

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240009060

APPLICANT REQUESTS: to overturn the U.S. Army Human Resources Command (AHRC) decision to deny his claim for Combat Related Special Compensation (CRSC).

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

- DD Form 149 (Application for Correction of Military Record)
- G1 Drop Checklist
- DA Form 2173 (Statement of Medical Examination and Duty Status) showing his strain of muscle fasci and tendon in his lower back was determined to have occurred in the Line of Duty (LOD)
- National Guard Bureau (NGB) Memorandum, Subject: LOD Determination ([REDACTED]), captain (CPT) (the applicant), 14 May 2018
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings which shows he was recommended for a medical retirement due to degenerative arthritis of the lumbar spine/intervertebral disc syndrome with laminectomy and radiculopathy of the right lower extremity, sciatic nerve
- Headquarters, U.S. Army Physical Disability Agency Orders Number D 137-08
- Enlisted Record Brief

FACTS:

1. The applicant essentially states:

- He filed his CRSC claim but was denied for:
 - Lumbar spine degenerative arthritis and intervertebral disc syndrome, laminectomy
 - Right lower extremity radiculopathy, and
 - Left lower extremity radiculopathy
- These conditions were secondary to his back injury which he sustained at Fort Hood, TX during a training exercise for deployment
- The injury continued to get worse while he was in Kuwait due to the wearing of his military combat equipment

- In the CRSC reconsideration claim for these conditions, he included the LOD determination for the denied injuries

2. A review of the applicant's service record shows:

- With prior enlisted U.S. Naval Reserve and Army National Guard of the United States (ARNGUS) service, on 5 November 2010, he executed his oath of office and was appointed as a Reserve Commissioned officer in [REDACTED] ARNG
- On 5 November 2011, he was appointed in the [REDACTED] ARNG by Special Orders Number 169 dated 26 July 2011
- DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was ordered to active duty for training on 18 September 2011 and was honorably released on 26 January 2012
- On 28 September 2017, he was ordered to active duty in support of Operation Enduring Freedom (Spartan Shield) by Orders Number 14-234-0214 dated 22 August 2017
- On 14 May 2018, the NGB approved the applicant's LOD as in the line of duty for lower back strain of muscle, fascia and tendon which occurred during Operation Enduring Freedom (Spartan Shield); the DA Form 2173 shows the applicant:
 - Developed a lumbar strain at Fort Hood, TX during Culminating Training Event and had a sharp pain in his back after running cable
 - While at Camp Buehring, Kuwait, he sought treatment and was provided muscle relaxers and shots for the pain
 - He was scheduled for physical therapy
- On 29 May 2018, he was honorably released from active duty, DD Form 214 shows he:
 - Served in Kuwait during the period of 24 November 2017 through 11 May 2018
 - Served in Iraq during the period of 12 through 23 January 2018
 - Served in Iraq during the period of 7 through 21 March 2018
- On 8 May 2023, the informal PEB determined the applicant was physically unfit for retention and recommended he be placed on the Permanent Disability Retired List (PDRL) with 40 percent disability for:
 - Degenerative arthritis of the lumbar spine/intervertebral disc syndrome with laminectomy with 20 percent disability rating
 - Radiculopathy, right lower extremity, sciatic nerve with 20 percent disability rating

