

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20240004600

APPLICANT REQUESTS: in effect:

- correction of her DA Form 199 (Informal Physical Evaluation Board (IPEB) Proceedings) and retirement orders to show her disability resulted from a combat-related injury
- approval of Combat-Related Special Compensation (CRSC)
- award of the National Defense Service Medal (NDSM) and all other medals that she is authorized
- a personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- four third party statements from family members and a witness
- DA Form 199 (IPEB)
- Orders D029-22, United States Army Physical Disability Agency (PDA)
- DA Form 2860 (Claim for CRSC)
- attachment to CRSC Claim-secondary conditions
- Member Entitlement Data
- Department of Veterans Affairs (VA) rating decision
- CRSC Decision Letter
- request for advisory opinion
- PDA advisory opinion
- Ex parte communications
- applicant's response to advisory

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 her Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) documents specifically state she is not eligible for CRSC, she believes this is completely incorrect. Her MEB/PEB should allow for consideration and allowance of her CRSC claim.
3. Further, she states she was injured specifically during a simulated combat exercise during basic training. They were on patrol and simulating a squad ambush drill with acting "OPFOR" attacking their position outside of the forward operating base (FOB). This is specifically combat simulated training which allows for CRSC for all other Soldiers, yet the MEB/PEB ruled she was not eligible for CRSC. The hand injury occurred specifically as a Soldier in front of her tripped, causing her to trip with her hand stuck between her gun stock and her body armor, then another Soldier landed on top of her furthering the traumatic injury to her hand. If not for the simulated combat training she would not have sustained a very serious and debilitating hand injury which not only ended her military career but has severely affected her life due to nerve damage, and severe pain. This should be corrected so she may properly receive CRSC.
4. Additionally, she served almost 6 years, but she was never awarded the National Defense Service Medal, or any other awards after completion of basic training.
5. The applicant enlisted in the United States Army Reserve (USAR) on 8 July 2008.
6. A DA Form 199 shows that on 23 December 2013, an IPEB found the applicant physically unfit for the performance of her military duties, recommended a rating of 80%, and recommended her disposition be permanent disability retirement. The DA Form 199 contains the following statements in
 - a. Section III (Recommended Disposition):
 - (1) Incurred or aggravated in the line of duty (ILOD) in a duty status authorized by 10 USC 1201(c) or 10 USC 1204, YES.
 - (2) Due to intentional misconduct, willful neglect, or unauthorized absence, No.
 - (3) For pre-existing findings without aggravation: The condition was noted at

time of entrance on active duty (AD); or clear and unmistakable evidence demonstrates that disability existed prior to entrance on AD and was not aggravated by active military service. (Not applicable to RC adjudications under 10 USC 1204 - 10 USC 1206).

(4) Permanent and stable, Yes.

b. Section V (Administrative Determinations), the PEB made the following findings:

(1) The disability disposition was not based on a 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 (5 USC 8332, 3502, and 6303). (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.)

(2) Evidence of record reflects the Soldier was not a member or obligated to become a member of an armed force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(3) The disability did not result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.

7. On 15 January 2014, the applicant concurred with the IPEB's findings and recommendations and waived a formal hearing of her case.

8. On 29 January 2014, the U.S. Army PDA published Orders Number D029-22 directing the applicant's retirement for permanent physical disability, rated at 80%, effective 6 March 2014, in pay grade E-4. The orders contain the following entries:

- "Disability is based on injury or disease received in line of duty (LOD) as a direct result of Armed Conflict or caused by an instrumentality of war and incurred ILOD during a war period as defined by law: "NO"
- Member of an armed force on 24 September 1975: "NO"
- Disability resulted from a combat related injury as defined in 26 USC 104: "NO"

9. A DD Form 2860 shows the applicant submitted a claim for CRSC on 10 January 2022, showing in:

a. Block 13a (Disability Description), the applicant indicated the following: "Residuals of right-hand crush injury status post right third space."

b. Block 13j (In Your Own Words, Describe the Events Surrounding the Disability and How it Meets the Guidelines of Combat Related, the applicant indicated:

We were doing field training at the FOB during basic training. While having the "enemy" in a nearby area we were running to reach cover and set-up a tactical and strategic position. I tripped and fell. My hand was caught between my body armor and the buttstock of my M-16 [Rifle]. In addition, the Soldier behind me fell on me further crushing and injuring my hand. This was simulating a combat training event, and my hand was injured due to the instrumentality of war, i.e., my weapon and body armor as such I should be awarded CRSC.

