

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240003115

APPLICANT REQUESTS, in effect:

- her Permanent Disability Retirement List (PDRL) orders be corrected to show her disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104
- correction of her DD Form 214, Certificate of Release or Discharge from Active Duty, to show she was retired due to a combat-related condition

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

- DD Form 149, Application for Correction of Military Record
- DA Form 199, Informal Physical Evaluation Board (IPEB) Proceedings, 28 January 2015
- Orders 061-2252, 2 March 2015
- Combat-Related Special Compensation (CRSC) memorandum (page 1), 14 December 2021

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. The applicant states, in effect, in order for her retirement pay to be nontaxable, her permanent disability retirement orders must be corrected to show her disability is based on injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war; and her disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104.
 - a. Her application for CRSC indicates the Veteran Affairs Schedule for Rating Disabilities (VASRD) Code 6602; moderate persistent asthma with pulmonary apical

pleural scars is rated at 100% and was verified as a combat-related disability due to an instrumentality of war.

b. The applicant contends exposure to burn-pits has been confirmed through recent research and that her injuries were caused by combat; however, at the time of her retirement this information was not available. After trying to update her status with the Defense Finance Accounting Service, she was told her orders must be corrected as stated above in order for her retirement pay to be non-taxable.

3. The applicant was appointed as a second lieutenant in the Army National Guard on 12 August 1999. She transferred to the Regular Army on 25 January 2003.

4. On 28 January 2015, an IPEB considered the applicant's moderate persistent asthma with pulmonary apical scars and determined she was unfit for continued service. The IPEB recommended a disability rating of 100%, and that she be permanently retired. The IPEB Proceedings further show:

a. Her condition began in 2004, after her deployment to Iraq. The applicant noted increased shortness of breath, which worsened in January 2014 while assigned to Korea.

b. The disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.)

c. The disability did not 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.

d. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES) under the 19 December 2011 Policy and Procedure Directive-type Memorandum.

e. On 9 February 2015 the applicant concurred with the PEB findings and recommendation.

5. Orders 061-2252, 2 March 2015, published by the U.S. Army installation Management Command, Headquarters, U.S. Army Garrison, Fort Benning, Georgia, placed the applicant on the retirement list effective 20 May 2015. These orders contain the following entries:

a. Disability is based on injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law: No

b. Disability resulted from a combat related injury as defined in Title 26, U.S. Code, section 104: No

6. The applicant was retired on 19 May 2015 by reasons of permanent (enhanced) disability in accordance with Army Regulation 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, chapter 4. She completed 12 years, 3 months, and 25 days of net active service for the period and foreign service in:

- Iraq from 17 July 2003 to 18 July 2004
- Afghanistan from 28 December 2007 to 2 January 2009

7. The applicant applied for CRSC on 1 December 2021. On 14 December 2021, the U.S. Army Human Resources, after verifying the disability as combat-related due to an instrumentality of war, approved her moderate persistent asthma with pulmonary apical pleural scars, post-traumatic stress disorder, tinnitus, chronic sinusitis, and allergic rhinitis. She received a combined combat-related disability rating of 100%.

8. The U.S. Army Physical Disability Agency (USAPDA) provided an advisory opinion in this case on 3 December 2024. The Chief, Legal Advisor stated:

a. On 28 January 2015, an IPEB found the applicant, an Active Duty/Regular Army Officer, physically unfit for moderate persistent asthma with pulmonary apical scars and recommended a rating of 100%. The disability disposition was not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. Moreover, the disability was determined to have not resulted from “a combat related injury as defined by 26 USC 104.” It appears from the record that the Army did not award a combat code as the onset was determined to have been in 2004, post the applicant’s Iraq deployment and only worsened while stationed in Korea in 2014. The applicant concurred with the findings and recommendation on 9 February 2015.

b. Her retirement Orders 061-2252 shows her disability was not received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law. Moreover, the disability was determined to have not resulted from “a combat-related injury as defined by 26 USC 104.” Subsequently, on 14 December 2021, the U.S. Human Resources Command (AHRC) approved the applicant’s claim for CRSC.

c. Based upon the evidence of record, the USAPDA was unable to provide full administrative relief to the applicant. Although AHRC awarded the combat determination, the action was taken after the IPEB decision and the servicemember's concurrence thereto. Thus, although it appears that relief may be warranted in this case, corrective action is outside the authority of the USAPDA. Accordingly, they recommend this matter be re-directed for corrective action, as appropriate.

9. The advisory opinion was provided to the applicant on 5 December 2024. She 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. 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.

11. 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.

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.

2. The Board carefully considered the applicant's contentions, her military record, the IDES proceedings and outcome, her concurrence with the results and a subsequent CRSC determination by AHRC. The Board considered the dates noted of the onset of her condition and the dates of the IDES proceedings. The Board considered the review and conclusions of the USAPDA advising official and the AHRC decision pertaining to her CRSC request. Based on a preponderance of evidence, the Board determined that the IPEB determination that the disability was determined to have not resulted from "a combat related injury as defined by 26 USC 104" was not in error or unjust and that the requested relief was not warranted.

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.

[REDACTED]

[REDACTED]

[REDACTED]

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. 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 his or her will in custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

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 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.

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. AR 15-185, Boards, Commissions, and Committees-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.

//NOTHING FOLLOWS//