

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240003166

APPLICANT REQUESTS: in effect,

- 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
- to have military retired pay equal her Combat-Related Special Compensation (CRSC)
- her DD Form 214 reflect all her significant awards and decorations
- 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

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

- DD Form 149, Application for Correction of Military Record
- Orders 013-2200, 13 January 2013
- DD Form 214, 4 March 2013
- CRSC correspondence, 31 March 2021

FACTS:

1. The portion of applicant's request to have all her significant awards added to her DD Form 214 will not be addressed in this Record of Proceedings as there is no evidence that she has exhausted all her administrative remedies. In addition, her request to have her military pay equal to her CRSC will not be considered as the applicant did not provide evidence she first requested relief through the Defense Finance and Accounting Service (DFAS).

2. The applicant states she has been awarded CRSC at a disability rate of 100 percent for her chronic fatigue syndrome, systemic lupus erythematosus, fibromyalgia, and chronic pain syndrome also referred to as undifferentiated connective tissue disease. The CRSC Branch, U.S. Army Human Resources Command (ARHC), determined that these conditions were combat-related due to an Instrumentality of War.

3. Having prior service in the Regular Army, the applicant enlisted in the U.S. Army Reserve on 13 July 2003.

4. On 16 November 2012, an Informal Physical Evaluation Board (IPEB) convened on at Fort Sam Houston, TX to consider her unfitting conditions. The Board found her to be physically unfit and recommended a combined disability rating of 100 percent and that she should be retired to due permanent disability. The following conditions were found unfitting:

- fibromyalgia associated with chronic pain and fatigue
- migraine headache and cerebral ischemia
- left foot hallux valgus, hallux rigidus, plantar fasciitis, pes planus
- right foot hallux valgus, hallux rigidus, plantar fasciitis, pes planus
- pelvic inflammatory disease, endometriosis
- anxiety disorder, not otherwise specified, and major depressive disorder
- thoracolumbar strain
- cervical degenerative disc disease
- right knee osteoarthritis
- left knee osteoarthritis

5. Her DA Form 199 (IPEB Proceedings) further shows in:

a. Section V: Administrative Determinations - 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. (This determination was made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.) Further, 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.

b. Section VI: The case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

c. Section IX: Soldier's Election – the applicant concurred with the recommendation and waived a formal hearing. She made the election to not have her VA ratings reconsidered.

6. The applicant provided, and the record contains:

a. Orders 013-2200, 13 January 2013, published by U.S. Army Installation Management Command, Headquarters, U.S. Army Garrison, Fort Benning, GA. These

orders indicate that her disability did not result from a combat-related injury as defined in Title 26, U.S. Code, section 104.

b. A DD Form 214, which shows the applicant was retired due to permanent disability (enhanced), effective 4 March 2013. She completed 3 years, 10 months, and 20 days of net active service for the period. It further shows she served in Iraq from 3 May 2009 to 2 May 2010. There are no awards for valor listed on this form.

c. A memorandum from the CRSC Branch, AHRC, Fort Knox, Kentucky, 31 March 2021, which awarded the applicant CRSC at the disability rate of 100 percent for her chronic fatigue syndrome, systemic lupus erythematosus, fibromyalgia, and chronic pain syndrome also referred to as undifferentiated connective tissue disease. The justification stated that these conditions were verified as being combat-related due to an Instrumentality of War.

7. DOD 7000.14-R (Financial Management Regulation), Volume 7B, Chapter 63, CRSC, states a disability is combat-related when 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.

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

b. The burden of proof that a disability is combat-related rests with the applicant, 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.

8. The DFAS official website provides information on the impact of VA Disability Determination Changes on Retired Pay, Concurrent Retirement and Disability Pay (CRDP), and CRSC.

a. Many military retirees who are eligible for DoD retired pay are also eligible for VA disability pay. The laws and regulations that apply when a retiree is eligible for both types of pay are complex and can be confusing.

b. The law requires that a military retiree waive a portion of their gross DoD retired pay, dollar for dollar, by the amount of their Department of Veterans Affairs (VA)

disability compensation pay; this is known as the VA waiver (or VA offset). Some retirees who receive VA disability compensation may also receive CRDP or CRSC payments that make up for part or all of the DoD retired pay that they waive to receive VA disability pay.

