

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20240007970

APPLICANT REQUESTS: reconsideration to overturn the decision of the U.S. Army Human Resources Command (HRC) to deny Combat Related Special Compensation (CRSC).

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's Brief
- Exhibit A - Coastal Medical Specialist documents
- Exhibit B - U.S. Army Medical Department Activity Memorandum for Record with Poplar Springs Hospital documents, 1 June 2017
- Premier Counseling Services documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 15 February 2018
- Department of Veterans Affairs (VA) letter/rating decision, 24 September 2018
- HRC Army Personnel Records Division (APRD) letter, 22 May 2019
- HRC Office of The Adjutant General letter, 2 October 2019
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 16 July 2020
- Order Number D210-11, 28 July 2020
- Letter from D_ T_, 22 October 2020
- DD Form 2860 (Claim for CRSC), 8 January 2021

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210006258 on 10 November 2021.

2. The applicant states:

a. After reviewing the decision of the CRSC packet dated 12 September 2022, the following evidence is being submitted for review. There are numerous hazards that he

was exposed to, which are not reflecting properly within his medical record. In addition, there are numerous outpatient treatments and his primary care provider created outpatient referrals to perform treatment. However, he is not fully understanding how the important documentation was not uploaded to his medical profile. After each visit, upon returning from his third combat deployment, he provided documentation to his Army primary care provider. On the other hand, he is very disappointed regarding the medical supporting documentation not being viewed by the Army Review Boards Agency (ARBA) medical personnel.

b. Attached to support his CRSC entitlement will include the following outpatient documentation scheduled by Army Physician Assistants (PA) and Behavioral Health Physicians.

(1) Obstructive Sleep-Apnea Diagnosis (Coastal Medical Specialist): The following supporting documentation is attached to show his outpatient referrals, scheduled by Army PA. It was developed because of burn-pits, hazardous pollutant vapors exposure, and unsafe living environments. As a result of the combat locations assigned by the Army on each of his deployments. Additionally, each deployment exposed him directly to hazardous vapors, because of unsafe environmental exposures, in Iraq and Afghanistan. The living area, which was a tent for him in Iraq, had multiple vapors enter it from underneath. There were also waste ponds located within the middle of the FOB [Forward Operating Base] during his Afghanistan tour. That affected him and as a result, led to him developing Obstructive Sleep-Apnea. Burn-pits were also in close vicinity of the living area.

(2) Post-Traumatic Stress Disorder (PTSD), which is also coded by VA Schedule of Rated Disabilities: There are multiple ongoing episodes that have been affecting his daily life, mood, and behavior. Please review the attached supporting documentation for the outpatient results. The paperwork will include his outpatient results, that were also uploaded into his medical profile. In addition, there is a previous DA Form 638 (Recommendation for Award), supporting the move forward to Camp Warhorse, during his Iraqi tour. After redeployments, he indicated to his Army PA, of the issues that were affecting him. The provider deemed his diagnosis to require outpatient treatments to assist him.

c. In conclusion, attached are all outpatient treatments that were initiated by Army primary care providers. Therefore, he can get treatment for all the diagnosis that were developed during his combat tours. All documentation is labeled and attached since your [ARBA] medical team/official could not find the paperwork in his Army profile. The reason it may have not been discovered is due to the significance of his diagnosis which required outpatient treatments.

3. A review of the applicant's official records show the following:

a. On 23 May 2007, he enlisted in the Regular Army. He had continued service through his extensions and reenlistments. He held military occupational specialty 92Y (Unit Supply Specialist).

b. His record contains an Enlisted Record Brief showing he served in:

- Africa during the period of 4 July 2015 through 23 February 2016
- Afghanistan during the period of 1 May 2010 through 30 April 2011
- Iraq during the period of 6 January through 5 November 2008
- Germany during the period of 2 November 2007 through 10 July 2014

c. On 28 November 2017, the PEB found the applicant physically unfit for retention due to PTSD which the onset occurred in 2010 while the applicant was deployed to Afghanistan. The condition was attributed to occupational and combat stressors. The PEB recommended the applicant be placed on the Temporary Disability Retired List (TDRL) with 50 percent disability. The PEB determined the following conditions were not unfitting:

