

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240009446

APPLICANT REQUESTS: this case comes before the Army Board for Correction of Military Records (ABMCR) on a remand from the United States Court of Federal Claims (USCFC). The Court directs the ABMCR to reconsider the applicant's request for correction of his records to show he was approved for Combat-Related Special Compensation (CRSC) for post-traumatic stress disorder (PTSD) and right elbow strain.

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

- DD Form 149, Application for Correction of Military Record
- Legal Brief
- Redacted ABCMR Record of Proceedings Docket Number AR20190015543, Not the Applicant
- ABCMR Record of Proceeding Docket Number AR20230008456, Not the Applicant
- USCFC Complaint and Motion for Remand
- 55 Exhibits consisting of:
  - Assignment orders
  - Medical records
  - Behavioral Health record and diagnosis
  - Physical Evaluation Board (PEB) Proceedings
  - Retirement Orders
  - DD Forms 214, Certificate of Release or Discharge from Active Duty
  - Department of Veterans Affairs(VA) Rating Decisions
  - Eyewitness statements
  - Personal statements
  - CRSC Program Guidance
  - CRSC decision letters
  - Prior ABCMR proceedings
  - U.S. Army Human Resources Command (AHRC) advisory opinions

FACTS:

1. Applicant's counsel states that the applicant filed his ABCMR application in 2022 after the AHRC denied his CRSC application for PTSD, bilateral planta fasciitis and bilateral pes planus, right elbow strain, lumbar spondylosis with degenerative disc disease, right ankle/foot tarsal tunnel syndrome, and erectile dysfunction stating that the applicant did not provide new evidence to show that a combat-related event caused the condition. The applicant had been previously granted CRSC for tinnitus, left shoulder pain, and left hearing loss, effective June 2016. His total combat-related disability is rated at 10%. The applicant filed an unopposed motion for a voluntary remand on 23 August 2024 to the ABCMR. For good cause shown, the applicant's motion to remand pursuant to Rule 52.2 of the Rules of the USCFC was granted, and the case was remanded until 21 February 2025, to the Secretary of the Army, who has referred it to the ABCMR for further consideration.

a. The court has order the ABCMR:

(1) Explain whether it is crediting each witness statement and/or medial record provided; and explain the specific legal basis for not crediting any particular evidence.

(2) To evaluate whether the Army inconsistently granted CRSC for tinnitus while denying CRSC for PTSD, and whether the Army inconsistently granted CRSC for a left shoulder condition while denying CRSC for a right elbow condition – when the conditions had the exact same causes.

(3) Explain its decision using the required preponderance of the evidence standard.

(4) Explain whether it considered the PEB determinations as persuasive evidence and, to the extent it does not, explain why.

(5) Determine whether the applicant's PTSD and right elbow strain CRSC claims satisfy the criteria argued below, instead of solely addressing the armed conflict criterion.

(6) Consider evidence from both of the applicant's deployments, including evidence of exposure to indirect fire and to explosive hazards as a Mine Detection Dog (MDD) handler.

b. The applicant first applied for CRSC for his PTSD and right elbow strain conditions more than seven years ago, in August 2017. He is here on remand, after the Court recognized potential errors by the ABCMR in adjudication of his prior claims. The ABCMR has the opportunity now to correct those errors. The applicant respectfully

requests that the ABCMR grapple with and address each of the arguments and exhibits discussed below and enclosed in making a careful and considered determination in this case.

c. The applicant served honorably in the U.S. Army from October 2001 until May 2016. On 29 October 2001 he enlisted in the Army National Guard (ARNG). The applicant served on active duty from 12 February 2001 to 21 June 2001, and again, from 31 March 2003 to 11 April 2004, during which time he was deployed in Afghanistan. During this period, his military occupational specialty was 12B, Combat Engineer with specialized training as a MDD handler known now as Combat Engineer MDD handler. This four-member MDD handler team was the first in the history of the Army and ARNG.

d. The applicant underwent 760 hours of training to qualify for the Combat Engineer MDD handler role, as well as hundreds more hours in additional training prior to and during his first deployment. The training exercises were so intense that three of the original seven members of his detachment were lost to stress. During his deployment, the role required the applicant to spend hours a day in fields surrounding Bagram Airbase that were known to have live mines, unexploded ordnances, and other explosives, as well as possible anti-handling devices. The applicant used a 30-foot lead to direct his MDD during this work, and his MDD often pulled hard against the lead, extending it to the full 30 feet. The applicant, in turn, would hold the strained lead at chest-height and pull right or left to help guide himself and the animal safely through the live mine field.

e. Moreover, he expertly led his MDD in the detection and disposal of live mines and explosives with the knowledge that if one were to explode in their presence, he and others around him would almost certainly be severely wounded or killed. He performed these duties with limited protective equipment, no weapon, and no protective cover.

f. Following his first deployment, the applicant served with the California ARNG. He returned to active duty on 16 August 2007. During this period, the applicant was again deployed to Afghanistan from 24 January 2011 to 23 November 2011, He served as a Horizontal Construction Engineer at Forward Operating Base Orgun-E. As described below, the applicant was at least twice subject to attacks by the enemy during his active-duty service.

g. On 10 February 2014, the VA determined that his PTSD was service-connected with a disability rating of 100%, effective 12 January 2012.

h. As recommended by the Medical Evaluation Board (MEB), the applicant was evaluated by the PEB. On 3 February 2016, the Formal PEB Proceedings stated that “[t]he Soldier was diagnosed with PTSD due to combat stressors from deployment to

Afghanistan.” Administrative findings during those proceedings determined that his disability was “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,” and that “[t]he 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.” The PEB also stated that “the onset and/or incurrence of the unfitting conditions is deemed to have been in line of duty in a combat zone; in a combat zone tax exclusion area; or during the performance of duty in combat-related operations.” The PEB conferred a 70% disability rating for PTSD, along with several other injuries, for a combined rating of 80%. It also directed the applicant be placement on the Temporary Disability Retired List (TDRL).

i. The applicant was released from active duty for medical retirement effective 9 May 2016, and placed on the TDRL. The Special Order formalizing his retirement stated that the applicant’s disability was “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.”

j. In a 10 June 2016 VA Rating Decision, the applicant’s PTSD disability rating was decreased to 70%, and his right elbow strain was determined to be service-connected with a 10% disability rating, effective 10 May 2016.

k. In a 6 March 2017 VA Rating Decision, his PTSD disability rating was increased to 100%, effective 10 May 2016, and his right elbow strain disability rating remained unchanged.

l. The PEB reconvened on 6 September 2017, in an informal proceeding to evaluate the applicant’s status on the TDRL. The PEB reevaluated and recommended the applicant’s PTSD at a 100% rating. The PEB stated, “the Soldier remains unfit for post-traumatic stress disorder resulting from a deployment to Afghanistan and directly related to an instrumentality of war.” The examination also restated that the PTSD was “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,” and that “[t]he 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.”

m. On 26 September 2017, the applicant was permanently medically retired from the U.S. Army with a disability rating of 100%. The Army stated that his disability was “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 period as defined by law,” and “resulted from a combat-related injury as defined in Title 26, U.S. Code, section 104.”

n. The Army's denial of the applicant's CRSC Claims. Notwithstanding these numerous statements and findings by the Army that his disabilities were the "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 Army repeatedly has denied the applicant's requests for CSRC. On 22 August 2017, he applied for CRSC for his PTSD, right elbow strain, and several other injuries. On 29 March 2018, the CRSC Board denied his application in its entirety, stating, "you did not provide a description of the events surrounding your PTSD and why you feel its meets [sic] the guidelines for CRSC. [ ... ] You provided no facts that you were engaged with a hostile enemy and you were engaged with a hostile enemy and you were not issued a Combat Action Badge."

o. On 25 August 2020, the applicant filed a request for reconsideration, which focused on three of his disabilities: PTSD, right elbow strain, and tinnitus. The submission responded to the Board's earlier decision by including additional evidence to establish a direct relationship between his disabilities and the qualifying combat-related events that caused them. The submission also explained the events surrounding the applicant's PTSD and why they meet the guidelines for CRSC. On 2 December 2020, the CRSC Board partially approved his request for reconsideration and approved CRSC for his tinnitus and left hearing loss disabilities. The CRSC Board erroneously denied his request for reconsideration for his PTSD and right elbow strain, stating that the applicant "provided no details on how [his] injury occurred as a result of a combat-related event and [he was] not awarded [a] Combat Action Badge."