- He sought treatment for back pain in September 2017 while deployed to Kuwait
 - The conditions presented as sharp pain which developed while he was running cable
 - He developed right lower extremity pain which is secondary to the back pain
 - He concurred with the PEB findings and recommendation and did not request reconsideration of the Department of Veterans Affairs ratings
- On 16 June 2023, he was retired from the ARNG and placed on the PDRL on 17 June 2023 with a 40 percent disability rating, the disability was incurred in the line of duty in a combat zone or result of performing combat related operations by Orders Number D 137-08 dated 17 May 2023
 - On 26 June 2023, AHRC notified the applicant his CRSC claim could not be processed as his records shows he did not have a Veterans Affairs waiver offsetting his retired pay
 - On 10 January 2024, AHRC notified the applicant his CRSC claim was approved for:
 - Chronic Sinusitis at 50 percent disability rating due to an instrumentality of war
 - Tinnitus at 10 percent disability rating due to an instrumentality of war
 - Right ear hearing loss at zero percent disability rating due to an instrumentality of war
 - The following conditions were denied as the PEB stated the disability was not combat related for:
 - Lumbar spine degenerative arthritis and intervertebral disc syndrome, laminectomy at 20 percent disability
 - Right lower extremity radiculopathy at 20 percent disability and a condition secondary to a condition which was not combat related
 - Left lower extremity radiculopathy at 10 percent disability and a condition secondary to a condition which was not combat related
 - On 27 June 2024, AHRC notified the applicant his CRSC claim was denied for the following conditions due to no new medical evidence:
 - Lumbar spine degenerative arthritis and intervertebral disc syndrome, laminectomy at 20 percent disability
 - Right lower extremity radiculopathy at 20 percent disability
 - Left lower extremity radiculopathy at 10 percent disability

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. While the injuries appear to be service related, the Board found no independent evidence in the available records that establishes a direct causal relationship between a qualifying combat event and the applicant's injuries.

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.

5/6/2025

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CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, United States Code (USC), section 1413a (Combat Related Special Compensation (CRSC) (c) (Eligible Retirees), an eligible combat related disabled uniformed services retiree is a member of the uniformed services who: is entitled to retired pay (other than by reason of section 12731b of this title); and has a combat-related disability. Effective date shall take effect not later than 180-days after the date of the enactment of this act of 2 December 2002. (e) (Combat-Related Disability), "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that: (1) is attributable to an injury for which the member was awarded the Purple Heart; or (2) was incurred (as determined under criteria prescribed by the Secretary of Defense); 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.

2. Title 10, USC, chapter 61, section 1201 (Regulars and members on active duty for more than 30 days: retirement), (a) Retirement - upon a determination by the Secretary concerned that a member is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b). (b) Required Determinations of Disability - determinations by the Secretary that: (1) based upon accepted medical principles, the disability is of a permanent nature and stable; (2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and (3) either; (A) the member has at least 20 years of service; or (B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either (i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service); (ii) the disability is the proximate result of performing active duty; (iii) the disability was incurred in line of duty in time of war or national emergency; or (iv) the disability was incurred in line of duty after 14 September 1978.

3. Department of Defense Financial Management Regulation 7000.14-R, Volume 7B, (Military Pay Policy – Retired Pay), provides information for the specific qualifications and entitlement for military retired pay, describes the basic types of retirement (regular, non-regular, and disability), discusses voluntary and involuntary retirements, and explains basic qualifications for the differing military retired pay programs.

a. Chapter 63, Combat Related Special Compensation (CRSC), paragraph 1.1 Effective Date. The CRSC program became effective 31 May 2003. Payments are

made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving VA disability compensation for a disability that has been determined to be combat related by the Military Department. No CRSC is payable for any month prior to June 2003.

b. Paragraph 1.1.1.3, for an eligible member who is retired under Title 10, USC, Chapter 61 (Title 10, USC, Chapter 61) with less than 20 years of active duty or with less than sufficient service and age to qualify for retirement under Title 10, USC, section 12731, compensation is effective 1 January 2008.

c. 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

d. 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.

e. 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.

4. Title 38, USC, sections 1110 and 1131, permit the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards

compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered physically unfit for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

5. Title 26 USC, section 104 (Compensation for injuries or sickness), (b) (3) (Special rules for combat-related injuries), for purposes of this subsection, the term "combat-related injury" means personal injury or sickness, (A) which is incurred; as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war; or (B) which is caused by an instrumentality of war. In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts considered shall be the amounts which he receives by reason of a combat-related injury. (4) Amount excluded to be not less than veterans' disability compensation in the case of any individual described in paragraph (2), the amounts excludable under subsection (a) (4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans Administration.

//NOTHING FOLLOWS//