

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240005494

APPLICANT REQUESTS:

- in effect, verification of his traumatic brain injury (TBI) as combat-related for approval of that portion of his Combat-Related Special Compensation (CRSC) claim
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- 332nd Medical Brigade Orders 03-352-00002, 18 December 2003
- 67th Combat Support Hospital memorandum for record, 1 April 2004
- DA Form 4187 (Personnel Action), 12 April 2004
- Headquarters, Task Force Olympia (Multi-National Brigade-Northwest (MNB-N)) Permanent Orders 103-002D, 12 April 2004
- DA Form 4980-10 (Purple Heart Medal Certificate), 12 April 2004
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 15 May 2004
- Department of Veterans Affairs (VA) Decision Review Officer Decision, 9 November 2018
- VA letter, 15 June 2022
- U.S. Army Human Resources Command (AHRC) CRSC letter, 25 August 2022
- CRSC Reconsideration Request Form, 16 September 2023
- self-authored statement, undated
- letter of support, undated
- VA letter, 30 October 2023
- AHRC CRSC letter, 28 March 2024

FACTS:

1. The applicant states:

a. For his CRSC claim, he is asking that his TBI, rated by the VA at 70 percent under VA Schedule for Rating Disabilities (VASRD) code 8045, be classified as a Purple Heart injury and verified as combat-related.

b. He has a signed letter from his Officer in Charge (OIC), who was in his direct chain of command and a medical officer, who was an eye witness to the event, stating he exhibited TBI symptoms and was treated for TBI after being hit by a 107 millimeter (mm) rocket in Mosul, Iraq. He received his TBI injury after being hit by a 107 m rocket in Mosul, Iraq. He was diagnosed and treated for TBI as verified by his OIC and medical officer. He should not be punished because the Combat Support Hospital in a war zone cannot locate his medical records.

2. After 3 years, 6 months, and 3 days of honorable service in the U.S. Navy Reserve, the applicant was appointed as a commissioned officer in the U.S. Army Reserve (USAR) on 9 June 2001.

3. The applicant's DD Form 214 shows he was ordered to active duty in support of Operation Iraqi Freedom on 4 January 2004, with duty in Kuwait/Iraq beginning on 18 January 2004.

4. A 67th Combat Support Hospital memorandum for record, signed by the OIC, Patient Administration, 1 April 2004, shows:

a. The applicant was injured when a 107 mm rocket impacted in their living area on Forward Operating Based (FOB) Diamondback, Mosul, Iraq, on 9 March 2004.

b. He was treated by the 67th Combat Support Hospital (CSH) immediately following the incident. A Standard Form 509 (Medical Record – Progress Report) was completed at the time and the date on the Standard Form 509 appears to be 9 May 2004; however, this is incorrect. The incident did occur on 9 March 2004. The treating physician, Major (MAJ) [REDACTED] did not use a Standard [sic DD] Form 1380 (Tactical Combat Casualty Care), Standard Form 558 (Emergency Care and Treatment), or a Standard Form 600 (Chronological Record of Medical Care).

5. A partially legible DA Form 4187 shows on 12 April 2004, the applicant was recommended for and approved for award of the Purple Heart. The remarks show he was in his cabin when a 107 mm rocket directly impacted the section of sleeping trailer he occupied. He received shrapnel injuries to his right arm, was evacuated, and received emergency treatment from the Emergency Medical Technician (EMT).

6. Headquarters, Task Force Olympia (MNB-N) Permanent Orders 103-002D, 12 April 2004, awarded the applicant the Purple Heart for wounds received as a result of enemy or hostile fire actions on 9 March 2004. A corresponding Purple Heart Citation shows the applicant was awarded the Purple Heart on 12 April 2004, for wounds received in action.
7. The applicant redeployed from Kuwait/Iraq on 22 April 2004.
8. A DD Form 2796 (Post Deployment Health Assessment), 27 April 2004, shows:
 - a. The applicant indicated on the form he had a medical or dental problem that developed during deployment and he was on a profile or light duty. He had concerns about the shrapnel wound on his right arm.
 - b. The medical professional signed the form indicating no referral was indicated.
9. An undated DD Form 2697 (Report of Medical Assessment) shows the applicant indicated his overall health was worse since his last physical examination due to a shrapnel wound on the right arm for which he was treated by the 67th CSH in Mosul, Iraq.
10. The applicant's DD Form 214 further shows he was honorably released from active duty on 15 May 2004, due to the completion of required active service with corresponding Separation Code LBK and transferred back to his USAR Troop Program Unit. He was credited with 4 months and 12 days of net active service this period.
11. AHRC Permanent Order 145-07, 24 May 2016, awarded the applicant the Combat Action Badge for actively engaging or being engaged by the enemy on 9 March 2004.
12. A review of the AHRC Soldier Management System (SMS) shows a transaction was completed on 30 June 2017, to transfer the applicant from his USAR TPU to the Retired Reserve due to maximum authorized years of service.
13. A VA Decision Review Officer Decision, 9 November 2018, shows the applicant was granted service-connection for the following conditions effective 14 August 2017:
 - TBI, 70 percent
 - migraine headaches, 30 percent
 - vestibular disorder, 30 percent
 - loss of smell, 0 percent
 - loss of taste, 0 percent

14. AHRC Orders C05-293023, 3 May 2022, placed the applicant on the Army of the United States Retired List, effective 19 May 2022.

15. A VA letter, 15 June 2022, shows the applicant has one or more service-connected disabilities with a combined evaluation of 100 percent effective 1 December 2021 and he is considered to be totally and permanently disabled due solely to his service-connected disabilities.