p. On 14 October 2021, the applicant filed an initial request for CRSC for his left shoulder strain disability. This injury had not previously been considered by the CRSC Board. On 23 November 2021, the CRSC Board denied this request in a decision that failed to discuss at all his left shoulder strain disability-the disability for which CRSC had most recently been requested.

o. After counsel raised the failure to consider the applicant's claim, the CRSC Board conducted an audit of its 23 November 2021 decision. On 28 February 28, 2022, the CRSC Board acknowledged error and approved his request for CRSC for his left shoulder strain disability. This decision letter attributed the applicant's left shoulder strain to an instrumentality of war. The CRSC decision letter also listed his PTSD and right elbow strain as "unable to verify as combat-related disability" with the following comment: "FINAL DISAPPROVAL; no new medical evidence provided to show combat-related event caused condition."

p. On 24 August 2022, the applicant appealed to the ABCMR the CRSC Board's decision that his PTSD and right elbow strain were not combat-related. The ABCMR obtained an advisory opinion from the AHRC on 21 February 2023, recommending against an award of CRSC for PTSD and right elbow strain. The Advisory Opinion is inconsistent with the CSRC Board's own findings and wrongly failed to consider three

key categories of evidence submitted by the applicant as well as the Army's own conclusion regarding the occurrence of his PTSD.

q. The applicant submitted a response to the Advisory Opinion on 14 March 2023. On 14 June 2023, the ABCMR denied his appeal. The ABCMR did not provide any reasoning for its decision-making in the denial letter; rather, the ABCMR merely "concurred with advisory official finding there is insufficient evidence to show the condition(s) are combat related."

r. Upon reviewing the applicant's complaint and the administrative record, the United States requested that the Court remand the case to the ABCMR. The applicant filed a complaint in the USCFC on 21 March 2024, identifying five principal errors in the ABCMR's June 2023 denial of his claims.

(1) The ABCMR failed to respond to his argument that his PTSD and right elbow strain were caused by instrumentalities of war that already form the basis for CRSC compensation for other disabilities.

(2) The ABCMR did not weigh significant documentary evidence submitted by the applicant on the incorrect basis that only "official military documentation" may be considered for an award of CRSC.

(3) By failing to consider the documentary evidence he submitted, the ABCMR applied a higher burden of proof than the preponderance of the evidence standard required by CRSC Program Guidance, and the ABCMR failed to distinguish its determination that his PTSD is not combat-related from that of the PEB - even though the PEB also applied the preponderance of the evidence standard and arrived at the opposite conclusion.

(4) The ABCMR addressed only whether his disabilities are combat-related because they resulted from armed conflict and ignored entirely that his disabilities qualify him for CRSC under any one of three other statutory criteria.

(5) The ABCMR failed to address whether his PTSD is combat-related because it occurred as a result of indirect fire.

s. On 22 August 2024, upon reviewing the applicant's administrative record, the United States requested that the Court remand his case to the ABCMR. In an unopposed consent Motion for Remand filed with the Court, the United States observed: ... [H]aving reviewed the underlying ABCMR opinion ...it is not clear from the opinion or the CRSC procedures and criteria in Federal Management Regulation 7000.14-R from where the "commander or first sergeant" requirement the board refers to as the "wartime chain of command" derives. In light of this, the ABCMR should reconsider

whether to credit statements from service members other than the commander or first sergeant, or, if the ABCMR is not going to credit those statements, it should explain the basis of the requirement that statements must come from a commander or first sergeant or other member of the chain of command.

t. The United States further requested that the ABCMR “explain its reasoning (and reconsider its decision if appropriate) as to whether or not it is inconsistent for the Army to grant the applicant CRSC for a left shoulder injury due to his work with MDDs and for tinnitus due to his exposure to demining operations, but deny CRSC for a right elbow injury and for PTSD due to the same instrumentalities of war.”

u. On 24 August 2024, the Court entered an order remanding the case to the ABCMR. Specifically, the Court ordered that the ABCMR:

(1) Explain whether it is crediting witness statements and/or medical records provided by the applicant; (if the ABCMR is not crediting those witness statements and/or medical records, the ABCMR should explain the legal basis for its reliance on these requirements);

(2) Consider evidence from both of his deployments to Afghanistan, including evidence of his exposure to indirect fire and exposure to explosive hazards as a MDD handler;

(3) Evaluate both whether the Army inconsistently granted CRSC to the applicant for his left-shoulder condition while denying CRSC for his right elbow condition and whether the Army inconsistently granted him CRSC for tinnitus while denying CRSC for his PTSD;

(4) Explain its rationale with reference both to the preponderance of the evidence standard and the extent to which it considered the PEB’s determination as persuasive evidence; and

(5) Address in its decision whether medical records that described the applicant’s upper-body injuries and PTSD were considered in reaching its conclusions, and if any such records were not considered, explain under what rationale.

v. The Court further directed the ABCMR to determine whether he is entitled to CRSC for his PTSD based on the instrumentality of war, hazardous service, and/or “as a direct result of armed conflict (including indirect fire)” criteria, as well as whether he is entitled to CRSC for his right elbow strain based on the instrumentality of war, hazardous service, and/or conditions simulating war criteria.

w. To establish eligibility for CRSC, an applicant must be: (1) a military retiree; (2) “entitled to retired pay” (except in certain instances not relevant here); and have (3) “a combat-related disability.” The first two criteria are not in dispute here; the sole question at issue in this case is whether his disabilities are “combat-related.”

x. A “combat-related disability” is “a disability that is compensable under the laws administered by the Secretary of VA.” To qualify as such, a disability must be one of the following:

- attributable to an injury for which the member was awarded the Purple Heart
- incurred as a direct result of armed conflict
- incurred while engaged in hazardous service
- incurred in the performance of duty under conditions simulating war, or
- incurred through an instrumentality of war

y. As required by statute, DOD has established CRSC Program Guidance, which prescribes uniform procedures and criteria under which military retirees may apply to the Secretary of their military department for CRSC. Under Program Guidance, CRSC determinations must be “based on the preponderance of available documentary information[,] where quality of information is more important than quantity. In addition, “[a]ll relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation, or conjecture.”

z. Program Guidance also provides “criteria, terms, definitions, [and] explanations” that apply when making combat-related determinations for each of the statutory bases for CRSC. Whether an applicant meets these criteria is judged only on the basis of the preponderance of the evidence. Four of the categories of service-connected disabilities warranting CRSC compensation are relevant here, although the applicant need only meet the criteria for one of them to qualify for CSRC. Each of them are set forth below in the following paragraphs:

(1) Direct Result of Armed Conflict. A disability is “combat-related” because it was incurred as “a direct result of armed conflict” if: (a) the disability was “incurred in the line of duty as the direct result of armed conflict” and there is (b) “a definite causal relationship between the armed conflict and the resulting disability.” Program Guidance broadly defines “armed conflict” as “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 terrorists. “



(2) Hazardous Service. Under Program Guidance, combat-related disabilities are attributable to hazardous service if they were incurred while engaged in duties and responsibilities including, but not limited to, “aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty.”

(3) Under Conditions Simulating War. A disability is “combat-related” because it was incurred in the performance of duty “under conditions simulating war” if it results 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, repelling, and negotiation of combat confidence and obstacle courses.” Program Guidance provides that this is a non-exhaustive list of military training activities that may constitute “conditions simulating war,” meaning that other activities performed “under conditions simulating war,” also qualify (so long as the injury was not incurred as part of “physical training activities such as calisthenics and jogging or formation running and supervised sport activities”).