- Gastroesophageal Reflux Disease (GERD)
- Pseudo folliculitis Barbae
- Obstructive sleep apnea (OSA)
- Bilateral shoulder strain
- Bilateral chronic wrist sprain
- Bilateral hip strain
- Right knee strain
- Left knee joint osteoarthritis
- Left chondromalacia patella
- Bilateral shin splints
- Bilateral old unfused fracture of the medial malleolus
- Bilateral pes planus
- Bilateral planter fasciitis
- Cervical strain
- Lumbosacral strain
- Bilateral calf muscle strain
- Costochondritis
- Erectile dysfunction
- tension headaches
- bilateral sensorineural hearing loss
- tinnitus
- dental pain

d. On 11 December 2017, the U.S. Army Combined Arms Support Command, Fort Lee, Virginia, published Orders Number 345-0513, which retired the applicant, effective 8 February 2018, and placed him on the TDRL, effective 9 February 2018. The orders show his percentage of disability as 50 percent. On 20 December 2017, the orders were amended to change the effective date of separation to 15 February 2018.

e. He was retired from active duty on 15 February 2018, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), chapter 4 (TDRL). DD Form 214 shows he completed 10 years, 8 months, and 23 days net active service.

f. On 21 November 2018, the HRC, Army Personnel Records Division (APRD), Chief, Special Compensation Branch, notified the applicant that his claim for CRSC could not be awarded for:

- PTSD
- Bilateral pes planus
- Plantar fasciitis
- Left knee osteoarthritis (Chondromalacia patella, calf muscle strain)
- Right knee (calf muscle strain)
- Left hip strain
- Right hip strain
- Right (Dominant) wrist sprain
- Left (Nondominant) wrist sprain
- Lumbosacral strain
- Cervical strain
- Tension headaches
- Obstructive sleep apnea
- tinnitus

The claim failed to show documented direct causal relationship between the disabilities claimed and the CRSC qualifying event. The PEB proceedings did not include any supporting documentation to verify combat exposure or any other CRSC qualifying criteria. The VA did not note any connection between combat and sleep apnea. The Physical Disability Agency determination was in reference to other laws than CRSC. After a thorough review of the applicant's provided documentation and available military records, the HRC APRD was unable to find any substantiating evidence linking the cause of his conditions to the qualifications for CRSC entitlement.

g. On 22 May 2019, the HRC, APRD CRSC notified the applicant that his reconsideration claim could not be awarded CRSC for the same conditions claimed on his 21 November 2018 letter.

h. On 21 October 2019, the HRC, Office of The Adjutant General notified the applicant that his appeal claim could not be awarded CRSC for:

- PTSD persistent depressive disorder with major depressive episode
- Bilateral pes planus
- Plantar fasciitis
- Left knee osteoarthritis (Chondromalacia patella, calf muscle strain)
- Right knee (calf muscle strain)
- Left hip strain
- Right hip strain
- Right (Dominant) wrist sprain
- Left (Nondominant) wrist sprain
- Lumbosacral strain
- Cervical strain
- Tension headaches
- Obstructive sleep apnea
- tinnitus

The documentation submitted did not confirm the disabilities were due to a combat related event.

i. On 16 July 2020, the PEB found the applicant was physically unfit for retention due to PTSD and recommended he be placed on the Permanent Disability Retired List (PDRL) with 70 percent disability. The PEB also found one or more condition(s) not unfitting during the TDRL placement and they were not compensable.

j. On 28 July 2020, the U.S. Army Physical Disability Agency published Order Number D210-11, which removed the applicant from the TDRL and placed him on the PDRL, effective 29 July 2020. In pertinent part, the order shows:

- Percentage of disability: 70 percent
- Component: Regular Army
- Statute authorizing retirement: Title 10, U.S. Code (USC), Section 1201
- Disability is based on injury or disease received in line of duty as a direct result of Armed Conflict or caused by an instrumentality of war period as defined by law: Yes
- Disability resulted from a combat related injury as defined in Title 26, USC, Section 104: Yes

k. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review the applicant's previous case before appearing before the Board. Documentation reviewed included the applicant's ABCMR application and accompanying

documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). In pertinent part, the ARBA Medical Advisor stated, "It is the opinion of the ARBA Medical Advisor there is insufficient probative evidence upon which to reverse the previous non-combat related determination for his mental health condition, and thus such a reversal is unwarranted."

