14. MEDICAL REVIEW:

1. 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), and the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application. The ARBA Medical Advisor made the following findings and recommendations:

2. The applicant is applying to the ABCMR requesting they reverse the United States Army Human Resources Command's (USA HRC) previous determinations that his mental health conditions (Posttraumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI)) are non-combat-related and therefore not eligible for Combat Related Compensation (CRSC). Through counsel he states:

"The CRSC Board erroneously denied the applicant's request for CRSC and erroneously denied in part two subsequent requests for reconsideration of the PTSD/TBI/ and COPD injuries for CRSC. The applicant respectfully requests that the Army Board for Correction of Military Records ("ABCMR") correct his military record to indicate that he qualifies for CRSC...

During Operation Enduring Freedom, the applicant was assigned to 141 Infantry Battalion at Bagram Air Force Base and various location[s] in theatre. In December 2005, the applicant was on patrol at Bagram Airfield with a squad clearing anti-tank mines. During the patrol, an anti-tank mine exploded approximately 80 meters from this location which sent debris and the bodies of soldiers disarming the mine flying. He was thrown back from the explosion and felt the heat from the blast. The applicant also came under small arms

fire from enemy combatants and was pinned down in his location. After this event, he reported his injuries to the medical officer on base which was documented in sick slips generated at that time. During his time in Afghanistan, he was also under constant mortar and small arms fire which caused him to suffer stress and anxious feelings during his tour of duty in Afghanistan. Additionally, the applicant was exposed to the environment of Afghanistan and burn bits while serving in Afghanistan which contributed to his COPD. For his combat service in Afghanistan during this time as a specialist Squad Automatic Weapon Gunner, he received the Army Commendation Medal.

The applicant's PTSD/TBI is a disability that was incurred as a direct result of armed conflict. His' medical records identify several causes of the applicant's disabilities that satisfy the definition of combat-related disabilities. First, his' medical records tie his PTSD/TBI to a scout mission outside the wire of Bagram Air Force Base in December 2005. As noted in the Medical Evaluation Board Summary dated April 30, 2019 (The 'MEBS Report"), the applicant did not experience PTSD prior to his military service. However, during his deployment in support of Operation Enduring Freedom, he was in close contact to an explosion from an anti-tank mine that caused the death of other soldiers. The Physical Evaluation Board found that the applicant's PTSD/TBI was combat-related due to traumatic events including being engaged with direct fire and exposed to the mine explosion. His tinnitus and migraine injuries are also traceable to this event as the explosion affected his hearing.

Second, his medical records also tie his PTSD/TBI to his experiences in Afghanistan in Operation Enduring Freedom. In particular, the applicant was part of a team that acted as reinforcements to the 13th Marines in Kandahar. As they were escorting troops from the airfield, the column of Humvees, including the vehicle the applicant was in, came under enemy fire and he witnessed the destruction of those vehicles and casualties from the attack. This caused him to have a reoccurrence of PTSD and to remain at a hyper vigilant state since he had a flashback of the mine explosion from the December 2005 incident....

The applicant's injuries resulting from his proximity to the anti-tank mine were incurred through an instrumentality of war. The anti-tank mine that exploded near him and triggering his PTSD/TBI, tinnitus, and migraines as well as other symptoms satisfies the definition of an "instrumentality of war."

...Because it already acknowledged his exposure to instrumentalities of war, the Army should also approve his CRSC claim for PTSD/TBI as being incurred through the same instrumentalities of war (i.e., anti-tank mine)."

3. The Record of Proceedings (ROP) details the applicant's military service and the circumstances of the case. His DD Form 214 for the period of Service under consideration shows the former Guardsman, an 11B (Infantryman), served on active duty in support of Operation Enduring Freedom from 07 March 2005 through 06 May 2006 with his Service in Afghanistan noted as from 07 May 2005 through 08 May 2005. He has not been awarded a Purple Heart or Combat Action Badge. [*Advisor's Note:* there is a discrepancy between the applicant's dates of service in Afghanistan between his DD Form 214 and supporting documentation to include his DA 638 and available medical records, with other records indicating a longer period of service].

4. His National Guard Report of Separation and Record of Service (NGB Form 22) for the period of Service under consideration shows he enlisted in the Army National Guard on 31 December 1998 and was honorably discharged from the Texas Army National Guard (TXARNG) effective 18 June 2019, under NGR 600-200, 6-36S due to placement on the permanent disability retired list.

5. Orders published by the United States Army Physical Disability Agency show the applicant was to be permanently retired for physical disability with a 70% combined military disability rating effective 18 June 2019. The orders show that at least one of his disabilities 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; and resulted from a combat related injury as defined in 26 USC 104.