(4) Instrumentality of War. Program Guidance defines an instrumentality of war as 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 disability is “combat-related” because it was incurred through an instrumentality of war if there is “a direct causal relationship between the instrumentality of war and the disability,” and the disability was “incurred incident to a hazard or risk of the service.” The Program Guidance further provides: [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. The Secretary of each military branch, acting through each branch’s board of corrections of military records, may revise any military record when it is “necessary to correct an error or remove an injustice. For the Army, that board is the ABCMR. When the ABCMR denies a CRSC claim, as happened here, it is obligated under the Program Guidance to provide a letter “specifying the reason(s)” for the denial. The letter must state “any criteria the application fails to meet.”

aa. Legal Argument. The applicant’s PTSD is combat-related under the Preponderance of the Evidence Standard. His PTSD is Combat-Related Under any one of the Armed Conflict, Instrumentality of War, or Hazardous Service Criteria. His PTSD was Directly Caused by Armed Conflict.

bb. During his deployments to Afghanistan, the applicant experienced multiple instances of armed conflict, as defined under Program Guidance, each of which is sufficient to meet the eligibility requirements for CRSC. Medical evidence described

below illustrates that the applicant's PTSD was caused by, and later exacerbated by, this armed conflict.

cc. During his first deployment, he was attacked and fired upon by the enemy at close range. On the 23 or 24 November 2003, when the applicant was on duty outside of Bagram Airbase working in a live mine field with his MDD and Unit, they were fired upon by the enemy at extremely close range. As he was unarmed in a live mine field with his MDD, he could not take immediate cover and could only slowly guide his MDD out of the active mine field. There were two eyewitnesses to this event in addition to the applicant. Staff Sergeant (SSG/E-6) (Retired) [REDACTED] the applicant's teammate, was also fired upon by the enemy, and Sergeant First Class (SFC/E-7)(Retired) [REDACTED] the Noncommissioned Officer in Charge (NCOIC) of the unit, witnessed the event from approximately 50-75 meters away. SSG [REDACTED] stated that the incident occurred "approximately 2 to 3 miles Northeast of the Airfield." The applicant and SSG [REDACTED] heard bullets flying over and around them, and they yelled to SFC [REDACTED] that they were taking enemy fire. SSG [REDACTED] stated that they "started to hear the buzzing sound of bullets around us." He added further that, "we both were in a dangerous situation and taking enemy fire." SSG [REDACTED] reported "several shots," and he "equate[d] it to an uncoordinated incident by the enemy. SFC [REDACTED], who was observing the operation from outside the active minefield, stated, "several of the members of the team, the applicant included, reported hearing bullets fly over, past, or around them, causing us to cease operations and seek cover." The applicant reported being able to hear the bullets whizzing by his head. These witness statements are corroborating evidence for the attacks. The ABCMR recently determined in another case that written statements, such as those submitted by the applicant here, can be used to corroborate his version of events and as evidence that he "truly experienced" the events described. The attack constituted armed conflict and it directly caused the applicant's PTSD, as described by the medical evidence detailed below.

dd. During the applicant's second deployment, he was in his office on the base at which he was stationed when the base suffered a mortar attack. During this attack, mortar shrapnel pierced the office wall directly where he was working. The mortar attack constituted armed conflict, and it was another direct cause of his PTSD. This second incident of armed conflict perhaps impacted the applicant even more acutely when considered in combination with the mental and physical strain he experienced in Afghanistan during his first deployment in 2003-2004.

ee. The applicant's PTSD was directly caused by an instrumentality of war. An award of CRSC is warranted for him based on the instrumentality of war criteria for three reasons.

(1) During his first deployment, SFC [REDACTED] NCOIC of the applicant's unit, detailed that the applicant was often "within close proximity to other manual demining

operations, flailing and unexploded ordnance (UXO) demolitions, mortar attacks and even near misses by targeted or stray rounds. These rounds were instrumentalities of war that were fired directly at the applicant by the enemy during the armed attack described above, which he could hear whizzing by his head.

(2) During the applicant's second deployment, the mortar shrapnel that pierced his office directly where he was sitting constituted an instrumentality of war.

(3) As a result of his two deployments, his PTSD was caused in part by his exposure to mines and other military ordnance. Program Guidance states that an instrumentality of war includes "injury or sickness caused by ... military ordinance." As described below, medical evidence shows that these instrumentalities of war are directly and causally related to his PTSD.

ff. The applicant's PTSD was Directly Caused by Hazardous Service. He is equally entitled to CRSC based on the hazardous service criterion, as defined by CRSC Program Guidance. During his first deployment, his role as a Combat Engineer MDD handler constituted hazardous service - mine detection in an open mine field without a weapon or other protective gear is inherently dangerous work. As explained above, his duties required standing in a live mine field, with his MDD, without protective cover, for hours each day. If a mine were to explode while they were working in the field, they would almost certainly be severely wounded or killed. He received hazardous duty and demolition pay for this work.

gg. He was also awarded an Army Commendation Medal on 21 January 2004, which stated, "[the applicant] placed himself in harm's way on a daily basis while conducting military mine clearance. His outstanding performance of duty in a combat zone reflects great credit upon himself [ ... ]." To illustrate the hazardous service that the applicant performed, SFC [REDACTED] detailed that, "[d]uring clearance operations [the applicant] was required to wear the Medng [sic] Demining Suit (weighing approximately 45 pounds) while working in areas that were known to have mines, unexploded ordnance, possible anti-handling devices [ ... ] [when] [a]ny break in concentration [ ... ] could cause a mine or explosive to be missed and the loss of life, limb or eyesight of himself, his K9 companion, or another team member."

hh. The physical and mental strain of this hazardous service directly caused his PTSD disability. He faced a substantial risk of death every time he and his MDD entered a live mine field with limited protective equipment and no protective cover. This risk of death caused mental and physical strain, as shown by the medical evidence described below, which directly caused his PTSD disability. Further, the applicant was engaged in hazardous service as a Combat Engineer MDD handler when he was attacked by the enemy at close range in the armed conflict described above. This attack directly caused his PTSD disability. Because the applicant was engaged in hazardous service at the

time of the attack that caused his PTSD, the applicant qualifies for CRSC for his PTSD under the hazardous service provision.

ii. Medical evidence shows by a preponderance of the evidence that the applicant's PTSD is combat-related. The applicant had no history or symptoms of PTSD prior to his first deployment. His symptoms of PTSD first presented after the armed attack he survived during his first deployment. He experienced suicidal ideations during his first deployment, and these thoughts of suicide returned periodically throughout his military career.

jj. As time progressed, the applicant's PTSD symptoms became more pronounced. During his second deployment, those he served with attested to his change in demeanor, resulting from the acute combat stressors he had experienced over the course of his service. These symptoms of PTSD and depression included uncharacteristic anger and frustration and trouble sleeping. The applicant's post-deployment health re-assessment, 4 March 2012, indicated that he was struggling with symptoms of PTSD. He selected "somewhat difficult" in response to how difficult emotional problems were making it for him to do his job, take care of things at home, or get along with others. He began receiving psychological counseling services and treatment in July 2012 for symptoms of PTSD and depression. At that time, he reported to a psychologist that he had experienced "military exposure to extremely high levels of life-threatening task[s] on a daily basis.

kk. He was diagnosed with PTSD by a VA psychologist on 7 December 2013. A medical report from his psychologist, 16 December 2014, also indicated that he "[d]irectly experienced traumatic life-threatening events and traumas during deployments. On 29 December 2014, the National Guard Bureau formally stated that the applicant's PTSD occurred during Operation Enduring Freedom in the line of duty. He was admitted to Enloe Behavioral Health for in-patient care on 18 December 2015. At that time he "endorse[d] multiple psychological trauma as stemming from his military service including his time as a canine mine detector [ ... ]. He also endorse[d] multiple episodes of being under fire or near incoming artillery. The records continued by stating that the applicant had recurring distressing recollections of those traumas, continuous sleep disturbances, poor concentration, panic attacks, flashbacks, physiological reactions stimulated by PTSD (including high blood pressure), hypervigilance, attempts to avoid situations of and exposures to triggers, and persistent negative emotions and a restricted range of emotions.

ll. On 5 January 2016, another psychologist wrote in a medical report that the applicant told her that "he did not trust himself anymore and at times was suicidal." He continues to suffer from PTSD today. He reports continuing and frequent night terrors about the armed combat he experienced during his first deployment, when he and SSG [REDACTED] survived enemy fire at close range, the applicant reports ongoing sleep issues;

night terrors; hypervigilance and sensitivity to loud noises, crowds, dark places, and aircraft; distrust of others; and memory issues. The applicant currently receives special monthly compensation for loss of use of a creative organ relating to erectile dysfunction. This disability is directly related to his PTSD. He also receives special monthly compensation based on being housebound. The special monthly compensation is payable because the applicant has PTSD rated at 100% disabling, and he has additional service-connected disabilities rated at or more than 60% disabling.

