ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240007087

APPLICANT REQUESTS: through Counsel:

- approval of his Combat-Related Special Compensation (CRSC) claim for his conditions of post-traumatic-stress disorder (PTSD), traumatic brain injury (TBI), migraines, sleep apnea, osteoarthritis in both knees, and flat feet
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Proof of Service
- Counsel's brief
- Documents Index
- applicant's self-authored statement
- DD Form 2807-1 (Report of Medical History), 8 January 2007
- Gramling vs. U.S. Court Order, 10 November 2009
- Air Assault Course Diploma, 15 September 2011
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings (ROP) for a different applicant, in Docket Number AR20120022347, 22 August 2013
- ABCMR ROP for a different applicant, in Docket Number AR20120018589, 14 May 2013
- 3 medical records, 2012 – 2014
- Headquarters, U.S. Army Maneuver Center of Excellence Orders 15134-67, 14 May 2015
- Headquarters, U.S. Army Maneuver Center of Excellence Orders 15134-423, 14 May 2015
- 6 medical records, 19 October 2015 – 10 December 2015
- ABCMR ROP for a different applicant, in Docket Number AR20150012092, 15 September 2016
- 9 medical records, 14 December 2017 – 10 December 2019
- 21 medical records, 5 February 2020 – 7 October 2020

- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 13 November 2020
- 2 medical records, 6 January 2021 – 13 January 2021
- U.S. Army Installation Management Command Orders 006-0506, 6 January 2021
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 20 January 2021
- Enlisted Record Brief (ERB), 21 January 2021
- 10 post-service medical records, 28 January 2021 – 25 October 2021
- Department of Veterans Affairs (VA) Rating Decision, 2 March 2021
- U.S. Army Human Resources Command (AHRC), Soldier Programs and Services Division letter, 27 April 2021
- AHRC, Soldier Programs and Services Division letter, 28 May 2021
- 12 witness statements and/or Statement in Support of Claim
- Department of Defense (DOD) 700.14R (Financial Management Regulation), Volume 7B, Chapter 63, excerpts
- Title 10, U.S. Code, section 1413a (Combat-related special compensation)
- 5 medical journal articles

FACTS:

1. Counsel states:

a. The applicant developed debilitating medical conditions from his years of service in the U.S. Army and his participation in combat-related activities. Over the course of his fourteen-year enlistment, he developed PTSD, TBI and migraines, sleep apnea, osteoarthritis in both knees, and flat foot.

b. PTSD: The applicant developed PTSD as a result of numerous combat-related activities. While deployed he engaged in firefights, encountered indirect fire, witnessed the enemy use a child 's corpse as an improvised explosive device (IED) during combat action, witnessed a friend being stabbed in the neck by a child which led to his death, and rescued fellow Soldiers from a burning vehicle that had been hit by an IED. He had no history of psychological illness prior to enlisting, but now experiences daily combat nightmares, distressing recollections, avoidance of combat memories, difficulty sleeping, survivor's guilt, and shame.

c. TBI and migraines: The applicant sustained a TBI from head injuries he received both while deployed in combat and while engaged in hazardous service. In Iraq in 2008, he was rendered unconscious by an IED explosion that caused the metal latch on a Bradley vehicle to slam down on his head and knock him to the floor of the vehicle where he struck his head again. During that same deployment in 2009, he was hit by

the shockwave of another IED explosion, jolting his head back. Finally, he took several hits to the head while performing airborne jumps from 2015 to 2017 at Fort Campbell.

d. Sleep Apnea: The applicant's combat-induced PTSD led to his development of obstructive sleep apnea. Symptoms of obstructive sleep apnea, which include sleep disturbance, difficulty breathing while asleep, and severe sleep reduction, emerged shortly after his first deployment in Iraq.

e. Osteoarthritis and Flat Foot: The applicant's numerous parachuting missions have caused him to develop osteoarthritis in both knees and flat foot. The repeated high intensity impacts he sustained from jumping out of aircrafts resulted in knee pain so severe that a fellow Soldier described him as unable to move or bend his knees during airborne operations.

f. Each of these disabilities were incurred as a direct result of armed conflict, engagement in hazardous service, the performance of duty under conditions simulating war, or an instrumentality of war, and are therefore combat-related. A proud veteran of the Army, the applicant was a healthy young man when he first deployed to Iraq in 2008. He reenlisted multiple times, deploying to Afghanistan in 2012 and again to Iraq in 2015, before he medically retired from the Army in 2021.

g. On 27 April 2021, the applicant received notice of a determination on his initial filing for CRSC benefits. In its decision letter, the AHRC only approved benefits for the applicant's tinnitus at a 10 percent disability rating. The AHRC explained that it denied his claims for PTSD, TBI and migraine headaches, obstructive sleep apnea, left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot, because these claims did not contain supporting documentation to verify combat exposure or other qualifying criteria in the CRSC legal standard and the Physical Evaluation Board (PEB) Proceedings. On 28 May 2021, the AHRC denied the applicant's reconsideration claim due to lack of evidence supporting the relationship between his disabilities and a qualifying combat-related event. The AHRC stated that it would reevaluate his claims if additional documentation was provided. The applicant provided such documentation on 5 February 2024, but the AHRC has not issued a decision as of the date of this appeal. As such, the applicant respectfully asks the ABCMR correct the AHRC's 27 April 2021 and 28 May 2021 denials of the applicant's claims and find that his disabilities are in fact combat-related and that CRSC should be granted.

h. The applicant enlisted in the Army on 23 January 2007. He served for 14 years, during which he received thirty medals and awards, including a Bronze Star Medal, Parachutist Badge, and several Army Commendation Medals. He deployed to combat three times: (1) Iraq, from 6 October2 008 to 24 September 2009; (2) Afghanistan, from 31 October 2012 to 3 August 2013; and (3) Iraq again, from 1 July to 8 September 2015. Before enlisting, the applicant was healthy and fit. On 20 January 2021, he was

medically retired from the military due to disabilities "based on injury or disease received in the line of duty 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 as defined by law."

