

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 November 2024

DOCKET NUMBER: AR20240004416

APPLICANT REQUESTS: in effect, reconsideration of his prior requests for correction of his records to reflect his disabilities were combat-related and approval of his claim for Combat-Related Special Compensation (CRSC)

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

- DD Form 149 (Application for Correction of Military Record)
- Letter of commendation, dated 4 May 1984
- Standard Form 513 (Consultation Sheet), 8 February 1985
- Standard form 513, 9 December 1985
- photographs
- Advanced Practice Nurse Practitioner's (APNP) letter, dated 19 August 2021

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in:

- Docket Number AR20110013079 on 24 January 2012
- Docket Number AR20210011769 on 2 December 2021.

2. The applicant states:

a. In effect, his disabilities were incurred during hazardous duty, as an instrument of war and combat-related. He received brain damage from live fire exercises and exposure to diesel smoke while performing duties in his Military Occupational Specialty (MOS) 63D (Self-Propelled Field Artillery Systems Mechanic) and working on Howitzer tanks.

b. An injury to his knee, incurred while skiing at a U.S. Army Ski School, was further aggravated by 3 years of field duty. He has a 100 percent service-connected disability rating from the Department of Veterans Affairs (VA), related to field duty. The no shows on his record for surgeries were the result of never being informed of the surgeries by

his chain of command in Germany. He believes he suffers from brain damage since his obsolete surgery in 1988. He has provided a post-traumatic stress disorder (PTSD) letter from his doctor.

3. The applicant enlisted in the Regular Army on 6 January 1984 and was awarded the MOS 63D.

4. A Letter of Commendation, 4 May 1984, shows he was commended for successful completion of the Field Artillery Systems Mechanic Course without a single no-go on the within course tests or the end of course test. Rarely do students complete this challenging and difficult course without encountering some difficulties, and his success was an indication of his attentiveness, competence, and perseverance.

5. Multiple certificates show:

a. A Certificate of Achievement was awarded to the applicant on 20 November 1984, for outstanding performance of duty as a Track Mechanic during Reforger Exercise "Certain Fury" from 12 -29 September 1984.

b. A Certificate of Appreciation was awarded to the applicant on 30 January 1985, for outstanding performance of duty during the Grafenwoehr Field Training Exercise from 7 -18 December 1984.

6. A Standard Form 513, dated 8 February 1985, shows the applicant was seen for locking of his left knee for the past 2 days and consultation was requested with Orthopedics. He denied recent trauma, describing an old injury 10 years prior on a motorcycle with medial collateral ligament (MCL) tear

7. A Certificate of Appreciation was awarded to the applicant on 30 April 1985, for outstanding performance of duty as a mechanic during the battalion's live fire exercise at the Grafenwoehr Major Training Area from 3 – 23 March 1985.

8. A Standard Form 513, 9 December 1985, shows the applicant was seen on 30 October 1985, after original referral to the Orthopedic Clinic on 8 February 1985 for recurrent left knee instability. He missed an appointment because of a field commitment and was seen by Physical Therapy for rehabilitation on 26 February 1985. Their findings show MCL and LCL laxity. He had increased pain and episodes of locking in the past. He had no recent trauma, but had a motorcycle injury 10 years ago. Consult with Orthopedics was requested for x-rays.

9. Multiple additional certificates show:

a. An Army Commendation Medal was awarded to the applicant on 10 November 1986, for meritorious service as an Assistant Gunner while participating in the training exercise "Desert Legion '86" at the National Training Center, Fort Irwin, CA, from 11 August 1986 – 4 September 1986.

b. A Certificate of Participation was awarded to the applicant on 20 February 1987 for exceptionally meritorious service during the period from 18 January 1987 through 20 February 1987, while participating in "Desert Legion '87" exercises at Fort Bliss, TX.

10. A partial DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows:

a. A PEB convened on 1 December 1987, where the applicant was found physically unfit with a recommendation of placement on the Temporary Disability Retired List (TDRL) with a combined rating of 30 percent and reexamination during May 1989.

b. The applicant's unfitting condition was anterolateral rotatory instability, left knee, as a result of anterior cruciate deficiency and posterolateral meniscus tear status post reconstruction, 30 percent.

c. A presumptive finding of in the line of duty (LOD), not due to own misconduct was found. It was also found that:

(1) The applicant's retirement was not based on disability resulting from injury or disease received in the LOD as a direct result of armed conflict or caused by an instrumentality of war or incurred in the LOD during a period of war as defined by law.

(2) It was found the applicant's disability did result from a combat-related injury as defined in Title 26 U.S. Code, section 104.

11. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably retired on 26 January 1988, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to temporary physical disability, with corresponding separation code SFK. He was credited with 4 years and 21 days of net active service.

