

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240005027

APPLICANT REQUESTS: in effect -

- Reversal of the U.S. Army Human Resources Command (AHRC) denial of Combat Related Special Compensation (CRSC)
- A personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 February 2005
- Department of Veterans Affairs (VA) letter, 31 May 2013
- DD Form 2860 (Claim for CRSC), undated
- Readjustment Counselor letter, 22 August 2023
- HRC CRSC letter, 18 February 2024

FACTS:

1. The applicant states he never got a reason why he was denied CRSC. He has supporting documentation and does not know why he was denied. Correction has to be made due to lack of evidence concerning denial.

2. A review of the applicant's service records show:

a. He was inducted into the Army of the United States on 25 February 1971.

b. On 20 February 1973, DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably released from active duty and transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training). The applicant completed 1 year, 11 months, and 26 days net active service this period.

c. On 25 February 1977, DD Form 4 (Enlistment or Reenlistment Agreement – Armed Forces of the United States) shows he enlisted in the USAR for 1 year. The

applicant reenlisted and/or extended on multiple occasions and served continuously until he was assigned to the Retired Reserve.

d. On 7 December 2003, he entered active duty in support of Operation Iraqi Freedom.

e. On 28 February 2005, he was released from active duty and transferred to his USAR unit in Georgia. DD Form 214 shows he completed 1 year, 2 months, and 24 days net active service this period. In pertinent part, item 18 (Remarks) shows he served in Kuwait and Iraq from 16 February 2004 to 30 January 2005.

f. His record contains a VA rating decision dated 9 October 2009, which shows a service-connected disability rating of 10 percent for Post-Traumatic Stress Disorder (PTSD), effective 28 March 2005.

g. On 15 November 2010, Headquarters, 81st Regional Support Command published Orders Number 10-319-00001, which assigned the applicant to the Retired Reserve, effective 14 December 2010.

h. On 30 March 2011, the HRC, CRSC Branch notified the applicant that his claim for CRSC related to PTSD was unable to be verified as combat-related disability based on no evidence to verify that PTSD was caused by a combat-related event.

i. On 12 July 2011, the HRC, CRSC Branch notified the applicant that his claim for CRSC related to PTSD was unable to be verified as combat-related disability based on no new evidence to verify PTSD was caused by a combat-related event.

j. His record contains a VA rating decision dated 8 March 2013, which shows a service-connected disability rating of 70 percent for PTSD, effective 19 December 2012.

k. On 5 March 2018, the HRC, Chief, Army Personnel Records Division notified the applicant that his office received the applicant's CRSC appeal request related to PTSD. However, records indicated the applicant had exhausted his appeals rights with the office. The applicant's claim had previously been processed at the initial, reconsideration, and appeal levels. The HRC, Army Personnel Records Division, now considered the determination final and directed the applicant to submit any further appeals to the Army Review Boards Agency (ARBA) in accordance with the CRSC Procedure Guide.

l. On 18 February 2024, the HRC, CRSC Branch notified the applicant that they had received his application for reconsideration related to PTSD and records in their database indicated that the applicant received a final CRSC determination letter dated

5 March 2018. That decision was final and the CRSC Branch cannot process his reconsideration request. The applicant's only recourse was to contact ARBA and initiate an appeal to have his military records corrected. If the review board makes a determination to correct his records, he may re-apply for CRSC by sending them a CRSC Form 12e, Reconsideration Request, and a copy of the review board's determination.

3. In support of his request the applicant provides:

a. State of Tennessee VA letter dated 31 May 2013, which states the applicant is a disabled Veteran and rated as 100 percent permanent and total for VA benefits.

b. DD Form 2860 undated, showing he submitted a CRSC claim related to PTSD.

c. Readjustment Counselor letter dated 22 August 2023, which states, the applicant has been seen at the Johnson City Veteran Center since March 2010. The applicant reported chronic struggle with symptoms consistent with the diagnosis of PTSD and was exposed to traumatic events such as chemical warfare, mortars, small arms fire and seeing dead American Soldiers.