i. While deployed in Iraq and Afghanistan, the applicant was involved in traumatic events that ultimately caused him to develop PTSD. He enlisted in the Army in 2007 with no history of psychiatric illness. However, after experiencing numerous traumatic events while deployed, he developed PTSD. During his deployments, the applicant was exposed to fire fights, explosions, and indirect fire, causing him to incur multiple injuries. This included blasts from IED explosions, grenades, rocket propelled grenades, land mines, and vehicle crashes. Several incidents in particular stand out for the devastating psychological impact they had on the applicant. During his first deployment to Iraq in 2008, he witnessed a nearby IED explode. To his horror, he realized that the enemy had not used a typical IED. Instead, the enemy had used a dead child as the IED. In another incident during his first Iraq deployment, a truck two cars ahead of his vehicle in the convoy struck an IED, exploding instantly. The applicant quickly jumped out of his vehicle and rushed to help. He immediately began dressing the wounds of one of the wounded Soldiers. During the medical evacuation (MEDEVAC), the applicant rode alongside that wounded soldier. Despite doing everything he could, even holding one of that wounded Soldier's arteries closed, the Soldier died in transit while lying next to the applicant. After the incident, his fellow Soldiers reported that the applicant would wake up at night screaming. During that same deployment, he watched as a nearby sergeant was shot several times in the leg and groin. On 27 March 2013, while deployed in Afghanistan, the applicant again witnessed the killing of a fellow Soldier. That Soldier, the applicant's friend, was giving out gifts to local children when a child stabbed him in the neck. The applicant used his fingers to try to stop the bleeding, but his friend died in the helicopter en-route to treatment.

j. The applicant was diagnosed with PTSD on 20 November 2019, but has sought mental health services since approximately 2016. He has "ongoing, classical symptoms of PTSD," including distressing recollections and dreams of combat trauma, avoidance of memories that are combat-related, irritability, poor sleep, dreams of death, daily nightmares of combat, lack of motivation, social discomfort, feelings of anger, and "survivor's guilt, regret, and shame." He also experiences panic attacks, flashbacks, and hallucinations, as well as "almost daily" suicidal and morbid thoughts of death. He was placed on a limited duty profile for mental illness from 6 October to 5 November 2018, and again from 10 December 2019 to 9 March 2020, for PTSD and suicidal thoughts.

k. The applicant has attended an intensive outpatient program (IOP) for PTSD, taken numerous psychotropic medications, and has been involved in extensive individual psychotherapy. Unfortunately, nothing worked. Throughout 2021, Psychiatric Nurse Practitioner J____ R____, a Board Certified Advanced Practice Registered Nurse with expertise in "diagnos[ing] chronic and acute mental health conditions," repeatedly

diagnosed the applicant with "combat-related PTSD and attendant obstructive sleep apnea" during each of their bi-monthly sessions. To manage his symptoms, Nurse R___ prescribed the applicant Risperidone for nightly auditory and visual hallucinations, Duloxetine for depression, Bupropion XL for depression, Prazosin for nightmares, and Topiramate for mood swings and anger issues.

l. The applicant suffered multiple head injuries while deployed in Iraq and while executing airborne operations at Fort Campbell, causing his TBI and chronic migraines. He was first diagnosed with TBI and related migraines in 2008 after an IED exploded a mere 15 feet away from a Bradley vehicle he was driving while on his first deployment in Iraq. The IED blast rocked the Bradley vehicle, causing a heavy metal latch on the vehicle to loosen and slam down on the applicant's head, knocking his helmet off. He fell down into the vehicle and hit his head again on the floor of the vehicle. He lost consciousness. D____, the applicant's supervisor at the time, along with several other platoon members were able to navigate him onto a stretcher and take him to an aid station. There, the applicant was diagnosed with a concussion and placed on light duty for two weeks.so Immediately after the experiencing headaches and seeing stars.

m. Unfortunately, this was not the only time the applicant suffered a head injury overseas. While deployed in Iraq in 2009, he was hit by the shockwave of an IED explosion. Though he did not lose consciousness this time, he experienced a consistent headache for the next month. As a result of these two incidents, he has had chronic headaches with dizziness, vertigo, extreme sensitivity to light, nausea, and partial loss of vision. He became so sensitive to light that he needed to turn off the lights throughout his house to avoid migraines. He continues to suffer from two or three severe migraines per week. He would take Tylenol or Motrin for his headaches and lie down in a dark room for his severe migraines. According to S____ E____, a Soldier deployed alongside the applicant in Afghanistan in 2012 and 2013, he could not go on missions for a couple of days due to his headaches, blurred vision, and the accompanying vomiting and nausea.

n. The applicant also suffered head injuries while serving at Fort Campbell, KY, from 2015 to 2017. Throughout his time at Fort Campbell, he engaged in parachute training, a recognized hazardous activity. Medical records indicate that he hit his head several times when parachuting between 2015 and 2017.60 In one instance, he was taken to a doctor and given a full week's leave to recover in his quarters.

o. After his discharge from active duty, the applicant continued to suffer from chronic migraines. On 10 March 2020, a VA physician documented the severity of the applicant's conditions. The VA physician determined that his migraine headaches and related symptoms were attributable to his 2008 TBI. The symptoms have disrupted his ability to complete even the most rudimentary tasks. He cannot even put on or take off

his shoes without assistance. When he bends over, "the blood rushes to [his] head and the migraine gets worse." The applicant sought medical treatment again in 2017. On 29 April 2021 , he requested therapeutic filter glasses to decrease sensitivity to light and other migraine triggers. He also visited the VA TBI clinic biweekly for treatment from April to September 2021

p. The applicant's combat-related PTSD caused him to develop obstructive sleep apnea. He first started suffering from sleep disturbances in 2009, shortly after his first tour in Iraq. He brought his sleeping issues to the attention of medical professionals in 2017, 2018, 2019, 2020, and 2021. He was officially diagnosed with a sleeping disorder in 2017,72 which was later re-diagnosed as obstructive sleep apnea in 2020. Considerable scientific evidence links PTSD to obstructive sleep apnea. This causal link is further corroborated by his VA health care provider, Psychiatric Nurse Practitioner J____ R____, who treated the applicant for his combat-related PTSD and obstructive sleep apnea.