6. On 04 December 2018, VA Form 21-0819 shows that the applicant was referred to the IDES for PTSD, Restricted Lung Disease, and Lumbago. The applicant's Medical Evaluation Board (MEB) Proceedings (DA Form 3947) dated 05 March 2019 shows that the following conditions were determined to be unfitting: PTSD, Major Depressive Disorder (MDD), Recurrent Episode, Mild, Lumbosacral Strain, and Degenerative Arthritis of the Lumbar Spine. The MEB determined his diagnoses of PTSD and MDD did not exist prior to service (EPTS) while his physical health conditions that were determined to be unfitting were documented to be EPTS and not permanently aggravated by service. The Board determined he had 8 conditions, to include TBI, that met retention standards.

7. A memorandum dated 18 March 2019 shows that the Physical Evaluation Board (PEB) found the applicant to be unfit to continue military service based on diagnoses of

PTSD, MDD, Lumbosacral strain, and degenerative arthritis of the lumbar spine. The Informal PEB Proceedings also shows that the applicant's diagnoses of PTSD, MDD, Lumbosacral strain, and degenerative arthritis of the lumbar spine were unfitting for continued military service. The PEB made the administrative decision that his diagnoses of PTSD/MDD were conditions were combat-related:

"The Soldier first sought treatment for this condition in January of 2007, due to traumatic combat related events while deployed to Afghanistan. This condition is attributed to the following stressors: being engaged with direct fire, improvised explosive devices, and witnessing fellow Soldiers casualties (V1/V3-Yes: Direct result of armed conflict)."

8. CRSC as described on the United States Army Human Resources Command website:

"Combat-Related Special Compensation (CRSC) is a form of concurrent receipt which is paid monthly. It restores military retired pay that is offset when a Military Retiree accepts compensation from the Department of Veterans Affairs (VA) for a disability or condition that can be attributed to a combat-related event as defined by the Department of Defense (DoD) program guidance. This allows eligible Retirees to concurrently receive an amount equal to or less than their length of service retirement pay and their VA disability compensation, if the injury is combat-related."

9. This guidance is more prescriptive than that used by the military PEBs and is found in Department of Defense Financial Management Regulation 7000.14-R Volume 7B Chapter 63 "Combat-Related Special Compensation (CRSC)." Paragraph 631001A of which defines the basis for determining combat related for the purposes of awarding CRSC:

"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."

10. 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."

11. Combat related is defined in Section b(3) of 26 U.S. Code § 104, and requires there be a direct cause and effect relationship:

(3) Special rules for combat-related injuries: For purposes of this subsection, the term “combat-related injury” means personal injury or sickness—

(A) which is incurred—

(i) as a direct result of armed conflict,

(ii) while engaged in extra-hazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

12. To award CRSC, the claimant must submit official documentation that shows how the condition is combat related as defined by CRSC program guidance. Official documentation includes wartime chain of command endorsements which confirms exposure to armed conflict (Wartime chain of command must be First Sergeant and/or Company Commander or higher), copies of combat decorations (certificates, combat badges, and DA Form 638s), and/or evaluation reports which support exposure to armed conflict.

13. The applicant is not in receipt of a Purple Heart, Combat Action Badge, and no corroborating documentation was found. An outpatient consult note dated 14 January 2014 documented that the applicant reported he did not have a Combat Infantryman Badge (CIB) despite submitting the paperwork for it and attributed the lack of follow-through to when he was discharging from his active service from a National Guard unit.

14. The applicant’s service records show that he received an Army Commendation Medal (ARCOM) for Service from 07 May 2005 to 06 May 2006 with the citation noting:

“for exceptionally meritorious service while serving as a Squad Automatic Weapon Gunner with Alpha Company, 3rd Battalion, 141st Infantry, as the Combined/Joint task Force-76 Quick Reaction Force and Bagram Airfield Security Team in support of Operation Enduring Freedom VI.”

15. A note in paragraph 630502 of DoD FMR 7000.14-R Volume 7B Chapter 63 CRSC notes the requirement for documentation, stating in part:

“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.”

16. The primary stressor and onset of his PTSD as noted in his VA Initial Evaluation for Post-Traumatic stress Disorder dated 15 October 2007 was documented as:

“When asked to clearly describe the specific stressor events the veteran considered particularly traumatic, the veteran described an incident where he saw a soldier who was attempting to diffuse a bomb, caught in the explosion of that bomb and killed. He says he saw the body thrown into the air. The veteran states that he was less than one-quarter of a mile away when it happened. He was not involved in the recovery of the body. It should be noted that this veteran does not have intrusive thoughts, nor does he have dreams or flashbacks about this particular event. He also notes that being on alert all the time was very traumatic for him.”

17. A VA Social Work note in JLV dated 03 January 2007 shows the applicant screened positive for PTSD and reported exposure to the following events:

“receiving hostile fire, encountering IED’s, mines or booby traps while on patrol or at his duty station, being ambushed or attacked, his unit engaging the enemy in a firefight, seeing Americans or other troops killed or wounded, and duties involving peacekeeping.”