4. On 2 December 2024, the HRC, Chief, Special Compensation Branch provided an advisory opinion for this case and stated:

a. The applicant submitted CRSC applications on 1 March 2011, 12 July 2011, 5 March 2018, and 18 February 2024. He requested consideration for PTSD Veterans Affairs Code 9411. However, our office was unable to verify a combat related event in relation to his condition. The applicant's claim has now been reviewed at the initial and reconsideration levels and denied due to insufficient evidence.

b. The applicant states that his PTSD is from 2004-2005 Iraq, was from providing escort around Baghdad, An Asharia, Al Hilah, and Balad. While on these convoys, the violence from enemy insurgents was horrific. Suicide bombers, beheadings, and improvised explosive device attacks on military convoys escorting people and materials. Attacks by insurgents in Logistic Staging Area Adder, Iraq. Although PTSD happened in a deployment environment, by program guidance, it does not automatically qualify for CRSC.

c. We have reviewed all the documentation submitted by the applicant and his records in the Interactive Personnel Electronic Records Management System and have not found evidence to award PTSD.

5. On 2 December 2024, the applicant was provided with a copy of the HRC Special Compensation Branch advisory opinion to allow for comments or rebuttal. He did not respond.

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. Based upon the available documents, the facts and recommendations outlined in the HRC advisory opinion, and the lack of any rebuttal of those facts submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting reversal of the U.S. Army Human Resources Command previous denial of Combat Related Special Compensation.

BOARD VOTE:

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

X //SIGNED//  
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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. The Department of Defense Financial Management Regulation, Volume 7B, Chapter 63: Combat-Related Special Compensation (CRSC), paragraph 6303 states, a member may not be paid CRSC unless he or she has applied for and elected to receive compensation under the CRSC program by filing an application on DD Form 2860, (Claim for CRSC), with the Military Department from which he or she retired. A member may submit an application for CRSC at any time and, if otherwise qualified for CRSC. The law states that a member eligible for both CRSC, under Title 10, United States Code (USC), section 1413a, and Concurrent Retirement Disability Pay, under Title 10, USC, section 1414, may not receive both, but must elect which compensation to receive.

a. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The Military Departments will determine whether a disability is combat-related based on the following criteria:

- 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

b. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

c. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. 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.

b. 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.

(2) 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.

(3) Instrumentality of War:

a. 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.

b. 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.

c. 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.

d. 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.

2. Title 10, United States Code (USC), section 1413a, "CRSC," states, in pertinent part, that the Secretary concerned shall pay to each eligible combat-related disabled

uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree. The monthly amount to be paid to an eligible retiree is the amount of compensation to which the retiree is entitled under Title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability. The amount paid to an eligible combat-related disabled uniformed services retiree for any month may not exceed the amount of the reduction in retired pay that is applicable to the retiree for that month under sections 5304 and 5305 of Title 38.

3. Title 10, USC, section 1414, "Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation" states, in pertinent part, a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans' disability compensation for a qualifying service-connected disability is entitled to be paid both for that month without regard to sections 5304 and 5305 of Title 38. A person who is a qualified retiree under this section and is also an eligible combat-related disabled uniformed services retiree under section 1413a of this Title may receive special compensation in accordance with that section or retired pay in accordance with this section, but not both. The Secretary concerned shall provide for an annual period (referred to as an open season) during which a qualified retiree shall have the right to make an election to change from receipt of special compensation in accordance with section 1413a of this Title to receipt of retired pay in accordance with this section or the reverse, as the case may be. Any such election shall be made under regulations prescribed by the Secretary concerned subject to approval by the Secretary of Defense.

4. Title 38, USC, sections 1110 and 1131, permits the Department of Veterans Affairs (VA) to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered physically unfit for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

5. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, the regulation states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an

investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that 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.

//NOTHING FOLLOWS//