mm. These present-day PTSD symptoms are a direct result of the armed conflict, instrumentalities of war, and/or hazardous service that the applicant endured during his service. His treatment provider for the last 5+ years, Dr. ■■■ came to this same conclusion in her expert opinion, February 2022, which was provided to the ABCMR in August 2022. In particular, Dr. ■■■ found that “[the applicant] has PTSD and his PTSD, is based on his exposure in combat ... [i]ncluding being shot at in an active mine field and having mortars demolish his office wall while he was inside.” Dr. ■■■ explained that “PTSD is re-experiencing and reliving a traumatic event(s) as if it were happening again” and that “PTSD also includes nightmares.” As his treatment provider, Dr. ■■■ detailed the applicant’s ongoing sleep issues and other symptoms: “The applicant’s frequent and continuous night terrors are about the armed combat he experienced during his first deployment where he and a fellow Soldier took enemy fire at close range without cover or protection. His life was over in that moment and he is reliving [sic] that moment in each of these nightmares and reexperiencing.”

nn. Dr. ■■■ also opined on the direct causal relationship between the armed attack in November 2003 and the applicant’s PTSD disability: “Had he not been in these incidents, it is my opinion that he would not have PTSD. Dr. ■■■ continued, “[the applicant] suffers from PTSD that was directly attributable to the mortars/rockets and bullets shot directly at him while stationed at Bagram Airbase.” Accordingly, based on the medical evidence and corroborating witness statements described above, the applicant has established by a preponderance of the evidence that his PTSD disability is the direct result of armed conflict, instrumentalities of war, and/or hazardous service, and that there is a definite causal relationship between these factors and the resulting PTSD disability.

oo. In fact, there is nothing in the record or in his history that could be or has been identified as the cause of his PTSD other than his hazardous service. The ABCMR should therefore approve the applicant’s CRSC claim for PTSD.

pp. The Army has already awarded the applicant CRSC based on the same instrumentalities of war. The CRSC Board previously awarded the applicant CRSC for tinnitus and left hearing loss, finding that the disabilities were combat-related under the instrumentality of war criterion. In his August 2020 request for reconsideration after the Army’s initial denial of his tinnitus claim, the applicant argued that his tinnitus was

caused by heavy equipment conducting demining operations, which consisted of constant explosions as mines and ordnances were disposed of. In approving CRSC for this condition, the Army agreed that the applicant's exposure to instrumentalities of war like mortars, weapons fire, and shrapnel qualified him for CRSC. These same instrumentalities caused his PTSD and also should serve as a basis for his award of CRSC for PTSD.

qq. The applicant established that his right elbow strain is combat-related under the preponderance of the evidence standard. The applicant's right elbow strain is combat-related under any one of the Instrumentality of War, Hazardous Service, or Conditions Simulating War Criteria. The applicant's right elbow strain was directly caused by an instrumentality of war. The Program Guidance states that 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. Further, it may also include "instrumentalities not designed primarily for Military Service if use of [ ... ] such instrumentality subjects the individual to a hazard peculiar to Military Service." A disability qualifies for CRSC as incurred through an instrumentality of war if there is "a direct causal relationship between the instrumentality of war and the disability," and the disability is "incurred incident to a hazard or risk of the service."

rr. MDDs are Instrumentalities of War. MDDs, including the MDD the applicant was charged with training and deploying, are instrumentalities of war intended only for military service. The Army developed the MDD program specifically for the detection of enemy land mines. The MDDs were trained "specifically and only to find enemy land mines and UXO" The MDD training is rigorous, involving several accreditation tests and hundreds of training hours. Such training is exclusively for military service. The applicant's interactions with the MDD were completely dissimilar from interactions that a civilian would have with a pet. The applicant and his unit did not play with or leisurely walk the MDDs in the way that civilians play with or walk their pets. His only interactions with MDDs were pursuant to his duty to detect and dispose of live mines in combat zones or in training circumstances that simulated combat zones and utilized live mines.

ss. CRSC Program Guidance states that an instrumentality of war includes an instrumentality "not designed primarily for Military Service if use of [...] such instrumentality subjects the individual to a hazard peculiar to Military Service." While the MDD with which the applicant worked to detect, disarm, and dispose of live mines was in fact intended only for military service, even if the Board disagrees, the MDD at a minimum subjected the applicant to a hazard peculiar to military service for the following reasons. First, his duties with the MDD required him to move about in live mine fields, detecting and disposing of live mines without any protective cover for hours each day. Second, if a mine exploded while they were working in the mine field, both the applicant and the MDD would likely be severely wounded or killed. And third, all of the applicant's interactions with the MDD were pursuant to his duties with the MDD unit.

tt. The applicant's right elbow strain was directly caused by hazardous service. His right elbow strain also qualifies for CRSC because it was directly caused by hazardous service. Under Program Guidance, hazardous service includes, but is not limited to, "aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty." In order to find that a disability is the result of hazardous service, it must "be the direct result of actions taken in the performance of such service." The applicant's mine detection duty constituted hazardous service, because he and his unit worked in live mine fields to detect and dispose of mines with limited protective equipment and no protective cover-inherently dangerous work-for which he received demolition and hazardous duty pay. The applicant's right elbow strain is the direct result of this hazardous service. It was caused by the MDD and the repetitive stress of manipulating the 30-foot lead required to handle his MDD while on duty.

uu. These duties, and the strenuous and repetitive motion that the applicant engaged in to control his MDD are described above and were part of his hazardous service. As such, the applicant's right elbow strain should be approved for CRSC as being caused by hazardous service.

vv. The applicant's right elbow strain was directly caused by conditions simulating war. The applicant's mine detection training exercises constituted performance of duty under conditions simulating war. His duties required him to frequently train with his MDD, subjecting his body to the same stresses he experienced while working in live mine fields. His training exercises were plainly not akin to mere "physical training activities such as calisthenics and jogging or formation running and supervised sport activities," which are expressly carved out of the definition of hazardous service under Program Guidance. Rather, his training activities required the same actions as his work with his MDD while operating in live mine fields. Those activities squarely constituted the type of "grenade and live fire weapons practice" activities intended to be captured by this criterion.

ww. The applicant's right elbow strain is the result of his mine detection training duties conducted under conditions simulating war. Medical evidence shows by a preponderance of the evidence that his right elbow strain is combat-related. His medical record shows numerous upper body injuries directly attributable to his MDD, which constitute sufficient evidence connecting these events to the right elbow condition under a preponderance of the evidence standard. A screening note of acute medical care from 7 June 2002, while the applicant was on active duty training, states that he was suffering from soft tissue strain in his right shoulder. He was diagnosed with right shoulder bursitis/tendonitis on 13 July 2003. Medical records from 25 July 2003, state that the applicant's shoulder injury was exacerbated "recently when walking dog - jerked on leash and pulled shoulder."

xx. In October 2003, his medical records state, "left shoulder pain. Injured while working [MDD] in training mine field between 1 October 2003/2 October 2003." The records continued, "Upper body, arms & shoulders used in constant strain with restraining the dogs. Made several firm corrections with the dog in the past 48 hours. Believed that aggravated the shoulder." Additionally, on 4 March 2004, a Statement of Medical Examination and Duty Status, described the injury as, "SM injured shoulders while working with [MDD] in training mine field." The applicant's medical evaluations and records show by a preponderance of the evidence that his numerous upper body injuries were caused and exacerbated by the repetitive motion required to handle his MDD during mine detection exercises.

yy. Accordingly, the ABCMR should approve CRSC for the applicant's right elbow strain. The Army has already awarded the applicant CRSC based on the same Instrumentalities of War criteria as noted above. The Army awarded the applicant awarded CRSC for his left shoulder injury in February 2022. Specifically, the CRSC Board granted the applicant's CRSC claim for his left shoulder injury and attributed that injury to an instrumentality of war. The applicant's left shoulder CRSC claim relied heavily on the argument that an MDD is an Instrumentality of War, for the reasons explained above. Thus, in approving CRSC for the applicant's left shoulder condition, the Army agreed that his MDD was an Instrumentality of War under Program Guidance. The same Instrumentality of War also caused his right elbow strain.