q. The applicant even participated in an overnight sleep study on 8 March 2020, due to the severity of his symptoms. On several occasions, the applicant's then-wife, had woken up at night to find him not breathing. She would shake him, and he would "pop up gasping for air like he [could not] breathe." The applicant's coworkers had also found him asleep in his office multiple times. Following the overnight sleep study, he was diagnosed with "severe obstructive sleep apnea with moderate oxygen desaturations." The doctor also diagnosed him with disrupted sleep architecture. The doctor recommended treatment, further consultation, and that the applicant refrain from driving or "any activity which requires him to be alert, until effectively treated."

r. The applicant developed osteoarthritis and flat foot after repeatedly crashing into the ground while engaging in airborne operations at Fort Campbell. He began executing airborne operations at Fort Campbell, KY, in 2011, engaging in parachute training with the 101st Airborne Division. In September 2011, he was awarded an Air Assault Badge and Additional Skill Identifier (ASI) 2B for successful completion of the standard two-week Air Assault Course. In May 2015, he was awarded a Parachutist Badge for successful completion of 3-week "[h]azardous duty" in airborne training.

s. During his time in the Army, the applicant completed dozens of airborne missions jumping from military aircraft. Z____ H____, who served with the applicant from 2014 to 2016 at the 1st Battalion,160th Special Operations Aviation Regiment (SOAR) (1-160th SOAR) in Fort Campbell, confirmed that the applicant completed parachute jumps an average of two to four times per month. The jumps occurred from approximately 3,000 feet with a gear weighing anywhere from 100 to 150 pounds. The weight of the gear, combined with a Soldier's bodyweight, causes significantly more force upon landing than civilian jumps. He also participated in nighttime jumps, which are inherently more

dangerous than daytime jumps as night jumpers lack depth perception and the ability to gauge landing terrain. This also exacerbates the force at which jumpers hit the ground.

t. Though the applicant did not suffer from knee or foot injuries prior to serving at Fort Campbell, soon after he was awarded the Parachutist Badge, he began experiencing significant knee pain. H____ saw that the applicant's knee pain caused him to fall down and be unable to move or bend his knees during airborne operations. Though he often took Ibuprofen to decrease his knee pain and swelling, he developed a limp. He even required help getting in and out of his car because of the condition of his knees.

u. H____'s statements are consistent with the applicant's medical records. He has reported knee pain since 2015.Specifically, medical records indicate that he experienced pain and edema (swelling in the tissue outside of a joint) and effusion (swelling in the tissue inside a joint). A magnetic resonance imaging (MRI) taken in October 2015 showed small suprapatellar joint effusion. As a result, he received physical therapy. While seeking medical treatment in October 2018, the applicant reported persisting knee pain that he incurred from "jumping out of planes." In August 2019, he described bilateral knee pain and explained that "…jumping and placing pressure on his knees cause[d] him pain." X-rays revealed that he developed "a torn meniscus in his right knee" and was beginning to "have the same issue with his left knee. Further orthopedic testing indicated elevated joint tenderness. A subsequent MRI report from September 2019 showed that he had "[i]nflammatory change centrally within Hoffa's fat pad, "a condition consistent with "jumper's knee." In October 2019, he sought further treatment for his persisting pain and complained of "locking, catching, and pain with prolonged standing, [and] sitting…" Subsequent X-rays corroborated the osteoarthritis diagnosis, again showing bilateral joint effusion and quadriceps bone spurs. An examination at a VA hospital in September 2020 showed that his range of motion in both knees was "[a]bnormal or outside of normal range." The applicant continued reporting his knee pain through January 2021.

v. The applicant's airborne jumps also impacted his feet. In May 2018, he was diagnosed with plantar fascia! fibromatosis after reporting pain in the arch of his left foot that was exacerbated by standing. His foot pain did not abate. D____ M____, who served with the applicant from 2017 to 2019, observed that he was unable to even walk due to his foot pain. Even after he was given foot inserts, M____ noticed him walking on the sides of his feet and his toes to try to stop the pain. At his podiatry consultation in February and March 2020, the applicant again reported pain in the bilateral foot and Achilles tendons of both feet. By then, the pain had persisted for 2 years. He had "minimal improvement from orthotic inserts, heel lifts and profiling," which is "consistent with [patellofemoral pain syndrome] and Achilles tendonitis bilateral, and bilateral pes planus."

w. Because of these injuries, the applicant has significant mobility difficulties; he uses a cane and at times experiences pain so severe that he must walk on the sides of his feet even while using a cane. He feels paralyzed when he wakes up, experiencing intense pain in his left knee without even getting out of bed. He relied on his former wife to help him "out of bed in the morning because h[is] knees are in so much pain," and "help him in and out the car because his knees can't bend and he is so sore."

x. There are two steps for determining whether a military retiree is eligible for CRSC. First, the retiree must satisfy the preliminary CRSC requirements. Second, the retiree 's disabilities must be combat-related. The applicant satisfies the preliminary requirements for CRSC eligibility. The Department of Defense (the DOD) sets the criteria for a veteran's preliminary eligibility for CRSC. Under current guidelines, to qualify for CRSC, a veteran must meet each of the following requirements:

- the retiree has been medically retired;
- the retiree is in military retired status,
- the retiree is entitled to military retired pay; and
- the retiree is entitled to VA compensation benefits for a disability that is rated by the VA as at least 10 percent disabling.