16. An AHRC CRSC letter, 25 August 2022, shows:

a. They reviewed the applicant's claim for CRSC and approved it in accordance with program guidance.

b. Verified as combat-related were:

- PTSD; 70 percent; this condition is granted due to his combat award
- tinnitus; 10 percent; this condition is granted due to his combat award

c. Unable to verify as combat-related disabilities were:

- TBI; 70 percent; no medical documentation in claim that establishes a definite causal relationship between a combat-related event and the resulting disability
- vestibular disorder; 30 percent; this condition is secondary to a condition which is not combat-related
- migraine headaches; 30 percent; this condition is secondary to a condition which is not combat-related.

d. The applicant's request form requires he prove his eligibility by providing medical records or notes that verify how the injury/disability occurred. There were no supporting documents in his claim that confirm his conditions were directly caused by a specific combat-related event. To award conditions as combat-related, he must provide the CRSC office with official medical documentation that shows how each condition is combat-related as defined by the CRSC program guidance.

17. The applicant filed a request for CRSC reconsideration with AHRC on 16 September 2023, and with his request he provided a CRSC Reconsideration Request Form, self-authored statement, a letter of support, and photographs, along with documents previously discussed in this Record of Proceedings, including Purple Heart documents and VA letters, all of which have been provided to the Board for review.

18. The applicant's self-authored statement to AHRC shows:

a. He was providing additional evidence to prove that his TBI, vestibular disorder, and migraine headaches are due to a combat-related event. He was providing a signed letter from retired Colonel (COL) [REDACTED] who was an OIC in his direct chain of command and witness all events when he was hit by a 197 mm rocket directly, while service at FOB Diamondback at Mosul, Iraq, on 9 March 2004.

b. His Purple Heart was awarded for wounds received in action, which includes his TBI resulting from concussion injuries; therefore, his TBI and secondary injuries are Purple Heart injuries. He was restricted from full duty for over 2 weeks due to headaches, nausea, and loss of memory and he experienced loss of consciousness. These are all hallmarks of TBI.

c. He was diagnosed with and is being treated by physicians for TBI, vestibular disorder, and migraine headaches, which the VA has rated as service-connected. He has had no other event in his life that would cause TBI.

19. The undated letter of support from retired COL [REDACTED] shows:

a. He was writing to AHRC in direct support of the applicant. He was personally involved in his assessment from his experience as a Certified Registered Nurse Anesthetist (CRNA) and can testify that he did indeed suffer a TBI. He was dug out from the rubble after an air burst mortar round penetrated their logistics support area (LSA) in Mosul, Iraq. When he awoke from his period of unconsciousness, he assessed his awareness to time, place, and person. He was confused as to what happened and at the time he told the applicant he got his bell rung pretty well.

b. The applicant was awarded the Purple Heart and the Combat Action Badge. He might add that the applicant was not the only Soldier injured that day. His own surgical technician was also injured with leg trauma and he had the honor of pinning her medal on her before she was evacuated to Germany.

c. He had the honor and privilege of serving with the applicant and noted the residual effects from that TBI in his subsequent return to the USAR and having been assigned to his unit. He would be more than happy to attest, confirm, and notarize a statement supporting re-evaluation of the applicant's claim.

20. A VA letter, 30 October 2023, shows the applicant has a combined service-connected disability rating of 100 percent for the following conditions:

- PTSD, 70 percent
- TBI, 70 percent
- migraine headaches, 30 percent
- vestibular disorder, 30 percent

- tinnitus, 10 percent
- loss of taste, 0 percent
- loss of smell, 0 percent

21. An AHRC CRSC letter, 28 March 2024, shows they reviewed the applicant's reconsideration request for CRSC and made the following determinations:

a. Verified as combat-related were:

- PTSD; 70 percent; CRSC effective date June 2022; previously awarded; verified percentage and effective date
- tinnitus; 10 percent; CRSC effective date June 2022; previously awarded; verified percentage and effective date

b. Unable to verify as combat-related disabilities were:

- TBI; 70 percent; second disapproval; no new medical documentation to show combat-related event caused condition
- vestibular disorder; 30 percent; second disapproval; no new medical documentation to show combat-related event caused condition
- migraine headaches; 30 percent; second disapproval; no new medical documentation to show combat-related event caused condition

c. They reviewed his reconsideration request and the supporting documentation he provided. The evidence within the new documentation that he submitted still does not establish a link between the requested conditions and a combat-related event. To award a condition as combat-related, you must provide this office with official documentation that shows how each condition is combat-related as defined by CRSC program guidance. Official documentation includes medical documentation from the time each injury occurred.

22. 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 warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board considered the applicant's receipt of the Combat Action Badge and Purple Heart for a concurrent shrapnel wound on 9 March 2004; VA rating of 70% for TBI; Colonel RGH, the applicant's OIC and medical officer, letter attesting that he assessed the applicant after a period of unconsciousness resulting from air burst mortar attack in Mosul, Iraq subsequent to the applicant was dug out of the rubble; and the conditions under which CRSC can be awarded. Based on the preponderance of the evidence, the Board found that, but for the applicant's time in combat, it was more likely than not that the applicant would not have been diagnosed with TBI. Therefore, the Board determined a causal relationship does exist between the applicant's time in combat and the subsequent diagnosis of TBI. After due consideration of the applicant's request the Board agreed that the applicant is entitled CRSC based on the diagnosis of TBI and a recommendation for relief is warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reversing the U.S. Army Human Resource Command's decision not to verify his Traumatic Brain Injury as a combat-related disability.

6/6/2025

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. 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. Title 10, U.S. Code, section 1413a, as amended, established Combat-Related Special Compensation (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) or 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. 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.

4. 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.

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. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//