zz. Accordingly, that Instrumentality of War should serve as the basis for his right elbow strain CRSC claim. The ABCMR erred in determining that the applicant's PTSD and right elbow strain were not combat-related. The June 2023 ABCMR denial of the applicant's CRSC claim is flawed for several reasons, which are also detailed in the consent motion for remand filed by the United States. The Army erred by failing to explain how the same Instrumentalities of War could warrant CRSC for certain injuries, but not for his PTSD or right elbow strain. The applicant's PTSD was caused by the same Instrumentalities of War-explosions of mines and other military ordnance-that were found by the CRSC Board to have caused his tinnitus. And his right elbow strain was caused by the same Instrumentality of War - his MDD - that was found by the CRSC Board to have caused his left shoulder injury.

aaa. In its June 2023 denial of his claims, the ABCMR did not provide any explanation for why CRSC was appropriate for his tinnitus, left-hearing loss, and left shoulder injury, but not for his PTSD or right elbow strain, despite the fact that they were caused by the same Instrumentalities of War. At a minimum, the ABCMR was required under Program Guidance to rationally link its determination regarding the applicant's CRSC claims to the facts. The ABCMR further erred by adopting the AHRC Advisory Opinion's assertion that nothing other than "official military documentation" is permitted for approval of CRSC. That is not accurate. There is also no requirement in law, regulation, or guidance limiting the consideration of medical evidence to only that "from



the time the injury occurred,” as the Advisory Opinion asserts. Rather, Program Guidance requires that CRSC determinations rely on a “preponderance of available documentary information,” and, as argued above, the applicant has met this standard.

bbb. In its June 2023 denial of the applicant’s CRSC claims, the ABCMR completely disregarded the following evidence showing that his injuries and conditions are combat-related, ostensibly because it did not meet the ABCMR’s erroneous criteria that it be “official military documentation” and “from the time the injury occurred”: (1) military medical records from 2002-2004 attributing his upper body, arm, and shoulder injuries to his work with the MDD in a training mine field; (2) a letter from his therapist, [REDACTED] a Licensed Marriage and Family Therapist (LMFT) and notes from their counseling sessions; (3) a letter from behavioral health officer [REDACTED], Registered Nurse, [REDACTED] (4) a letter from Specialist [REDACTED]; (5) a letter from [REDACTED]; (6) a letter from SFC [REDACTED] C; (7) a letter from SSG [REDACTED]; (8) a Report of Expert Medical Review from Dr. [REDACTED], Doctor of Psychology; (9) medical records from Enloe Medical Center; and (10) personal statements from the applicant.

ccc. Compounding this error, the ABCMR went further by adopting the Advisory Opinion’s view that the absence of evidence meeting its erroneous criteria was a basis for it to deny the applicant’s claim. In so doing, the ABCMR failed to satisfy its obligation under Program Guidance to consider all available documentary information. Instead, it only considered evidence that fit its completely arbitrary standard for what constitutes “official military documentation” to support a CRSC claim.

ddd. The ABCMR also erred by applying a much higher burden of proof to the applicant’s claims than is required by Program Guidance, which is clear that CRSC determinations must be based on the preponderance of available evidence. Under that required standard, an applicant for CRSC can satisfy his burden simply by showing that it is more likely than not that his injuries are combat-related in accordance with Title 10, U.S. Code, section 1413a(e). In other words, the evidence in support of the claim need be only slightly greater than other evidence regarding the claim. An applicant should be awarded CRSC if he has proved his claim by just 51% of the weight of the evidence. By ignoring outright, the substantial, objective evidence submitted by the applicant, including medical records, corroborating letters from eyewitnesses, and the conclusions of the PEB, the ABCMR applied an erroneous and impermissibly high burden of proof.

eee. This approach is also inconsistent with the ABCMR’s own decision-making in other cases. The ABCMR has held, for example, that eyewitness statements are corroborating evidence of combat-related events. Perhaps most notably, the ABCMR made no effort to distinguish its determination that the applicant’s PTSD is not combat-related from that of the PEB, even though the PEB applied the same standard the ABCMR is supposed to apply (preponderance of the evidence) and arrived at the opposite conclusion. While Title 26, U.S. Code, section 104, the statute applicable to

determinations by the PEB, does not require identical findings to those required for CRSC, a finding by the PEB that the applicant's PTSD is combat-related is strong persuasive evidence that he also meets the standard for CRSC. In other cases, the ABCMR has found PEB determinations to be persuasive evidence in favor of awarding CRSC for PTSD when there was no other cause for the PTSD.

fff. In the applicant's case, not only did the ABCMR fail to give the PEB's decision any weight, it failed to address the PEB's contrary conclusion entirely. In addition, the ABCMR erred by considering only whether the applicant's disabilities are combat-related because they resulted from armed conflict. The ABCMR ignored entirely that his disabilities qualify him for CSRC under any one of three other statutory criteria.

ggg. In his submission to the ABCMR, the applicant argued that he is entitled to CSRC for his PTSD based not only on the fact that his PTSD was caused by armed conflict, but also that it was caused by instrumentalities of war and/or incurred in the course of hazardous service. He argued that his right elbow strain was caused by an instrumentality of war, hazardous service, and/or conditions simulating war. An award of CRSC for either or both injuries can be granted on the basis of any one of these criteria. In the cursory two-paragraph discussion in its June 2023 denial of the applicant's claims, the ABCMR referred only to the criteria for armed conflict, observing that "(t]here must be a definite causal relationship between the armed conflict and the resulting disability." The ABCMR made no mention whatsoever, and did not engage in any analysis, of whether the applicant is entitled to CRSC on the basis that his disabilities are attributable to hazardous service (because they were incurred while he was engaged in the duty of clearing live mines); incurred under conditions simulating war (because his right elbow strain resulted from working with his MDD in training mine fields); or caused by instrumentalities of war (for his right elbow strain, his MDD; and for his PTSD, rounds fired at him directly by the enemy, mortar shrapnel piercing his office wall, and/or the mines and other military ordnance explosions to which he was exposed).

hhh. Finally, the ABCMR erred by failing to address in the June 2023 denial of the applicant's claims whether his PTSD is combat-related because it occurred as a result of indirect fire. Not a single criterion for establishing a "combat-related" injury requires that an applicant be engaged in a direct, face-to-face confrontation with the enemy. Indeed, the ABCMR has determined that indirect fire meets the criteria for CRSC in other cases. Here, the applicant sustained repeated exposure to mortar attacks, including one attack in which shrapnel pierced the office where he was sitting, and close-range explosions of mines and other military ordnance during demining operations.

iii. In conclusion, and for the foregoing reasons, the applicant respectfully requests that the ABCMR remedy its earlier decisions and those of the CRSC Board denying in error the applicant's claims for CRSC for PTSD and right elbow strain.

2. The entire court remand is provided in the supporting documents for the Board's review.

3. On 29 October 2001, the applicant enlisted in [REDACTED] ARNG. He held military occupational specialty (MOS) 21B, combat engineer.

4. His record contains a Certificate of Training which shows he completed a 760 hour performance and academic training for the Mine Dog Handler Course on 25 July 2003.

5. The applicant served in Afghanistan on two separate occasions:

- 12 September 2003 to 18 February 2004
- 24 January 2011 to 23 November 2011

6. On 3 February 2016, a PEB found that the applicant's PTSD, bilateral plantar fasciitis, and lumbar degenerative disc disease to be unfitting for continued service and recommended he be placed on the TDRL with re-examination in August 2017. The PEB noted the applicant was diagnosed with PTSD due to combat stressors from deployment to Afghanistan.

a. The PEB also noted in Section V, Administrative Determinations:

(1) 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. (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service)

(2) The disability did result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104 (Compensation for injuries or sickness) or Title 10, U.S. Code, section 10216 (Military Technicians (dual status)).

b. His concurrence is not recorded on this document; however, the PEB findings and recommendation were authenticated by the Chief, Operation Division on 11 February 2016.

7. Orders 116-4501, 25 April 2016, published by Joint Force Headquarters [REDACTED] ARNG, show the applicant was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit placement

on the TDRL, effective 10 May 2016. These orders state the “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, USC 104: **NO**; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operation as designated by the Secretary of Defense (NDAA 2008 Sec 1646): N/A.”