y. The applicant meets all four of the preliminary eligibility requirements. First, he was medically retired from the Army on 20 January 2021, because of physical disabilities incurred during his military service. Second, he is in military retired status as of 21 January 2021. Third, he is entitled to military retired pay. A veteran is entitled to military retired pay upon a determination that the member is unfit to perform his or her duties and where (i) the disability is of a permanent nature, (ii) the disability is not the result of intentional or negligent conduct, and (iii) the disability is at least 30 percent under the standard schedule of rating disabilities and was not noted at the time of the member's entrance on active duty or is the proximate result of performing active duty. Here, the Army retired the applicant "because of physical disability." Lastly, he is entitled to VA disability compensation for his service-connected disabilities. The extent of these disabilities includes PTSD, migraine headaches, and obstructive sleep apnea - each rated by the VA at 50 percent; his flat foot, rated by the VA at 30 percent; his cervical strain, left shoulder strain, and right shoulder acromioclavicular joint osteoarthritis, each rated by the VA at 20 percent disability; and his carpal tunnel syndrome (left upper extremity), carpal tunnel syndrome (right upper extremity), lateral collateral ligament sprain (left ankle), lateral collateral ligament sprain (right ankle), left hip strain, left knee joint osteoarthritis, lumbosacral strain, right hip strain, right knee joint osteoarthritis, and tinnitus, each rated by the VA at 10 percent. Therefore, he satisfies the four preliminary eligibility requirements.

z. The applicant satisfies the requirement that disabilities be "combat-related." In addition to the DOD's preliminary eligibility requirements, a retiree must show that their

disability for which CRSC is sought is "combat-related." Title 10, U.S. Code, section 1413a(e) defines a "combat-related" disability as either a disability caused by an injury for which the veteran received the Purple Heart, or a disability incurred in one of four circumstances:

- 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.

aa. As explained herein, each of the disabilities for which the applicant seeks CRSC is combat-related because each was incurred as the direct result of armed conflict, while in hazardous service, in the performance of duty under conditions simulating war, and/or through an instrumentality of war. His PTSD is combat-related because it was incurred as a direct result of armed conflict. First, his PTSD is "combat-related" because it was incurred as a direct result of armed conflict. "Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists." Additionally, "[t]here must be a definite causal relationship between the armed conflict and the resulting disability."

bb. The applicant's PTSD was incurred as a direct result of armed conflict. He was engaged in armed conflict and now experiences recurring traumatic nightmares of combat and avoidance of combat-related memories. While in military service, he was exposed to fire fights, explosions, and indirect fire. He personally experienced several traumatic events while serving: he witnessed enemy combatants use a dead child as an IED; he witnessed a nearby soldier being shot several times in the leg and groin; he witnessed his friend being stabbed in the neck by a young child while handing out gifts; and he witnessed a vehicle in front of him in a convoy get hit by an IED and explode, after which he unsuccessfully attempted to administer life-saving care. After the convoy IED incident, the applicant would wake up at night screaming.

cc. As stated herein, years of psychological treatment and hundreds of sessions with various medical professionals clearly demonstrate that the applicant's PTSD and corresponding symptoms are due to armed conflict. He has received several distinct diagnoses for combat-related PTSD and continues to take a regime of various medications to improve his quality of life.

dd. Furthermore, the VA granted a service connection for the applicant's PTSD with an evaluation of 50 percent. The informal PEB determined that his PTSD is "due to combat related stressors while deployed to Iraq (2008-2009)" and "aggravated by his subsequent deployment to Afghanistan (2012-2013)." The PEB attributed his PTSD to

stressors including "exposure to explosions, indirect fire, injuries while in combat, and fearing for life" as a"[d]irect result of armed conflict." The PEB ultimately found that the "disability disposition is based on 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." Moreover, the PEB expressly found that the applicant's PTSD was the "[d]irect result of armed conflict." The ABCMR has established CRSC eligibility based on similar PEB determinations. See ABCMR Case Number 20120018589 ("The applicant's subsequent PEB, as approved by the Secretary of the Army, clearly connects his injuries to the combat theater and clearly identifies his injuries as having occurred during battle and by an instrumentality of war. This documentation is a matter of official record and is more than sufficient to establish that the applicant's injuries occurred during a combat-related event."); ABCMR Case Number 20120022347 (finding that "[t]he applicants [sic] PEB decisional document states his PTSD was combat incurred due to a mortar attack" and granting CRSC); ABCMR Case number 20150012092 (finding that "it appears HRC did not take into consideration the 2013 PDRB [Physical Disability Board of Review] findings which corrected his PEB by adding PTSD and then ultimately permanently medically retiring him" and granting CRSC).

ee. The applicant's PTSD symptoms include avoidance of combat-related memories and daily combat-related nightmares. His symptoms are inextricably linked to his direct involvement in armed conflict because he would not suffer from these haunting memories and nightmares had he never directly participated in armed combat while in the Army. Ultimately, there is a clear and definite causal relationship between his armed conflict experiences and the resulting PTSD, rendering the PTSD "combat-related" under Title 10 U.S. Code, section 1413a(e).

ff. The applicant's TBI and chronic migraines are combat-related because they were incurred as a direct result of armed conflict and while engaged in hazardous service. His TBI and chronic migraines are "combat-related" because they were incurred as a direct result of armed conflict. His TBI arose during his deployment in Iraq. There, he was hit by the metal latch of the Bradley vehicle he was driving when an IED blast came through. He was knocked unconscious after falling into the vehicle and smashing his head. Only after this incident did he begin to suffer from severe chronic migraines with dizziness, photophobia, phonophobia, nausea, and scotomas. This was the first instance the applicant experienced a TBI. These injuries were aggravated in 2009, when he was hit by another IED explosion while in the back seat of a vehicle. The injuries were further aggravated in 2015 to 2017 when he repeatedly hit his head while performing airborne jumps.

gg. The applicant's TBI and chronic migraines were incurred as a direct result of armed conflict. The Neurology Compensation and Pension Examination consultation performed by a VA physician found that his chronic migraines are attributable to his TBI.