18. The applicant provided a DA Form 689 (Individual Sick Slip) dated 04 December 2005. There are comments from the unit commander and medical officer noted on the form. The unit commander documented line of duty as “yes” and noted the following:

“SM while on patrol was involved in extraction of mine casualties. SM reports uneasiness.” The provider section noted he is “worrisome on safety, reports anxiety, reports restlessness, recommend talk to Chaplain.”

19. The IDES Narrative Summary (NARSUM) dated 05 March 2019 noted the applicant screened positive for PTSD and severe depression through the VA on 03 January 2007 and was diagnosed with PTSD on 29 March 2007. It was further noted that the applicant had several BH profiles between 2009-2013 showing temporary S2 and S3 profiles and that several profiles in 2015 became permanent. The NARSUM further indicated the applicant underwent individual

psychotherapy through the VA from January 2007-May 2011, Substance Abuse Treatment Intensive Outpatient Program from February through May 2012, individual therapy April 2012-December 2015 and June-October 2017; PTSD Group from February 2019-present (at the time of the evaluation), in addition to psychotropic medications, noted as consistently from 2007-present. It was also documented that his 2006 PDHA/PDHRA did not mention BH issues though responded "yes" to the combat-related questions. His PHAs in 2009, 2012, and 2014-2017 were noted to mention BH issues. Regarding TBI, the NARSUM specified that the condition was diagnosed during the time of his C&P examination which noted neuropsychological testing was performed on 11 January 2019 though was unavailable for review. It was documented that there were not any TBI clinic referrals available for review and that there was no history of profiles for this condition.

20. A Line of Duty Determination memorandum dated 29 January 2018 documented that the applicant's DA Form 2173 for PTSD that occurred during Operation Enduring Freedom was approved "IN LINE OF DUTY."

21. A VA Rating Decision Letter dated 19 June 2019 shows the applicant's VA service-connection was increased to 100% for TBI with chronic traumatic encephalopathy; PTSD and Major Depressive Disorder.

22. A TBI Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI) DBQ dated 11 January 2019 documented that the applicant was diagnosed with TBI in-service in 2011. Regarding the applicant's history of TBI and residuals attributable to TBI, the evaluator documented the following:

"States blast injury while deployed to Afghanistan 2005. States they were clearing a mine field and had removed a mine but it had a timer. States he was thrown back by the blast wave and got knocked down. States he was dazed and couldn't determine time or how much time was passing by. States at time of blast he had difficulty telling North/south direction and felt like his hearing was underwater and had decreased concentration and focus that were exacerbated by light and that this lasted a couple of days. No medic eval initially. States he has a diagnosis of TBI that was determined by the VA. States he continues to have headache."

23. A TBI PM&R note dated 22 May 2017 for the purposes of a TBI Second Level Evaluation shows the applicant endorsed a history of "exposure to a blast and blunt trauma while repelling." It was noted he was between 31 and 50 feet from the closest

blast. He also responded yes to a question regarding being thrown to the ground or against some stationary object like a wall, vehicle, or inside a vehicle by the explosion. He also endorsed one episode of blunt trauma other than from blast/vehicular injury, e.g., assault, blunt force, sports related or object hitting head. The evaluator noted the applicant had a mild traumatic brain injury and had chronic severe headaches.

24. A Clinical PharmD note dated 01 May 2017 documented that the applicant reported a history of impact to the head twice while deployed from “repellant and anti-tank.” The provider noted that the applicant reported a loss of consciousness for a while, was dizzy right after the event, and started experiencing headache afterwards. A Neurology consult note dated 15 November 2017 documented the applicant reported complaints of headache since 2005 on a daily basis that lasted for 45 minutes to 2 hours. He was diagnosed with Migraine Headaches, Major Depressive Illness, and PTSD.

25. On 19 October 2011, the applicant was diagnosed with headache and the provider noted he reported occipital headaches that he gets daily.

26. A VA Physician’s note in JLV dated 15 April 2009 documented that the applicant presented to the clinic due to:

“pain to top of head where he sustained his head injury one month ago after he was hit on head with a glass vase, denies loc. Refers his mother removed a small piece of glass from his head a few days ago and this is what concerned veteran to come in today.”

27. A VA primary care note dated 26 April 2007 shows the applicant underwent a TBI screening. It was documented that he experienced the following during OIF/OEF deployment: blast or explosion IED, RPG, Land Mine, Grenade, etc. and fall. It was also documented that the applicant denied experiencing any symptoms immediately afterwards and it was documented as a negative screen.

28. On 05 February 2007, a physician documented that the applicant was being seen for an initial evaluation. It was documented that he was reporting left sided chest wall pain for 9 months after hitting a wall while repelling. On 22 February 2007 he was diagnosed with [left] chest wall pain [status-post] trauma.