8. On 9 May 2016, the applicant was honorably released from active duty by reason of disability, temporary (enhanced) and assigned to the U.S. Army Reserve Control Group (Retired Reserve). He completed 4 years, 3 months, and 20 days of net active service for the period.

9. The PEB conducted a reexamination of the applicant’s unfitting conditions on 6 September 2017 and recommended a disability rating of 100% and that he be permanently retired due to disability.

10. On 26 September 2017, the U.S. Army Physical Disability Agency published Orders Number D269-21 which removed the applicant from the TDRL and placed him on the Permanent Disability Retired List, effective 26 September 2017, with a 100% disability rating 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. The injury was found to be combat-related as defined in Title 26, U.S. Code 26, section 104. These orders state the applicant’s disability was “based on injury or disease received in LOD as a direct Result of Armed Conflict or caused by an instrumentality of war period as defined by law: **YES**; his disability resulted “from a combat related injury as defined in 26 USC 104: **YES**.

11. On 29 March 2018, AHRC notified the applicant that his claim for CRSC for PTSD, bilateral plantar fasciitis and bilateral PES planus, right elbow strain, lumbar spondylosis with degenerative disc disease, right ankle/foot tarsal tunnel syndrome, and tinnitus claims could not be approved because he failed to provide documentation to show direct causal relationship between the disabilities claimed and a CRSC qualifying event. His claim did not include a description of the events surrounding his PTSD, or facts that he was engaged with a hostile enemy, and he was not awarded a Combat Action Badge. They were unable to find any substantiating evidence (medical records, DD Form 214 entries, signed Line of Duty Investigations, awards or otherwise) linking the cause of his disabilities to a qualifying combat-related event for CRSC entitlement.

12. On 2 December 2020, AHRC notified the applicant his request to reconsider his CRSC claim had been approved for tinnitus (10%), and left hearing loss (10%) as being combat-related due to an instrumentality of war. They were unable to award CRSC for his PTSD and major depressive disorder, bilateral plantar fasciitis and bilateral pes planus, right elbow strain, lumbar spondylosis with degenerative disc disease, right

ankle/foot tarsal tunnel syndrome, and erectile dysfunction claims. The reason cited was that he had not provided new evidence to show a combat-related event caused his conditions. He provided no details on how his injury occurred as a result of a combat-related event and he was not awarded the Combat Action Badge.

13. On 23 November 2021, AHRC notified the applicant that his request to reconsider his CRSC claim for PTSD and major depressive disorder, bilateral plantar fasciitis and bilateral pes planus, right elbow strain, lumbar spondylosis with degenerative disc disease, right ankle/foot tarsal tunnel syndrome, left shoulder stain and erectile dysfunction could not be approved because he failed to provide documentation to show direct causal relationship between the disabilities claimed and a CRSC qualifying event. Although he stated that his PTSD resulted from a witnessing fellow Soldiers be injured and killed from mortar fire attacks. Unfortunately, experiencing a loss and/or witnessing a death did not qualify for CRSC. Being in a combat zone was not, in and of itself, sufficient to award CRSC. He had not provided supporting documentation that he was engaged with a hostile enemy, and he was not awarded the Combat Action Badge.

14. On 28 February 2022, AHRC conducted an audit of his claim for CRSC with supporting documents and approved his claim in accordance with current program guidance. In addition to his previously awarded tinnitus and left hearing loss, the applicant was awarded left shoulder strain based on a combat-related injury due to an instrumentality of war. This injury was rated at 0%, effective June 2016. His total combat-related disability was 10%. AHRC rendered a final disapproval for his CRSC claim pertaining to PTSD and major depressive disorder, bilateral plantar fasciitis and bilateral pes planus, right elbow strain, lumbar spondylosis with degenerative disc disease, right ankle/foot tarsal tunnel syndrome, and erectile dysfunction based on no new evidence to show combat-related event caused condition.

15. On 18 July 2022, in ABCMR Docket Number AR20220010440, the Board having reviewed the application, all supporting documents, the evidence found within the military record, counsel's petition, an advisory opinion, and regulatory guidance, denied the applicant's request for CRSC for his PTSD, bilateral plantar fasciitis and bilateral pes planus, right elbow strain, lumbar spondylosis with degenerative disc disease, right ankle/foot tarsal tunnel syndrome, and erectile dysfunction stating that the governing regulation provided that to support a combat-related determination, it was 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. The Board concurred with advisory official finding there was insufficient evidence to show the condition(s) were combat related. Based upon a preponderance of the evidence, the Board determined there was insufficient evidence that shows reversal of the CRSC claim was warranted.

16. The applicant provides through counsel:

a. Exhibits 1-55 which contain miscellaneous military orders, DD Forms 214, VA Rating Decisions, PEB Proceedings, CRSC Program Guidance (January 2004), CRSC correspondence, two ABCMR Record of Proceedings, USCFC Complaint, Defendant's Consent Motion for Voluntary Remand and USCFC Order. The following documents are included in those exhibits and have been described in counsel brief:

b. Exhibit 7, Applicant's Statement of Facts for his first deployment to Afghanistan wherein he recounts that his K9 Mine Detection Detachment was tasked with clearing of the operating areas, roads, verge, mechanical machinery, and around an incapacitated Soldier suspected of being in a minefield. He was under great stress and pressure to finish the mission successfully. His unit could not wear full protection because they needed to maintain good communication with their K9 and teammates, and the dangers associated with using two-way radios in a mine field, so they were limited to the amount of Personal Protective Equipment they could wear -plexiglass face shield, Kevlar helmets, chest armor with shoulder attachment, groin and leg attachments from the blast suit with a fully open back from shoulders to ankles. He sustained an injury to his shoulder from the repetitive action of working with his canine which was documented in a Line of Duty report. He also endured multiple indirect mortar and rocket events and a very stressful direct enemy fire event with his teammate. He saw Soldiers, local nationals, and children die. The culmination of these events directly led to his PTSD diagnosis.

c. Exhibit 8, Witness statement, DC. This Soldier served with the applicant and witnessed the applicant and his canine intentionally and deliberately enter live minefields and daily and conduct coordinated grid searches to locate the mines and coordinate with combat engineers to disarm the mines. He also witnessed the applicant and his teammate take direct fire while conducting clearing operation in the minefield. He stated that the two Soldiers could not run so they just remained frozen in place.

d. Exhibit 10, Witness statement [REDACTED] This Soldier stated that for nearly seven months the applicant conducting demining operations that would often be within close proximity to other manual demining operation, flailing, and UXO demolitions, mortar attacks and even near misses by targeted or stray rounds.

e. Exhibit 11, Statement from [REDACTED] 16 December 2014. This medical provider stated that she provided psychological counseling service and treatment to the applicant beginning in July 2012 for symptoms of PTSD and depression that included medication and referral and diagnostic evaluation.

f. Exhibit 14, Letter of Information Regarding the applicant's service in Afghanistan. This letter was written by the Chief of Staff, Operations, 29 September 2016. He stated

that the applicant was a key leader assigned to the most kinetic Forward Operating Base location in their Task Force area during a 11-month deployment. They were subject to constant mortar attacks throughout their mobilization. He further stated that the applicant performed his duties as a unit administrator superbly. The applicant was a leader of the highest caliber and his deployment experience coupled with his can-do attitude made him a warrior that he was proud to serve with.

g. Exhibit 30, Response to AHRC Advisory Opinion, 14 March 2023, wherein the applicant's counsel argued that the wrong standard was applied when the advisory official stated that the applicant "must submit official military documentation that establish [sic] a direct causal relationship between a qualifying combat-related event and the disability claimed. Neither the DOD CRSC Program Guidance nor Title 10, U.S. Code, section 1413a(e) mention this requirement for official military documentation of an injury in order for a veteran to be approved for CRSC. Counsel also stated the advisory opinion was not based on available documentary information, ignored, and mischaracterized the evidence the applicant submitted, ignored several the applicant's arguments, and inappropriately focused on an erroneous requirement of a combat-related event. Counsel asserted that that the applicant should be awarded CRSC based on a preponderance of the available evidence.

h. Exhibit 37, Witness Statement, HC, fellow Soldier. This individual served with the applicant on his second deployment to Afghanistan in 2011. She describes the remote, dangerous location of the Forward Operating Base and how the stress impacted the applicant. He was often extremely angry, exhausted, in pain and unable to concentrate. She also contends that she was told that no one in the unit that "never left the base" would receive a Combat Action Badge. She was aware that the regulation permitted for anyone within 20 meters of a blast to receive the award however leadership had given guidance that if the blast landed inside the base the award would not be approved.