The TBI, in turn, is attributable to the repeated serious blows to the head and concussions suffered by him during his involvement in armed conflict. Thus, the TBI and chronic migraines were incurred as a direct result of armed conflict.

hh. The applicant's TBI and chronic migraines are likewise combat-related because they were incurred while engaged in hazardous service. The DOD Financial Management Regulation specifies that hazardous service "includes...parachute duty." As mentioned herein, medical records indicate he hit his head during airborne jumps pursuant to parachute duty in 2015 to 2017 at Fort Campbell, KY. Thus, the TBI and chronic migraines were incurred while engaged in hazardous service.

ii. Furthermore, the DOD has recognized that injuries suffered in the "performance of duty under conditions simulating war," including "military training, such as…airborne operations" shall be considered combat-related. As discussed herein, the applicant's parachute duty was performed as part of his military training and while equipped with combat gear. Thus, the TBI and chronic migraines were incurred while in the performance of duty under conditions simulating war.

jj. In addition to being "combat-related" as a direct result of armed conflict and through hazardous service, the applicant's TBI and chronic migraines are combat-related because they were incurred through instrumentalities of war. According to the DOD: "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…" 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 material." (emphasis added).

kk. The applicant suffered head injuries while riding in a Bradley vehicle that was impacted by IED explosions, which caused him to hit his head on the vehicle's metal latch, fall down, hit his head again, and lose consciousness. A Bradley vehicle is a "vehicle ... designed primarily for Military Service and intended for use in such Service," and an IED is a "military weapon" and is "military ordnance...or material." The Bradley vehicle and IED clearly constitute instrumentalities of war. Thus, the head injuries the applicant suffered while inside the Bradley vehicle impacted by the IED explosion were incurred through an instrumentality of war.

ll. Again, the applicant suffered additional head injuries after landing on his head while engaged in airborne jumps pursuant to parachute duty. The U.S. Court of Federal Claims has explicitly held parachutes constitute an instrumentality of war. Thus, the applicant's TBI and chronic migraines, which were exacerbated as a result of his

multiple head injuries during parachute jumps, are disabilities incurred through an instrumentality of war.

mm. Because the applicant's TBI and chronic migraines were incurred as a direct result of armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, and through instrumentalities of war, the TBI and chronic migraines are "combat-related" under Title 10 U.S. Code, section 1413a(e)(2)(A)-(D). Thus, the ABCMR should find he is entitled to CRSC for his TBI and chronic migraines .

nn. The applicant's obstructive sleep apnea is combat-related because it developed as a direct result of armed conflict. The VA granted service connection for obstructive sleep apnea with an evaluation of 50 percent based on requiring the "use of breathing assistance device such as continuous airway pressure (CPAP) machine." His obstructive sleep apnea is "combat-related" because it developed as a direct result of his PTSD, which he incurred in armed conflict. Obstructive sleep apnea is "common among patients with underlying psychiatric conditions." Accordingly, "[t]he prevalence of obstructive sleep apnea] is higher among patients with PTSD than the general population." "Recognizing and treating [obstructive sleep apnea] in patients with PTSD is crucial in optimizing the therapeutic response" to patients' PTSD symptoms.

oo. The link between the applicant's PTSD and obstructive sleep apnea is also evident from a number of his "classical" PTSD symptoms, including his reoccurring nightmares and poor sleep. Without his engagement in armed conflict and hazardous service, he would not have PTSD. Because his obstructive sleep apnea and PTSD are bound together, he would not have developed obstructive sleep apnea absent his involvement in armed conflict and hazardous service. Because his obstructive sleep apnea was incurred as a direct result of armed conflict, the disability is "combat-related" under Title 10 U.S. Code, section1413a(e)(2)(A). Thus, the ABCMR should find he is entitled to CRSC for his obstructive sleep apnea.

pp. The applicant's left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot are combat-related because they were incurred while engaged in hazardous service, through an instrumentality of war, and in the performance of duty under conditions simulating war. His left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot are combat-related because they were each incurred while engaged in hazardous service. As discussed, parachuting is specifically identified as a hazardous service. For example, the DOD states "hazardous service…includes…parachute duty."

qq. Although the applicant was healthy and fit before his military service, the repeated and high intensity impacts during the parachute jumps damaged his knees and feet, resulting in flat foot and joint osteoarthritis in both knees. In 2020, he was

diagnosed with plantar fascia! fibromatosis, "[patellofemoral pain syndrome] and Achilles tendonitis bilat, and bilat pes planus."

rr. When the applicant was in the 1-160th SOAR division at Fort Campbell from 2014 to 2016, he jumped out of planes and helicopters as part of his combat duties on an average of two to four times a month. This repeated high intensity impact damaged SFC Wood's knees and feet, resulting in his osteoarthritis and flat foot. As a result, the VA granted a service-connection for left and right knee joint osteoarthritis with an evaluation of 10 percent based on painful motion of the knee.

ss. The applicant jumped out of planes with a combat load of about 100 to 150 pounds at a minimum and conducted numerous nighttime jumps on a regular basis. Studies show that the injury rate is substantially higher when jumping from a plane with combat equipment and on nighttime jumps than daytime jumps. For example, one study reported that while an average paratrooper injury rate with no combat load was 1.8 injuries per 1,000 daytime jumps, the injury rate with combat equipment was 8.5 injuries per 1,000 daytime jumps. This injury rate went up to 10 injuries per 1,000 jumps for nighttime jumps with combat equipment. Moreover, the jumps during combat-related trainings occurred from a much lower altitude than the civilian jumps. Another study shows that the lower altitude jumps resulted in higher injury rates than higher altitude jumps. Thus, he was exposed to a high risk of injuries due to his jump duties.

tt. A study from the Army Public Health Center based on medical records of more than 200,000 soldiers including 31,621 paratroopers over three years recognized that paratroopers may experience cumulative micro-traumatic ("CMT") injuries and injury-related musculoskeletal ("MSK") long-term effects resulting from "repeated impacts from parachute jumps over time or the combination of repeated jumps and the repetitive stresses caused by other military activities (e.g., load carriage and foot marching)." The study pointed out that those CMT injuries and long-term effects appear gradually and, therefore, they "cannot be attributed to a single jump." Medical records clearly showed that CMT-MSK injury rates were substantially higher than acute traumatic ("ACT")-MSK injuries, which are injuries due to single high intensity forces directly attributed to an aircraft jump and injuries primarily observed immediately after landing. This supports the applicant’s lack of medical record reporting knee injuries immediately after parachute jumps but the existence of a medical record reporting knee pain several years after performing parachute duties .