c. If an individual elects to receive CRSC, their retired pay will be offset by the full amount of their VA disability pay. The individual may still receive some retired pay if their retired pay exceeds their VA disability pay. Or they may not receive any retired pay at all if their VA award exceeds their retired pay. CRSC payments are subject to deductions for monthly Survivor Benefit Plan premiums or garnishments. Also, CRSC is non-taxable, so it is issued separately from retired pay. An individual may begin to receive two separate payments from DFAS each month, one for retired pay (taxable) and one for CRSC (non-taxable).

d. CRSC is compensation for the retired pay that is offset due to receiving VA disability pay, a Military Service Retirees CRSC payment can never exceed their total military retired pay. Actual payment amounts are determined by Defense Finance and Accounting Service (DFAS) and are unique for each Military Service Retiree based on years of service, retirement pay, and more. If a Military Service Retiree has any questions regarding the amount of payment, they should contact DFAS at 1-800-321-1080.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy and regulation. Upon review of the applicant's petition and available military record, the Board majority found, based on a preponderance of the evidence, including the U.S. Army Human Resources Command's award of Combat Related Special Compensation (CRSC) pay, there was sufficient evidence for correction of her military retired pay equal her CRSC and amendment of her Permanent Disability Retirement List (PDRL) Orders to show her disability resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104. The Board minority found insufficient evidence to support that an error or injustice incurred.

2. The Board concluded there was no error or injustice pertaining to the applicant's request for significant awards and decorations and for her DD Form 214 to show she was retired due to a combat-related condition, and therefore denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- amending Orders 013-2200, U.S. Army Installation Command, dated 13 January 2013, to show "Yes" to "Disability resulted from a combat related injury as defined in 26 USC 104"
- entitlement to back pay and allowances as a result of this correction

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to amending her DD Form 214 to add additional awards and/or decorations or to show as combat-related.

4/2/2025

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, 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.

2. 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.

3. 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.

4. Army Regulation (AR) 635-5, Personnel Separations-Separation Documents, prescribes policies and procedures regarding separation documents. There are no provisions to include combat codes on the DD Form 214.

5. AR 635-5-1, Personnel Separations-Separation Program Designator Codes, 2 March 2022 added the separation program designator code SEA for disability retirement due to disability incurred in combat related operation or in a designated combat zone.

6. AR 635-40, Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation prescribes Army policy and responsibilities for disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability.

a. Paragraph 5-7 states the Secretary of the Army will abide by Title 10, U.S. Code, section 1216a and Title 38 Code of Federal Regulations (38 CFR) for disposition of Soldiers found unfit because of a mental disorder due to traumatic stress. (1) For Soldiers found unfit with a rating of 80 percent or greater for a permanent and stable condition (or conditions) not related to diagnosis of the mental disorder due to traumatic stress, the Soldier will be permanently retired. (2) All other such Soldiers will be placed on the Temporary Disability Retired List and re-evaluated within a timeframe that is not less than 90 days but consistent with the maximum timeframes stipulated by 38 CFR or other applicable statutes.

b. Paragraph 5-24 defines Armed conflict. The fact that a Soldier may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support a finding that the disability

resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability. (1) To be considered incurred as a result of armed conflict does not require the armed conflict to have been occurred during a period of war. (2) Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Soldiers are engaged with a hostile or belligerent nation, faction, force, or terrorists. (3) Armed conflict may also include such situations as incidents involving a Soldier 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. (4) Normally Soldiers who sustain injuries while assigned to administrative, supply, or other support duties in the rear area are not considered to be in the area of combat operations unless the injury is actually incurred during an enemy attack in the immediate area.

c. Paragraph 5-35, Determination for federal tax benefits states physical disability evaluation will include a determination and supporting documentation on whether the Soldier's disability compensation is excluded from Federal gross income under the provisions of Title 26, U.S. Code, section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

d. Combat related. This standard covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

(1) As a direct result following armed conflict.

(2) While engaged in hazardous service. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

(3) Under conditions simulating war. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training (combatives training), rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

(4) Caused by an instrumentality of war. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during 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 material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war (the 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 were engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

7. 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.

8. 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.

9. 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.

10. 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//