i. Exhibit 38, Army Commendation Certificate awarded to the applicant for meritorious service while assigned as a Mine Dog Handler in the Army's first Mine Dog Detachment during Operation Enduring Freedom from 23 March 2003 to 15 February 2004. The citation states that the applicant "placed himself in harms way on a daily basis while conducting military mine clearance."

j. Exhibit 39, Report of Expert Medical Review, [REDACTED] Licensed Psychologist. This medical provider reviewed the applicant's service treatment records, VA medical records, military personnel documents, and other statements regarding his CRSC claim. She disagreed with the CRSC ruling that his PTSD was not service connected. The applicant's record demonstrated that his PTSD was incurred as a direct result of armed conflict, an instrumentality of war and hazardous service. She opined that his PTSD was based on his exposure in combat, including being shot at in a mine field and having mortars demolish his office wall while inside.

k. Exhibit 40, Witness Statement from [REDACTED], Sergeant Major. He stated that he was a mentor to the applicant who came to him for advice to remedy the conditions that were affecting the unit's readiness and his condition. While he is not a trained mental health provider and cannot diagnose conditions, he knew that the deployment in 2003, taking responsibility for the duties of his superiors in the absence of their performance, the deployment in 2011, and continued performance of his superior's responsibilities had cumulatively caused a degradation in both the physical and mental health of the applicant. His ability to make an assessment and convey information was significantly diminished and his physical condition demonstrated that his years of selfless service had exacted their toll on him.

l. Exhibits 41-55 contain various documents related to his physical and behavioral health, personal statements regarding his deployments, and CRSC literature.

- a Post-Deployment Health Re-assessment, 4 March 2012, shows the provider noted minor concern for the applicant's reported physical, exposure, and PTSD symptoms. The provider indicated that the applicant was already under care for his physical and PTSD symptoms
- on 23 December 2014, his PTSD condition was found to be in the line of duty
- various treatment records for PTSD, depression, suicidal ideation, chronic alcohol use, back pain, bilateral foot pain, adjustment disorder, attention deficit hyperactivity disorder
- a medical note from [REDACTED] who stated that she assisted the applicant with family issues in 2012 and tried to work with him on other issues; she encouraged him to check himself into a Behavioral Health Facility, which he did and he remained there for six days
- the applicant's statement regarding his second deployment to Afghanistan where he served as the Assistant Company Operations Sergeant with the 649th Engineer Company wherein he recounts the impact of the daily exposure of war, losing his chain of command and overwhelming stress that contributed to his PTSD
- a news article about the U.S. Army Engineer Specialized Search Dogs
- medical records related to his right and left shoulder strain
- a Line of Duty determination for his shoulder pain which indicates the pain was the result from working with K9 in training mine field
- a legal brief prepared for the CRSC Board
- ABCMR Proceedings showing a remanded case for CRSC belonging to another applicant
- ABCMR Proceedings showing a request for CRSC reconsideration belonging to another applicant



17. Determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where quality of information is more important than quantity. All relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation, or conjecture.

18. Department of Defense, 7000.14-R, Financial Management Regulation, Volume 7B, Military Pay Policy and Procedures-Retired Pay, Chapter 63, Combat Related Special Compensation (CRSC) provides:

a. The burden of proof that a disability is combat-related rests with the applicant, who is required to provide copies of documents in his or her possession to the best of his or her ability. A record submitted by a member may be used in support of his or her application if that record appears regular on its face and is consistent with Military Service documents and procedures in use at the time, based on the best information available. Military Departments may compile a list of typical documents used in various time periods. If necessary, the Military Departments, under agreement with VA may request copies of certain documents (i.e., DD 214, medical records, final VA ratings) from VA to support CRSC determinations.

b. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

#### MEDICAL REVIEW:

1. On 22 January 2025, the Army Review Board Agency's Senior Behavioral Health Advisor and Medical Advisor provided a medical review and advisory opinion in this case. The full advisory is available for review and is attached with the supporting documents. This opinion reads:

a. In the counsel's brief, the applicant requested correction of his record to show CRSC eligibility for PTSD and right elbow strain. The applicant previously applied to ABCMR in 2023. The applicant had several questions. The goal in this review was to focus on relevant medical documentation to assist the Board in determining whether the applicant's PTSD is CRSC qualifying under instrumentality of war and/or incurred in the course of hazardous service (namely, mine detection and clearance) and/or as a direct result of armed conflict (including indirect fire), or not qualifying. And whether the applicant's right elbow strain is CRSC qualifying under instrumentality of war and/or hazardous service and/or incurred under conditions simulating war criteria (namely,

training and operations with mine detection dogs) or under exposure to indirect fire and exposure to explosive hazards as a mine-detection dog handler or not qualifying.

b. Concerning his tinnitus claim. There were no service treatment records for hearing loss or tinnitus complaints. The applicant's hearing loss was identified as sensorineural hearing loss or consistent with damage sustained to the inner ear. The 10 February 2014 VA Rating Decision indicated there was a link between his MOS Combat Engineer and its association with acoustic trauma and left ear hearing loss. Acoustic trauma is injury to the hearing mechanism caused by a very loud noise incident. CRSC was granted for Tinnitus as combat related due to instrumentality of war. Based on objective evidence of acoustic trauma, it was presumed that more likely than not, the left hearing loss and tinnitus were the direct result of a noise incident associated with military equipment/machinery/weaponry, or an explosion etc. However, it should not be assumed that the injury was due to a loud noise incident while the applicant was in harm's way without evidence.

c. In short, in the undersigned's opinion, the Tinnitus condition and PTSD condition were best evaluated individually based on their own merit for CRSC qualification because the etiology should not be presumed to be the same.

d. Concerning the PTSD condition, in his statements, the applicant described the impact of his BH condition on his life including military stressors; his frustrations with the disability evaluation process; and specific life stressors as well (childhood stressors, divorce and custody issues, a brother's suicide in 2006 and other familial concerns).

(1) He indicated that during the first deployment, there was an embedded civilian counselor with whom he discussed his problems (deployment stress and personal). There were no post deployment health assessments or re-assessments (DD Form 2796 or 2900) for the first deployment that were available for this review. However, the applicant sought care soon after his first Afghanistan deployment for depression and counseling. Multiple post deployment assessments and re-assessments which were initially essentially negative for BH findings/concerns and it was emphasized during the retention exam that he had received marital counseling only. He explained that he concerns about the impact on his career and limited his reporting. However, changes in his personality were noted prior to the second deployment by at least one colleague as well as his wife. He did ultimately began reporting BH concerns related to combat stress within 4 months of his return from the second Afghanistan deployment (Post Deployment Health Re-Assessment, 4 March 2012). He also began counseling in July 2012.

(2) Prior to the military the applicant had no mental health issues. PTSD was initially diagnosed by Master of Science Level Licensed Marriage and Family Therapist in 2012. The diagnosis was confirmed during the IDES process by doctorate level

mental health professionals completing the first Initial PTSD DBQ under DSM IV criteria on 7 December 2013 and later on 26 October 2015. The Initial PTSD DBQ using DSM-5 criteria; and finally, during the 17 February 2022 Report of Expert Medical Review. The combat stressors were detailed above. Based on review of the entire case file, the etiology of the applicant's current PTSD disability was best captured by the applicant's self-assessment of the development of his PTSD in that it wasn't one incident, it was a succession of overwhelming events/stressors. The incident of having bullets fly nearby over head while performing MDD handling duties is the first incident witnessed by some (██████ and SSG (RET) ██████) and supported in statements by others. The undersigned concurs with the PEB that more likely than not, the applicant's PTSD meets CRSC criteria for instrumentality of war because there appears to be a direct causal relationship between the instrumentality of war and the disability, and it appears the disability was initially incurred incident to a hazard or risk of the service. The Board may also consider that the incident is evidence the PTSD condition was incurred while engaged in hazardous service.

e. In reference to the applicant's right shoulder strain. The medical record showed onset of right shoulder pain during BCT/AIT physical training in June 2002; and the onset of left shoulder pain performing MDD handling duties in October 2003. The medical record showing onset of left shoulder pain during MDD handling duties is reflected in the approval of CRSC due to instrumentality of war.