uu. Medical records and accounts by fellow service members indicate the applicant has experienced "locking, catching, and pain with prolonged standing, sitting and running" in both his knees since his time at Fort Campbell. The studies and the applicant’s record of repeated jumps as part of his duties for at least two years show that his knee injury is a result of "repeated impacts from parachute jumps over time or the combination of repeated jumps and the repetitive stresses caused by other military

activities," and "cannot be attributed to a single jump." Furthermore, his systematic complaints of knee and foot pain correspond closely with his qualification as a parachutist in the Army in May 2015 and his subsequent parachuting in the 1-160th SOAR, Fort Campbell from 2014 to 2016. In his 2014 medical history, he answered "No" to having "Knee trouble (e.g., locking, giving out, pain or ligament injury, etc.)" Almost exactly 1 year later-after having begun parachuting-the applicant began complaining of "pain," "clicking/popping," and "swelling." X-rays affirmed his osteoarthritis diagnosis, and showed bilateral joint effusion, as well as quadriceps bone spurs. An examination at a VA hospital in September 2020 showed that his range of motion on both knees was "[a]bnormal or outside of normal range." Based on the above evidence, there is little doubt that his foot and knee pain are the direct result of his activities as a parachutist. Thus, his left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot are combat-related because they were each incurred while engaged in hazardous service.

vv. Additionally, the applicant's left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot are combat-related because they were each incurred through an instrumentality of war. As discussed, parachuting is specifically recognized as an instrumentality of war. The U.S. Court of Federal Claims explicitly recognized that "a parachute" is "an 'instrumentality of war'" in a decision affirmed by the U.S. Court of Appeals for the Federal Circuit. Thus, the applicant incurred these injuries through an instrumentality of war.

ww. Furthermore, the applicant's left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot are combat-related because they were each incurred in the performance of duty under conditions simulating war. According to the DOD: "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." (emphasis added.)

xx. As noted, when the applicant was in the 1-160th SOAR division at Fort Campbell from 2014 to 2016, he jumped out of planes and helicopters as part of his combat duties on an average of two to four times a month. He jumped out of planes with a combat load of about 100 to 150 pounds at a minimum. He "carried a plate carrier, SAPI plate, parachute, reserve chute, helmet, M-4 Rifle and additional gear" on these jumps. These jumps are further distinguished from those performed by civilians because these "jumps were executed at low altitudes and involved a release procedure that is coarser when compared to civilian equipment."

yy. In addition, the applicant performed numerous nighttime jumps on a regular basis. These nighttime jumps "were often more difficult to safely perform due to the lack of depth perception, obstacle avoidance, and terrain association. "During the nighttime jumps, he would "often crash land [] on rough patches or dangerous stretches of terrain." His experiences are supported by empirical studies. Nighttime jumps and jumps conducted with combat equipment have a substantially heightened risk of injury than daytime jumps. The risk of injury was further compounded by the lower altitude of the jumps, as low altitude jumps have been shown to have higher injury rates than higher altitude jumps.

zz. The applicant performed these jumps at Fort Campbell as part of his combat duties, while carrying military equipment, and in both daytime and nighttime conditions. These factors support the conclusion that his disabilities were the result of tactical exercises and airborne operations. The DOD has stated that disabilities resulting from military training, including "tactical exercises" and "airborne operations," shall be considered combat-related. Because the applicant's left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot were incurred while engaged in hazardous service, through an instrumentality of war, and in the performance of duty under conditions simulating war, the disability is "combat-related" under Title 10 U.S. Code, section 1413a(e)(2)(B)-(D). Thus, the ABCMR should find he is entitled to CRSC for his left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot.

aaa. The applicant proudly served in the Army and for our county during multiple combat deployments. For the foregoing reasons, he respectfully requests that the ABCMR correct the decisions of the AHRC, and instead find that his PTSD, TBI, obstructive sleep apnea, left knee joint osteoarthritis, right knee joint osteoarthritis, and flat foot are combat-related disabilities for the purpose of CRSC. The applicant should be awarded CRSC because he meets the DOD's preliminary eligibility requirements and has incurred service-connected disabilities that are combat-related under Title 10 U.S. Code, section1413a(e).

2. The applicant states:

a. He enlisted in the Army on 23 January 2007, and served on active duty until his medical retirement on 20 January 2021 in the rank of sergeant first class (SFC). During his 14 years of service, he received 30 medals and awards, including a Bronze Star Medal, Parachutist Badge, and several Army Commendation Medals.

b. He was deployed to combat three times. He deployed to Iraq from 6 October 2008 through 24 September 2009, to Afghanistan from 31 October 2012 through 3 August 2013, and to Iraq a second time from 1 July 2015 through 8 September 2015.

c. During his first deployment to Iraq, he witnessed a sergeant get shot twice, once in the leg and once in the groin. He was standing 20 – 25 feet away from him when this happened. He then dragged the sergeant behind cover with the help of another Soldier.

d. Also, during his first deployment to Iraq in 2008, he was riding in a Bradley vehicle when the vehicle was hit by an explosion from an improvised explosive device (IED). The detonation caused the lid of the vehicle to come down, hitting him on the helmet. His helmet caught on the lid and the lid ripped his helmet off his head. This collision caused hm to fall into the Bradley vehicle and he hit his head again on the floor of the vehicle.

e. In addition to his combat deployments, he was stationed and trained at Fort Campbell, KY, with the 1-160th SOAR from 2014 through 2016. During his time at Fort Campbell, he was engaged in roughly two to four parachute jumps per month. In several of these jumps, due to the inherent difficulties of jumping from low altitudes (especially at night), he hit his head, causing significant injury.

f. Furthermore, due to the repeated jumps he conducted, often while loaded with between 100 to 150 pounds of equipment, he sustained knee and foot injuries. He continues to endure pain in his head, knees, and feet from these jumps. He often feels so much pain in his left knee when he wakes up that he cannot get out of bed.