I. On 10 November 2021, the Board voted unanimously to deny the applicant's request to overturn the decision of HRC to deny CRSC. ABCMR Record of Proceedings Docket Number AR20210006258 shows the Board stated:

(1) After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, and the medical advisory, the Board concurred with the advising official finding is insufficient probative evidence upon which to reverse the previous non-combat related determination for his mental health condition. The Board determined there was no evidence that any one of his disabilities was the direct result of armed combat; was related to the use of combat devices (instrumentalities of war); the result of combat training; incurred while performing extra hazardous service though not engaged in combat; incurred while performing activities or training in preparation for armed conflict in conditions simulating war. Based on this, the Board agreed that a reversal on the previous non-combat related determinations for his PTSD is not warranted. Therefore, relief was denied.

(2) Per regulatory guidance to award CRSC for PTSD under the category of armed conflict, the applicant must submit official documentation that shows how the condition is combat related as defined by CRSC program guidance. Official documentation includes wartime chain of command endorsements which confirms exposure to armed conflict (Wartime chain of command must be First Sergeant and/or Company Commander or higher), copies of combat decorations (certificates, combat badges, and DA Forms 638), and/or evaluation reports which support exposure to armed conflict.

(3) 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.

4. In support of his reconsideration the applicant provides:

a. Exhibit A - Coastal Medical Specialist documents showing his medical studies, treatment, examination(s), diagnosis, and physician interpretation for sleep apnea.

b. Exhibit B - U.S. Army Medical Department Activity Memorandum dated 1 June 2017, which states in part, the applicant was receiving treatment from the Department of Behavioral Health (BH) at Kenner Army Health Clinic, Fort Lee, Virginia. It was the recommendation of the applicant's BH provider that he will require more intensive treatment for his symptoms than can be provided at the BH Clinic at the time. Therefore, he was referred to attend the Partial Hospitalization Program at Poplar Springs Hospital located in Petersburg, Virginia. There, he could receive the intensive treatment he needs on an outpatient basis. The program attendance is mandatory.

c. Poplar Springs Hospital documents showing his chief complaint of depression, anxiety, and PTSD. It also shows the applicant's screenings, diagnosis, mental status evaluation/examination, treatments, medications, and prognosis.

d. Premier Counseling Services documents showing his intake/assessment, treatment, and progress notes for PTSD.

e. VA letter/rating decision dated 24 September 2018, which informed the applicant that his disability for his PTSD diagnosis was increased to 70 percent which gave him a combined rating of 100 percent disability.

f. Letter from D_ T_ dated 22 October 2020, stating he was deployed to Iraq with the 2nd Cavalry Regiment from Germany. His unit was stationed at Camp Liberty for 8 months. In May 2008, his unit was relocated to FOB Warhorse for the remainder of his deployment. On the day he arrived at FOB Warhorse, indirect fire struck approximately 25 meters from the office that he and the applicant occupied.

g. DD Form 2860 dated 8 January 2021, which shows the applicant applied for CRSC due to PTSD. In the application he stated that in November 2007 while he was deployed with the 2nd Cavalry Regiment, he relocated from Camp Liberty to FOB Warhorse when indirect fire struck the FOB approximately 25 meters from the office that he occupied with Mr. D_ T_. In support of his claim the applicant provided a witness statement from Mr. D_ T_, DA Form 199, and VA disability rating.

5. The applicant's supporting documents can be reviewed in their entirety within the labeled and tabbed supporting documentation provided to the Board.

BOARD DISCUSSION:

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 determination from the U.S. Army Human Resources Command noting the documentation submitted does not confirm the requested disabilities are due to a combat related event. The Board noted the applicant's contention that he was exposed to a number of hazards and sought outpatient medical treatments; however, determined there was no documentation to support the requested disabilities were caused by combat.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ 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//

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.

//NOTHING FOLLOWS//