(1) In the counsel's brief, the applicant contends the right elbow strain "was caused by operating his MDD during the course of his hazardous service". Presented in support of their contention, were the visits for right shoulder pain/injury (7 June 2002, 13 July 2003, and 25 July 2003) and the two visits on 2 October 2003 for left shoulder pain/injury. The potential for overuse or other injury while performing his MDD handling duties is acknowledged; however, injury cannot be presumed or based on speculation, it should be based on evidence. In the clinical record available for review, there was no documentation of treatment for or documentation of report of elbow pain or other symptom, except for report of right elbow pain with onset after an episode of weightlifting on 15 June 2011.

(2) A somewhat perplexing observation was noted that in the 27 November 2013 Elbow and Forearm Conditions DBQ, the applicant claimed injury to the left elbow in 2011 (not the right) due to lifting weights. On 27 November 2013 a left elbow film was obtained for pension and compensation purposes due to the applicant's report of left elbow pain which was negative. During the 24 April 2015 Elbow and Forearm Conditions DBQ, the applicant again stated that it was the left elbow that had been injured in 2011. However, he also added that he had right elbow pain too, currently worse than the left elbow pain. A right elbow film was not completed. The applicant endorsed that the both the right and left elbow conditions were due to repetitive upper extremity work in training activities specifically MDD handing.

(3) Although the applicant attributed bilateral elbow pain to mine detection dog handling, the record showed that the related training/duty took place in the 2003-2004 time frame, and the applicant was seen one time for right elbow pain, seven years later in 2011. At that time, it was documented that the right elbow injury occurred due to weightlifting in a gym. The Statement of Medical Examination and Duty Status reflects this medical history. There was no documentation of elbow symptoms until the August 2011 treatment visit for right elbow pain/injury. This was the sole treatment visit in the available service record specifically for elbow pain right or left.

f. In the undersigned's opinion, based on medical documentation in the record, it is less likely than not that the right elbow injury was the direct result of armed conflict, was incurred under conditions simulating war, was the result of an instrumentality of war or was incurred while performing hazardous service; notwithstanding the applicant's claim that the injury occurred due to MDD handling duties and the claim that he had sustained injury to the left elbow in 2011 (and not the right). The record indicates an elbow injury occurred in August 2011 as a result of weightlifting in the gym which was not linked to a combat or combat related incident. There were no other treatment records for an elbow condition until seven years after the MDD handling training/deployment ended which belies a direct cause and effect link between MDD handling and the right or left elbow condition.

2. The applicant and counsel provided the following written response to the medical advisory opinion, dated 31 January 2025, which reads:

This letter is a response to the advisory opinion issued on January 22, 2025, and sent by letter dated January 23, 2025<sup>1</sup> (the "Advisory Opinion").

We agree with the Advisory Opinion's finding that... [the applicant's]... post-traumatic stress disorder ("PTSD") is combat-related and warrants combat-related special compensation ("CRSC") under the instrumentality of war criteria. The Board should adopt that finding, or in the alternative, find that [the applicant] is entitled to CRSC because the preponderance of available evidence also establishes that his PTSD is a direct result of armed conflict (including indirect fire) or hazardous service.

[The applicant] served honorably in the U.S. Army from October 2001 until May 2016. During this time, he deployed to Afghanistan, where he was one of only four soldiers in the history of the U.S. Army and Army National Guard to serve as a 12B Combat Engineer with specialized training as a Mine Detection Dog (or "MDD") (handler) (known now as Combat Engineer Mine Detection Dog (handler)). This role required [the applicant] to expertly lead his MDD in the detection and disposal of live mines and explosives with the knowledge that if one were to explode in their presence, he and others around him would almost certainly be severely wounded or killed. While performing these duties, [the applicant] was also attacked and fired

upon by the enemy at close range. [The applicant] deployed again to Afghanistan in 2011, during which time he served as a Horizontal Construction Engineer at FOB Orgun-E and was at least twice subject to attacks by the enemy. [The applicant] seeks CRSC for PTSD arising from these experiences.

For the reasons set forth at greater length in our brief filed on September 24, 2024, and in the Advisory Opinion, we respectfully request that the Board adopt the Advisory Opinion's finding that [the applicant] is entitled to CRSC for his PTSD disability, and grant his claim for those benefits.

#### BOARD DISCUSSION:

1. After reviewing the application, supplemental submitted materials, advisory medical opinions, and the evidence found within the military record, the Board determined that partial relief was warranted. The Board found sufficient evidence to support the applicant's claim that he should receive CRSC for PTSD. Available evidence and the medical advisory opinion supported a conclusion that the applicant's PTSD was caused by an instrumentality of war, including his experience of enduring hostile fire while engaged in minefield operations.
2. The Board also determined that there was insufficient evidence to support the applicant's request of CRSC for right elbow strain. The applicant's medical record revealed that he only sought medical treatment for the right elbow after a weight-lifting injury, and that no elbow injury related to a combat experience was ever reported to medical providers by the applicant. Although the applicant claims that the elbow injury is related to shoulder injuries that were determined to be related to his military duties, there is insufficient evidence supporting a connection between the conditions. The Board therefore denied the applicant's request for relief concerning the right elbow strain.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing his CRSC claim for PTSD was approved.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

2/13/2025

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1413 provides that Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense. In this section, the term "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans

Affairs and that is attributable to an injury for which the member was awarded the Purple Heart; or 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. Department of Defense, 7000.14-R, Financial Management Regulation, Volume 7B, Military Pay Policy and Procedures-Retired Pay, Chapter 63, Combat Related Special Compensation (CRSC) provides special compensation to members of the Uniformed Services who have retired pay reduced because of receiving U.S. Department of Veterans Affairs (VA) disability compensation where a portion of such VA Disability compensation is the result of disabilities that are combat-related as determined by the Military Department. A combat-related disability is a disability with an assigned medical diagnosis code from the Veteran Affairs Schedule for Rating Disabilities. An uncorroborated statement in ta record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC. The following criteria, terms, definitions, and explanations will apply to making combat-related determinations in the CRSC Program.

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, 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.

(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. Hazardous service is service that 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. Travel to and from such service, or actions incidental to a normal duty status not considered hazardous, are not included.

c. 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.

d. Instrumentality of War.

(1) 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.

(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.

(4) 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.

e. Determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where quality of information is more important than quantity. All relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the



basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation, or conjecture.

f. The burden of proof that a disability is combat-related rests with the applicant, who is required to provide copies of documents in his or her possession to the best of his or her ability. A record submitted by a member may be used in support of his or her application if that record appears regular on its face and is consistent with Military Service documents and procedures in use at the time, based on the best information available. Military Departments may compile a list of typical documents used in various time periods. If necessary, the Military Departments, under agreement with VA may request copies of certain documents (i.e., DD 214, "Certificate of Release or Discharge From Active Duty", medical records, final VA ratings) from VA to support CRSC determinations.

g. When a Military Department denies a CRSC application, they will provide a letter to the member specifying the reasons(s) for the denial. The Military Department will inform the member that he or she may seek reconsideration by submitting additional, clarifying, or new documentary information to the Military Department in support of his or her claim. The Military Department will review the additional or new information and will inform the member of the results of the review. The Military Department will also inform the member that CRSC is subject to the same appeals and correction processes applicable to military pay and allowances, including application to the appropriate Board for Correction of Military Records (BCMR) under the provisions of Title 10, U.S. Code, sections 1552.

e. In considering an application where the issue of whether a disability is combat-related for the purposes of CRSC, BCMR will seek an advisory opinion from the Director of Compensation, Office of the Deputy Under Secretary of Defense, Military Personnel Policy, and comply with the requirements of Title 10, U.S. Code, section 1556, Ex parte communications prohibited.

3. Title 26, U.S. Code, section 104, Compensation for Injuries or Sickness (Subtitle A-Income taxes-Items specifically excluded from gross income), establishes 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—

(1) as a direct result of armed conflict,

(2) while engaged in extrahazardous service, or

(3) under conditions simulating war; or

b. which is caused by an instrumentality of war.

4. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

6. Army Regulation 15-185, Boards, Commissions, and Committees-ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//