10. The following list of secondary conditions was attached to the CRSC claim:

a. Thoracic lumbar area due to implantation of spinal cord stimulator based on disfigurement - 30% effective date: 02/22/2022.

b. Painful surgical scar, spinal cord stimulator replacement thoracic region 10% effective date: 02/22/2022.

c. Migraine including migraine variants 50%, effective date: 10/27/2020.

d. Chronic acquired psychiatric disorder to include depression 50%, effective date: 8/18/2017.

e. Right arm limitation of supination 10%, effective date: 03/17/2015.

f. Thoracic-lumbar myofascial pain syndrome, claimed as back strain and sprain 20%, effective date: 03/17/2015.

g. Right arm tenosynovitis 10%, effective date: 03/17/2015.

h. Residuals of right-hand crush injury (nerves) status post right third space and ring finger exploration and release of interosseous tendon and deep transverse intermetacarpal ligament 50%, effective date: 11/05/2012.

11. A VA Rating Decision, dated 7 April 2022, shows the applicant was granted a combined service-connected disability rating of 100 percent, effective 22 February 2022, for the following conditions:

a. Residuals of right-hand crush injury (nerves) status post right third space and ring finger exploration and release of interosseous tendon and deep transverse intermetacarpal ligament.

- b. Chronic acquired psychiatric disorder to include depression.
- c. Thoracic lumbar area due to implantation of spinal cord stimulator based on disfigurement.
- d. Thoracic-lumbar myofascial pain syndrome claimed as back strain and sprain.
- e. Patellofemoral pain syndrome, right knee (previously rated as chronic right knee strain).
- f. Right arm limitation of supination.
- g. Right arm tenosynovitis.
- h. Painful surgical scar, spinal cord stimulator replacement thoracic region.
- i. Scar, status post-surgery of right hand.
- j. Residuals of right-hand crush injury is the only condition that is service connected, Gulf War, incurred. All other conditions are service connected, Gulf War, secondary.

12. AHRC CRSC Decision Letter, dated 29 March 2023, informed the applicant the Army CRSC office reviewed her claim in accordance with the current program guidance and none of her conditions were combat related. Her rank is listed as specialist/E-4.

13. In the adjudication of this application, an advisory opinion was obtained from the AHRC, CRSC office, on 16 January 2025, showing the following:

- a. The applicant's request for a combat code for her behavioral health (BH) and right-hand crush conditions as well as the issuance of various service awards. For the reasons below, the appeal was found to be legally sufficient in part and legally insufficient in part.

- b. Background: On 23 December 2013, the applicant was found unfit for her BH, right-hand, and right knee conditions and placed into Permanent Disability Retirement at 80%. The PEB, specifically, found that the BH condition arose in October 2008 from a fall injuring her right hand. They also found that the onset of her right-hand injury occurred in October 2008 secondary to her crushing it during squad ambush training. Despite the specific findings, the PEB did not annotate the awarding of a combat code (V1/V3) in Section V of the DA Form 199. A review of the NARSUM indicates that the onset of the hand injury is not clear. Moreover, the MEB found that the BH condition did not fail retention standards. Still, the applicant has an approved LOD, which describes the injury to the hand and the onset of the BH condition consistent with the VA Hand

Disability Benefits Questionnaire, and the findings of the PEB, which were due to the crushing event during squad ambush training. As a result of the right-hand condition, the PEB also determined that the BH condition is also unfitting as it relates to the hand injury during conditions simulating combat. It is unknown from the ePEB case file what, if any, awards she has been issued.

c. Analysis: Despite the confusion as to when the initial hand injury occurred, the MEB, VA, and PEB all cite the right-hand crush injury happened during a fall when she was participating in squad ambush training. An injury that is the proximate cause of this type of training would warrant a V1/3 finding the applicant's BH condition arose from the crushing right hand injury. Thus, the proximate cause of the BH condition is also due to the fall during squad ambush training and warrants a V1/3 combat code. There appears to be no contention with respect to her right knee condition being non-combat related. It is unknown from the case file what, if any, service awards she has been issued.

d. Conclusion: The presented case indicates the applicant should be awarded a V1/3 combat for her BH and right-hand crush injury. The case file does not indicate, what, if any, awards she might have been issued, and **what, if any, she is still due**. Moreover, the PDA does not issue awards. It would be more appropriate for that request to be forwarded to U.S. Army HRC, Awards Branch. Therefore, her request is legally insufficient in part (awards) and legally sufficient in part (V1/3 – Yes for her BH and right-hand conditions).

e. The applicant's rank is incorrectly stated as private first class/E-3 [on the advisory opinion].

