

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240003620

APPLICANT REQUESTS, in effect:

- his service-connected disabilities be determined to be combat-related
- a personal appearance before the Board via video/telephone

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

- 2-DD Forms 149, Application for Correction of Military Record
- DD Form 214, Certificate of Release of Discharge
- List of medications
- Combat-Related Special Compensation (CRSC) documents with allied documents
- Form WH-380-E, Certification of Health Care Provider for Employee's Serious Health condition under the Family and Medical Leave Act
- Department of Veterans Affairs (VA) rating decisions and a list of service-connected disabilities
- VA Presumptive Disability Benefits
- Post-traumatic stress disorder (PTSD) Wikipedia article
- Defense Visual Information Distribution Service article

FACTS:

1. The applicant states, in effect, the VA has determined his post-traumatic stress disorder (PTSD) and migraines are service-connected. He contends these conditions should also be designated as combat-related based on his foreign service in Iraq. He further contends:

a. He was informed that he was denied [CRSC] because he did not receive an award for valor and did not participate in face-to-face combat, neither of which is required for a PTSD diagnosis.

b. His combat experience including watching incoming rockets/armor and knowing that they would land near his proximity, witnessing a dental clinic get hit and Soldiers

dying in that explosion, and having a Soldier in his unit commit suicide on Christmas Day. These events occurred between 2010-2011 and led to his PTSD. He tried to contact his commander to confirm his combat service, but he passed away.

2. Having prior commissioned service in the U.S. Army Reserve (USAR), the applicant was appointed as a first lieutenant in the Army National Guard on 11 December 1992.
3. He transferred to the USAR on 12 January 2009.
4. The applicant was ordered to active duty in support of Operation Iraqi Freedom on 5 November 2011. He was released from active duty on 29 March 2011. He received a DD Form 214 for this period of active duty which shows he served in Iraq from 13 November 2010 to 12 March 2011. His DD Form 214 does not show he received any awards for valor.
5. Orders: 17-354-00013, 20 December 2017, published by Headquarters, 63rd Readiness Division, CA, placed the applicant in the Retired Reserve, effective 1 February 2018, based on the completion of the maximum authorized years of service.
6. Orders: C11-899009, 1 November 2018, published by the U.S. Army Human Resources Command (AHRC), Fort Knox, KY, assigned the applicant to the Army of the United States Retired List, effective 17 November 2018.
7. The applicant was denied CRSC on 26 July 2023. The reason cited was that he failed to provide documentation of a combat-related event for his PTSD and migraine headaches, residual to traumatic brain injury (TBI).
8. The applicant provides:
  - a. A list of his active and pending medications.
  - b. His application for CRSC and his request for reconsideration. These documents show the applicant was awarded a total CRSC disability rating of 90 percent in May 2022. The following conditions were verified as combat related:
    - chronic fatigue syndrome
    - obstructive sleep apnea
    - sinusitis
    - tinnitus
    - hearing loss, right ear
    - rhinitis

c. A Certification of Health Care Provider for Employees's Serious Health Condition under the Family and Medical Leave Act, 21 June 2024, wherein a medical professional states the applicant suffers from PTSD.

d. Numerous VA rating decisions and correspondence which show the applicant and several service-connected conditions which include PTSD and migraine headaches, residual of TBI.

e. A document that explains what the VA considers a presumptive condition and the disability benefits associated with these conditions.

f. A Wikipedia printout describing the symptoms of PTSD.

g. A news article titled the "Army, Navy team up to protect Victory Base Complex, describing how Soldiers from the Army and Sailors began training together in early December 2009 and deployed to Iraq at the end of January. The article states, in part, that Sailors deploy the Phalanx system in defense of their ship to detect and shoot down incoming rockets and mortars in the air to protect.

9. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

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 does not grant requests for the correction of records solely for making the applicant eligible for veterans or other benefits.

12. 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.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Although the applicant provides a health care provider health condition document showing he suffers from PTSD, there is a lack of corroborating evidence showing the PTSD was 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. As a result, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's previous CRSC decision.

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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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. 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 extrahazardous service, or

(3) under conditions simulating war; or

b. which is caused by an instrumentality of war.

4. Title 38, U.S. Code, section 1110, General – Basic Entitlement, states 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.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation – Basic Entitlement, states 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.

6. 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. 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//