3. The applicant enlisted in the Regular Army on 23 January 2007 and was awarded the Military Occupational Specialty (MOS) 92Y (Unit Supply Specialist).

4. The applicant deployed to Iraq from 6 October 2008 through 24 September 2009.

5. An Air Assault Course Diploma shows the applicant successfully completed the Air Assault Course on 15 September 2011.

6. The applicant deployed to Afghanistan from 31 October 2012 through 3 August 2013.

7. A Medical Record shows the applicant was seen as an outpatient at the Soldier Readiness health Clinic on 6 August 2013, for post-deployment health reassessment. No current physical or mental issues were noted.

8. Headquarters, U.S. Army Maneuver Center of Excellence Orders 15134-67, 14 May 2015, awarded the applicant the Parachutist Badge for successful completion of airborne training.

9. Headquarters, U.S. Army Maneuver Center of Excellence Orders 15124-423, 14 May 2015, required the applicant to perform the hazardous duty of parachute duty effective 1 May 2015, with additional pay termination on 22 May 2015.

10. The applicant deployed to Iraq a second time from 1 July 2015 through 8 September 2015.

11. The applicant provided multiple medical documents, 19 October 2015 through 10 December 2015, reflecting his examination and treatment during that period for chronic left knee pain with increased swelling and pain with movement and loading. The source of the knee pain is not indicated.

12. The applicant provided numerous pages of medical documents, including VA Compensation and Pension (C&P) examinations, covering the period from December 2017 through October 2020, all of which have been provided in full to the Board for review, detailing his diagnosis and treatment of PTSD, TBI, obstructive sleep apnea, knee and shoulder conditions, and bilateral foot and Achilles pain.

13. The applicant's DA Form 199 shows:

a. An informal PEB convened on 13 November 2020, where the applicant was found unfit with a recommended rating of 50 percent and that his disposition should be placement on the Temporary Disability Retired List (TDRL) with reexamination in August 2021.

b. His unfitting condition is PTSD (Medical Evaluation Board (MEB) diagnosis (Dx) 1); 50 percent. The onset of this condition is 2008 due to combat-related stressors while deployed to Iraq (2008 -2009). This condition was aggravated by his subsequent deployment to Afghanistan (2012 – 2013) and personal family tragedy. This condition is attributed to the following stressors: exposure to explosions, indirect fire, injuries while in combat, and fearing for his live (V1/V3: Yes: Direct result of armed conflict.

c. His medical conditions determined not to be unfitting are MEB Dx 2-19:

- bilateral tinnitus
- gastroesophageal reflux disease (ERD)
- erectile dysfunction
- obstructive sleep apnea
- left ankle lateral collateral ligament sprain
- right ankle lateral collateral ligament sprain
- left knee joint osteoarthritis
- right knee joint osteoarthritis
- bilateral pes planus

- lumbosacral strain
- left carpal tunnel syndrome
- right carpal tunnel syndrome
- left hip strain
- right hip strain
- cervical strain

d. Section V: Administrative Determinations shows:

- the disability disposition is based on 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
- the disability did result from a combat-related injury under the provisions of Title 26, U.S. Code section 104 or Title 10, U.S. Code section 10216

14. U.S. Army Installation Management Command Orders 006-0506, 6 January 2021, released the applicant from assignment and duty because of physical disability with an effective date of retirement on 20 January 2021 and a disability rating of 50 percent. The orders further show disability is based on injury or disease received in the line of duty 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 as defined by law and resulted from a combat-related injury as defined in Title 26, U.S. Code section 104.

15. The applicant's DD Form 214 shows he was retired on 20 January 2021, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), due to disability, combat-related.

16. The applicant's VA Rating Decision, 2 March 2021, shows the applicant was granted service-connection for the following conditions effective 21 January 2021:

- migraine headaches, 50 percent
- obstructive sleep apnea, 50 percent
- PTSD, 50 percent
- flat foot (pes planus), 30 percent
- cervical strain, 20 percent
- left shoulder strain (non-dominant), 20 percent
- right shoulder acromioclavicular joint osteoarthritis (dominant), 20 percent
- carpal tunnel syndrome, left upper extremity (non-dominant), 10 percent
- carpal tunnel syndrome, right upper extremity (dominant), 10 percent
- lateral collateral ligament sprain, left ankle, 10 percent
- lateral collateral ligament sprain, right ankle, 10 percent

- left hip strain, limitation of extension of thigh, 10 percent
- left knee joint osteoarthritis, 10 percent
- lumbosacral strain, 10 percent
- right hip strain, limitation of extension of thigh, 10 percent
- right knee joint osteoarthritis, 10 percent
- tinnitus, 10 percent
- erectile dysfunction, 0 percent
- GERD, 0 percent
- left hip strain, impairment of thigh, 0 percent
- left hip strain, limitation of flexion of thigh, 0 percent
- right hip strain, impairment of thigh, 0 percent
- right hip strain, limitation of flexion of thigh, 0 percent
- scars, right shoulder, 0 percent
- TBI, 0 percent

17. A DD Form 2860 (Claim for CRSC), 18 February 2021, shows the applicant filed a claim for CRSC for the following disabilities:

a. PTSD, with a VA rating of 50 percent and a combat code AC (Armed Conflict); during his 2008 -2009 Iraq deployment, he watched one of his platoon's trucks get struck by an IED and administered first aid to the injured Soldiers.

b. Tinnitus, with a VA rating of 10 percent and the combat code IN (Instrument of War); he was involved in multiple IED blasts and attacks on multiple deployments.

c. Migraine headaches, with a VA raring of 50 percent and the combat code of AC; he received a TBI while in Iraq due to IED blast wave and a turret hatch falling on his head.

d. Sleep apnea, with a VA rating of 50 percent and a combat code of AC; central and obstructive sleep apnea are due to his TBI and PTSD and the result of damage to his brain received on multiple deployments.

e. TBI, with a VA rating of 0 percent and the combat code AC; he was struck in the had by the metal hatch on a Bradley vehicle after an IED shock waive knocked it loose on deployment.

f. Flat feet, with a VA rating of 30 percent and the combat code SW (Simulating War); he was conducting Airborne operations and, on a jump, when he came down on a log, hitting the bottom of his feet. Medics were called over and after later seeing a doctor, he was diagnosed with permanent foot damage and flat feet.

g. Left and right knee joint osteoarthritis, with a VA rating of 10 percent and the combat code SW; due to multiple airborne jumps wherein, he injured both knees.