14. On 21 January 2025, the applicant was provided a copy of the advisory opinion and given an opportunity to submit comments. She responded on 2 February 2025, by stating:

a. She agrees with USAPDA Opinion overall. As opined, the injuries of the right hand and subsequent BH condition were caused by an event that occurred during a squad ambush drill and deserves the code of V1/3 assigned to them. Legally, the threshold for change has been met, and she requests that the Board follow the USAPDA recommendation to grant the proper injury code change.

b. Additionally, she requests that her request for awards be forwarded to the USAHRC Awards Branch, if possible.

c. While she agrees with the advisory opinion in full, her rank was incorrectly stated as PFC/E-3 in lieu of specialist four/E-4. While she is sure this was merely a typo or oversight, it would be appropriate to mention it to prevent any confusion as to her rank, as she agrees with the advisory opinion.

d. In conclusion she requests that the Board adopt the USAPDA Advisory opinion decision to be legally sufficient to change her injury code to V1/3 for the right-hand injury and BH condition. She believes this is the proper legal remedy.

15. The applicant provided, in part, the four third party statements from her father, mother, aunt, and a witness who served with her during basic training.

a. Her family members indicate the applicant is a good, honest person, who joined the Army to make a difference. She told them in October that she had tripped on another Soldier and that another Soldier tripped and fell on her. She crushed her hand between her gun and her body, during a training exercise. A few weeks later they saw her at graduation and her hand was still swollen, slightly discolored, and she was in pain. She has been permanently damaged and disabled due to her military service.

b. A Witness states she served with the applicant during basic training, at Fort Jackson, SC. During a tactical training event while at Fort Jackson, the applicant injured her hand, her hand was swollen and discolored. She initially hid her injury because she was afraid, she would not graduate with everyone else. She eventually did tell the drill sergeant and she went to sick call shortly after the injury because it was too painful for her to hide. The injury occurred during a training exercise.

c. The applicant's submissions were provided to the Board in their entirety.

16. As previously stated the available evidence does not indicate, what, if any, awards you were issued to the applicant. It would be appropriate for her to forward the request to the AHRC, Human Resources Service Center, in letter format, to the address below; do not submit the request to AHRC using a DD Form 149 (Application for Correction of Military Records). The request to AHRC should include a copy of those documents that were provided to this Board and any other documentation that may support the request.

Commander, U.S. Army Human Resources Command
ATTN: AHRC-PDR-H/Department 420
1600 Spearhead Division Avenue
Fort Knox, Kentucky 40122

17. If the applicant still believe that an error or injustice exists after she receives a response from AHRC, she may submit a new DD Form 149 to this Board along with the response from the AHRC. The request for awards will not be further addressed in this Record of Proceedings.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered.

- Correction of her DA Form 199: GRANT, based upon the available documentation, the findings and recommendations outlined in the HRC advisory opinion and the concurrence of those findings by the applicant by correcting the applicant’s DA Form 199 by annotating the combat code (V1/V3) in Section V for her behavioral health condition and right-hand injury.
- Approval of Combat-Related Special Compensation (CRSC): PARTIAL GRANT. Based upon the change to the applicant’s DA Form 199, the Board recommends forwarding the changed document to the appropriate agency to determine the appropriate CRSC payment.
- Award of the National Defense Service Medal (NDSM) and all other medals: DENY, based upon the applicant failing to exhaust all administrative remedies prior to submitting to the ABCMR. The applicant is recommended to make this request to HRC for review.

2. the PEB did not annotate the awarding of a combat code (V1/V3) in Section V of the DA Form 199

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	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 Army records of the individual concerned be corrected by

- amending the applicant’s DA Form 199 by annotating the combat code (V1/V3) in Section V for her behavioral health condition and right-hand injury
- forwarding the changed DA Form 199 to the appropriate agency to determine the appropriate CRSC payment.

2. The Board further determined 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 awarding any awards at this time.

//SIGNED//

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 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, as amended, established CRSC. CRSC provides for the payment of the amount of money a military retiree would receive from the VA for combat-related disabilities if it were not for the statutory prohibition for a military retiree to receive a VA disability pension. Payment is made by the Military Department, not the VA, and is tax free. Eligible members are those retirees who have 20 years of service for retired pay computation (or 20 years of service creditable for Reserve retirement at age 60) and who have a physical disability retirement with less than 20 years’ service for injuries that are the direct result of armed conflict, especially hazardous military duty,

training exercises that simulate war, or caused by an instrumentality of war. CRSC eligibility includes disabilities incurred as a direct result of:

- armed conflict (gunshot wounds, Purple Heart, etc.)
- training that simulates war (exercises, field training, etc.)
- hazardous duty (flight, diving, parachute duty)
- an instrumentality of war (combat vehicles, weapons, Agent Orange, etc.)

3. 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

4. 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.

5. 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.

6. 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.

7. 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.

8. Title 10, U.S. Code, section 1556 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. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, states applicants do not have a right to a formal hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//