

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 May 2025

DOCKET NUMBER: AR20240009188

APPLICANT REQUESTS: In effect, correct both his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) and Orders Number 129-0004 to show his disabilities:

- Were incurred in the line of duty as a direct result of armed conflict or instrumentality of war and incurred during a period of war, and
- Resulted from a combat-related injury

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Human Resources Command (HRC) Letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, his retirement orders and DA Form 199 erroneously state his injuries were not combat-related; however, just months after his disability retirement, HRC awarded him Combat-Related Special Compensation (CRSC) for the same disabling conditions.
3. A review of the applicant's service records show the following:
 - On 7 June 2010, the applicant enlisted into the Regular Army; after completion initial entry training and the award of military occupational specialty 88M (Motor Transport Operator), he reported to his first duty assignment; he continued his active duty service through immediate reenlistments and extensions
 - On 17 April 2020, an Informal Physical Evaluation Board (IPEB) found the applicant was physical unfit to continue military service and recommended his

placement on the Permanent Disability Retired List (PDRL) with a combined disability rating of 50 percent

- The applicant's DA Form 199 lists the below-listed unfitting medical conditions:
 - Fibromyalgia
 - Left patellar tendon tear
 - Right patellar tendon tear
- Among the conditions the IPEB found not unfitting were the following:
 - Flat foot (pes planus) bilateral
 - Tinnitus
 - Tendonitis (achilles/peroneaVposterior tibial) bilateral ankles
 - Left and right foot osteoarthritis
- Section V (Administrative Determinations) of the applicant's DA Form 199 states:
 - The disability disposition is not 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 not result from a combat-related injury under the provisions of Title 26 (Internal Revenue Code), U.S. Code, section 104 (Compensation for Injuries or Sickness)
- On 8 May 2020, the U.S. Army Support Activity, Joint Base Langley-Eustis published Orders Number 129-004; the orders state:
 - 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: No
 - Disability resulted from a combat related injury as defined in Title 26, U.S. Code, section 104: No
- On 30 July 2020, the Army honorably retired the applicant based on permanent disability; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 10 years, 1 month, and 24 days of net active duty service
- On 18 August 2020, the applicant filed for CRSC with HRC; on 27 September 2020, HRC determined the following medical conditions were verified as combat-related:

- Fibromyalgia
- Bilateral Pes Planus With Bilateral Foot Osteoarthritis
- Right Achilles Tendonitis
- Tinnitus

4. On 25 April 2025, the U.S. Army Physical Disability Agency (USAPDA) provided an advisory opinion.

- "At the time of the IPEB, [applicant's] case file did not contain sufficient evidence to support the conclusion that his unfitting fibromyalgia condition was combat related"
- "Since then, [applicant] provided sufficient evidence and argument for HRC to approve CRSC for his unfitting fibromyalgia condition"
- "Given that [applicant's] fibromyalgia condition is now considered incurred due to an instrumentality of war, his DD 214 and retirement orders should be amended to reflect the new findings"

5. On 30 April 2025, the Army Review Boards Agency provided the applicant a copy of the advisory opinion for his review and the opportunity to submit matters in rebuttal; the applicant did not respond.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the facts outlined in the USAPDA advisory opinion, the Board concluded there was sufficient evidence to show the applicant's disabilities were incurred in the line of duty as a direct result of armed conflict or instrumentality of war and resulted from a combat-related event.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected to show the applicant's disabilities were incurred in the line of duty as a direct result of armed conflict or instrumentality of war and resulted from a combat-related event; thus making him eligible to receive Combat-Related Special Compensation (CRSC) for the injuries.

//SIGNED//

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code:

a. Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

b. Section 1413a (Combat-Related Special Compensation (CRSC)), as amended, provides for the payment of money to an eligible combat-related disabled military retiree (i.e., a member of the uniformed services who is entitled to retired pay and has a combat-related disability). The term "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. Effective 1 January 2008, Department of Defense (DOD) implemented supplemental guidance based on the enactment of the Fiscal Year 2008 National Defense Authorization Act (NDAA). This change provided special rules for CRSC eligible retirees with fewer than 20 years of service who retired under chapter 61 (Retirement or Separation for Physical Disability) of Title 10, U.S. Code, and for Temporary Early Retirement Authority (more than 15 but less than 20 years of total active service).

3. Title 26 (Internal Revenue Code), U.S. Code, section 104 (b) (3) (Compensation for Injuries or Sickness – Special Rules for Combat-Related Injuries) states, for the purposes of the subsection, the term "combat-related injury" means a personal injury or sickness that occurred as a direct result of armed conflict; or while engaged in extra-hazardous service; or under conditions simulating war; or was caused by an instrumentality of war.

4. The DOD Financial Management Regulation 7000.14-R, Volume 7B (Military Pay Policy – Retired Pay), currently in effect, includes combat-related injury definitions:

a. Direct Result of Armed Conflict.

(1) 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, or 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 liability.

(2) 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.

(3) Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

b. While Engaged in Hazardous Service. Such service includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of such hazardous service requires that the injury or disease be the direct result of actions taken in the performance of such service.

c. In the Performance of Duty Under Conditions Simulating War. In general, this 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.

d. Instrumentality of War.

(1) Incurrence during an actual period of war is not required. There must be a direct causal relationship between the instrumentality of war and the disability. The disability must be incurred incident to a hazard or risk of the service.

(2) 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.

(3) 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.

5. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), currently in effect, implements chapter 61 (Retirement or Separation for Physical Disability) under Title 10 (Armed Forces), U.S. Code.

a. Paragraph 4-22 (The Informal Physical Evaluation Board (IPEB) Process).

(1) All cases will be initially adjudicated by an IPEB. The IPEB conducts a documentary review of the case file without the presence of the Soldier to make an initial decision on the Soldier's fitness for continued service. The IPEB may obtain additional documents necessary for proper adjudication and will include them in the case file.

(2) The IPEB will make informal determinations and include their findings and any revised findings on a DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings). Those determinations include the following:

(a) A determination and supporting documentation for purposes of employment under Federal civil service laws regarding whether the Soldier's unfitting conditions were

incurred in combat with an enemy of the United States or were the result of armed conflict or were caused by an instrumentality of war during a period of war.

(b) A determination and supporting documentation regarding whether the Soldier's disability compensation is excluded from Federal gross income under Title 26, U.S. Code, section 104.

b. Paragraph 5-24 (Determinations for Purposes of Federal Civil Service Employment).

(1) Physical disability evaluation will include a decision and supporting documentation regarding whether the injury or disease that makes the Soldier unfit or that contributes to unfitness was incurred in combat with an enemy of the United States, was the result of armed conflict, or was caused by an instrumentality of war during a period of war.

(2) These determinations impact the eligibility of certain military retirees for the benefits listed below when employed under the Federal Civil Service System and will be recorded on the Soldier's record of proceedings.

c. Paragraph 5-25 (Determinations for Federal Tax Benefits).

(1) Physical disability evaluation will include a determination and supporting documentation on whether the Soldier's disability compensation is excluded from Federal gross income under the provisions of Title 26, U.S. Code, section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

(2) The amount of disability retired pay subject to exclusion from Federal gross income is the amount equal to the product of the Soldier's disability percentage (up to 75 percent for an Integrated Disability Evaluation System case) times the Soldier's retired pay base.

//NOTHING FOLLOWS//