29. The U.S. Army Human Resources Command Advisory Opinion dated 30 May 2024 regarding his CRSC application outlined the reasons for denial of his request. Supporting documentation reviewed included his USAPDA and PEB

findings in addition to an individual sick slip and LOD findings. It was documented that the applicant's claim was denied as "witnessing of a combat related event or casualties of war does not qualify for the award of CRSC. For the event to qualify, the Soldier must have been directly and personally exposed to armed conflict." Furthermore, it was noted that official military documentation must be furnished to establish a causal relationship between a qualifying combat-related event and the claimed disability (e.g., DA Form 638, combat badges, and award certificates, Evaluation Reports, or wartime chain of command statements) corroborating exposure to armed conflict. It was noted that, alternatively, military medical treatment records from the time of the event which show his TBI was caused by exposure to direct or indirect fire, IEDs, or anti-tank mines may be provided as evidence.

30. The available medical documentation while he was deployed was silent for a report of direct exposure to armed conflict as it relates to his diagnosis of PTSD as the stressor associated with his diagnosis does not constitute direct combat exposure. Although it is acknowledged that the applicant's diagnosis of PTSD was determined to be combat-related by the PEB and subsequent VA service-connection, there is no corroborating evidence in the medical records at the time of the event, nor official military documentation, to substantiate his assertion separate from the PEB findings and VA service-connection. Regarding the applicant's diagnosis of TBI, available medical records show that in 2007 the applicant reported a history of a blast event and a fall while deployed and was later diagnosed with TBI in 2011, approximately 5 years after his return from deployment. The PEB determined his diagnosis of TBI met retention standards at the time of his separation, though has subsequently been service-connected through the VA for this condition. Although it is acknowledged that the threshold for a combat-related injury according to CRSC criteria as it pertains to the Instrumentality of War does not require that the disability be incurred during an actual period of war, there are no service or medical records at the time of the event(s) corroborating the events that contributed to his diagnosis of TBI. In summary, while the applicant's medical records document a clear history of PTSD and TBI as related to events he experienced during deployment, there is no medical evidence at the time the events occurred, nor any other official military documentation, to support or establish a causal relationship between the claimed disability and combat-related event. As such, it is the opinion of the ARBA Medical Advisor there is insufficient probative evidence upon which to reverse the United States Army Human Resources Command's previous non-combat related determinations for his mental health conditions.

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 through counsel 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 through counsel of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding insufficient probative evidence upon which to reverse the United States Army Human Resources Command's previous non-combat related determinations for his mental health conditions. The opine noted, the PEB determined the applicant's diagnosis of TBI met retention standards at the time of his separation, though it has subsequently been service-connected through the VA for this condition.
2. The Board determined there is insufficient evidence to support the applicant and his counsel's contentions for his post-traumatic stress disorder (PTSD) and Traumatic Brain Injury (TBI) be found to be "combat-related" or approval of his application for Combat-Related Special Compensation (CRSC) for PTSD and TBI retroactive to 24 October 2014. The Board agreed the applicant, nor his counsel provided evidence that show he was directly and personally exposed to armed conflict." Furthermore, the Board noted that official military documentation must be furnished to establish a causal relationship between a qualifying combat-related event and the claimed disability. The Board found the applicant's medical records document a clear history of PTSD and TBI as related to events he experienced during deployment, there is however, no medical evidence at the time the events occurred, nor any other official military documentation, to support or establish a causal relationship between the claimed disability and combat-related event. Based on the preponderance of evidence, the Board determined reversal of the previous Human Resources Command decision is without merit and denied relief.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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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, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, U.S. Code, section 1413a, Combat-Related Special Compensation (CRSC), defines combat-related disability as a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that (1) is attributable to an injury

for which the member was awarded a Purple Heart; or (2) was incurred (as determined under criteria prescribed by the Secretary of Defense) 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.

3. Title 26, U.S. Code, section 104, Compensation for Injuries or Sickness, establishes special rules for combat-related injuries. 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.

4. DOD 7000.14-R, Financial Management Regulation, Volume 7B, Chapter 63, Combat Related Special Compensation (CRSC) states the following criteria, terms, definitions, and explanations will apply to making combat-related determinations in the CRSC Program.

a. Direct Result of Armed Conflict.

(1) 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.

(2) 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.

(3) Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against their 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.

b. 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.

c. 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.

d. Instrumentality of War.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

e. 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.

f. The burden of proof that a disability is combat-related rests with the applicant, who is required to provide copies of documents in their possession to the best of their ability. A record submitted by a member may be used in support of their 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.

5. Title 38, U.S. Code section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. Title 10, U.S. Code, section 1556 of, 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.

9. AR 15-185. ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//