12. U.S. Total Army Personnel Command Orders D139-5, dated 20 July 1989, removed the applicant from the TDRL effective 20 July 1989 and permanently retired him, placing him on the Permanent Disability Retired List (PDRL) with a disability rating of 30 percent.

13. A VA letter, dated 24 May 1999, shows the applicant was granted a service-connected disability rating of 70 percent effective 1 December 1998, and was paid at the 100 percent rate due to unemployability.

14. A letter from the U.S. Army Human Resources Command (AHRC), CRSC Branch, dated 19 April 2011, notified the applicant that after reviewing all the evidence provided, they were still unable to find justification to reverse their previous decisions made regarding denial of his CRSC claims. This decision was final and he was informed of his recourse with the ABCMR. The CRSC Branch informed the applicant they were unable to verify as combat-related the following disabilities:

- low back strain with degenerative joint disease, 40 percent; final CRSC disapproval; previously requested; no new evidence to show combat-related event caused condition
- right ankle laxity and degenerative joint disease, residuals of sprains, 10 percent; final disapproval; previously requested; no new evidence to show combat-related event caused condition
- residuals, left knee injury, postoperative, 40 percent; final disapproval; previously requested; no new evidence to show combat-related event caused condition

15. The applicant previously applied to the ABCMR in June 2011, requesting correction of his records to reflect his disabilities were combat-related, thereby qualifying him for CRSC. On 24 January 2012, the Board denied his request, determining the evidence presented does not demonstrate the existence of a probable error or injustice and the overall merits of his case are insufficient as a basis for correction of his records.

16. The applicant again applied to the ABCMR in February 2021, requesting correction of his records to reflect his disabilities were combat-related, thereby qualifying him for CRSC. On 2 December 2021, the Board denied his request, determining the evidence presented does not demonstrate the existence of a probable error or injustice and the overall merits of his case are insufficient as a basis for correction of his records.

17. A letter from the applicant's treating psychiatric nurse practitioner, dated 19 August 2021, shows:

a. She has seen the applicant off and on since 4 May 1995. During those years, he also received treatment from the VA. She has read the two psychological reports both dated 1994, and concurs with their conclusion of no psychotic symptoms.

b. In her 26-year association with the applicant, she has never seen any signs of psychosis or bipolar illness. He can become very obsessed with perceived injustices, as is consistent with chronic childhood PTSD. He is also depressed and anxious.

c. He is also concerned that he has been labeled unable to handle his own finances, but she has observed the opposite. For a person unable to work due to severe physical disability, he has creatively managed his money to live a life with some pleasures and makes a lot out of a little. He pays his bills to her in a very responsible way.

18. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

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 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 of the applicant's petition, available military records, and the letter from the U.S. Army Human Resources Command (AHRC), CRSC Branch, the Board concurred with the findings in the AHRC memorandum. After examining all evidence provided by the applicant, the Board determined that there was no justification to reverse the previous decisions denying the applicant's CRSC claims. The Board noted that the applicant's three disabilities—low back strain with degenerative joint disease, right ankle laxity with degenerative joint disease, and left knee injury (postoperative)—could not be verified by AHRC- CRSC branch as combat-related.

2. Based on the AHRC notification and the applicant's PEB findings, the Board concluded that there was insufficient evidence to support the applicant's request for reconsideration. The Board found no grounds for correcting the applicant's records to reflect that his disabilities were combat-related, nor for approving his claim for Combat-Related Special Compensation (CRSC). Therefore, relief is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20110013079 on 24 January 2012 and Docket Number AR20210011769 on 2 December 2021.

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

2. Department of Defense Instruction (DODI) 1332.38 (Physical Disability Evaluation), paragraph E3.P5.2.2 (Combat-Related), 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 shall be considered combat related if it makes the member unfit or contributes to unfitness and was incurred under any of the following circumstances:

- as a direct result of armed conflict
- while engaged in hazardous service
- under conditions simulating war
- caused by an instrumentality of war

3. DODI 1332.38, paragraph E3.P5.2.2.3 (Under Conditions Simulating War), in general, 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, 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. Appendix 5 (Administrative Determinations) to enclosure 3 of DODI 1332.18 (Disability Evaluation System) (DES) currently in effect, defines armed conflict and instrumentality of war as follows:

a. Incurred in Combat with an Enemy of the United States: The disease or injury was incurred in the LOD in combat with an enemy of the United States.

b. Armed Conflict: The disease or injury was incurred in the LOD as a direct result of armed conflict (see Glossary) in accordance with sections 3501 and 6303 of Reference (d). The fact that a Service member may have incurred a disability during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

c. 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.

d. Under Conditions Simulating War: In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, and leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat 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.

e. Caused by an Instrumentality of War: Occurrence during a period of war is not a requirement to qualify. If the disability was incurred during any period of service as a result of 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, the criteria are met. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an injury resulting from a Service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an

instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

5. 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.

6. 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.

//NOTHING FOLLOWS//