18. An AHRC Soldier Programs and Service Division letter, 27 April 2021, advised the applicant that the CRSC office completed processing his initial claim.

a. Verified as combat-related was tinnitus; combat code IN; effective date February 2021; justification: combat-related due to an instrumentality of war.

b. After carefully reviewing the available documentation his CRSC claims for obstructive sleep apnea, migraine headaches, PTSD, flat foot, left knee joint osteoarthritis, right knee joint osteoarthritis, erectile dysfunction, TBI were disapproved. According to program guidelines, he must show a documented direct causal relationship between the disability claimed and a CRSC qualifying event. While his claim contained his PEB Proceedings, it did not include any supporting documentation to verify combat exposure or any other CRSC qualifying criteria.

19. The applicant requested CRSC reconsideration on 5 May 2021. An AHRC Soldier Programs and Services Division letter, 28 May 2021, shows:

a. The applicant's request for CRSC reconsideration was reviewed and after reviewing the available documentation, his request for CRSC for obstructive sleep apnea, migraine headaches, PTSD, flat foot, left knee joint osteoarthritis, right knee joint osteoarthritis, erectile dysfunction, and TBI was disapproved.

b. He previously requested CRSC for the conditions listed above, but no new evidence was provided to show a combat-related event caused his conditions. He stated his PTSD resulted from seeing one of his platoon's trucks get hit by an IED and administering first aid to an injured Soldier who did not survive, but provided no facts to show he was engaged with a hostile enemy, and he was not awarded a Combat Action Badge.

c. Unfortunately, experiencing a loss and/or witnessing a death does not qualify for CRSC. Being in a combat zone is not, in and of itself, sufficient to award CRSC. The disability or injury must be linked to a combat-related event. After a thorough review of his documentation and military records, they were unable to find any substantiating documentation in the form of medical records, DD Form 214 entries, awards, or otherwise, linking the cause of his disabilities to a qualifying combat-related event for CRSC entitlement. Therefore, his claim does not qualify for award of CRSC.

20. The applicant provided 12 witness statements from individuals who either deployed with him or witnessed his physical and mental state in the aftermath of his deployments, all of which have been provided in full to the Board. They attest to traumatic events

experienced by the applicant during deployment and resulting physical and mental health conditions.

21. The applicant again requested reconsideration of his CRSC claim on 16 January 2014. A third and final AHRC, CRSC letter, 21 August 2024, shows the applicant was advised after reviewing all documentation in support of his claim, their office remained unable to overturn the previous adjudications. The documentation he submitted still shows no new evidence to link his requested conditions to a combat-related event. This disapproval is now considered final. He was advised he could appeal this decision to the Army Review Boards Agency (ARBA).

22. In the adjudication of this case, an advisory opinion was provided by AHRC on 4 February 2025, which shows:

a. The applicant submitted his initial CRSC application on 16 April 2021. He has requested reconsideration for obstructive sleep apnea, migraine headaches, PTSD, flat feet, left knee joint osteoarthritis, right knee joint osteoarthritis, tinnitus, TBI, and erectile dysfunction. He has been awarded 10 percent CRSC effective February 2021 for tinnitus. Their office was unable to verify a combat-related event in relation to the other claimed conditions. His application has now been reviewed at the initial, reconsideration, and appeal levels and denied due to insufficient evidence.

b. The applicant stated that his major depressive disorder is due to one of his platoon trucks being hit by an IED, indirect fire injuries while in combat, and fearing for his life while in Iraq, 2008 -2009 and Afghanistan 2012 – 2013. While his PEB findings state his PTSD is combat-related due to armed conflict, please recognize that PEB determination are in reference to other laws than CRSC. This means that although the PEB may determine a disability is combat-related under Title 26, U.S. Code, section 104 or Title 10 U.S. Code, section 10216, it does not automatically qualify for CRSC.

c. CRSC found no award recommendations, copies of combat badges, evaluation reports, or wartime chain of command letters corroborating exposure to armed conflict, duties, and/or actions on his claim form. Wartime chain of command letters must be from first sergeant and/or company commander or higher.

d. For the conditions of obstructive sleep apnea, migraine headaches, PTSD, flat feet, left knee joint osteoarthritis, right knee joint osteoarthritis, tinnitus, TBI, and erectile dysfunction, the applicant must provide military documentation and military medical records that establish a direct causal relationship between a qualifying combat-related event and the disability.

23. On 6 February 2025, the applicant and his representing Counsel were provided a copy of the AHRC advisory opinion and given an opportunity to submit comments, but they did not respond by the suspense date.

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 review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board concurred with the Program Specialist for Combat Related Special Compensation (CRSC) for the U.S. Army Human Resources Command deeming the applicant ineligible for CRSC for the conditions of obstructive sleep apnea, migraine headaches, PTSD, flat feet, left knee joint osteoarthritis, right knee joint osteoarthritis, tinnitus, TBI, and erectile dysfunction and determined no medical documentation existed establishing a causal relationship between a combat related event and the conditions. The Board noted the applicant's contentions, through counsel, that his conditions were from years of service in the U.S. Army and his participation in combat-related activities; however, determined no basis to reverse HRC's decision to deny CRSC.

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
:XX	:XX	:XX	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.

[redacted]

X //SIGNED//

CHAIRPERSON
Signed by:

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. 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) 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. 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//