

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20240011878

APPLICANT REQUESTS: This case comes before the Army Board for Correction of Military Records (ABCMR) on a remand from the United States Court of Federal Claims. The Court directs the Deputy Assistant Secretary of the Army (Review Boards) to reconsider and explain whether the applicant is entitled to Combat Related Special Compensation (CRSC) for post-traumatic stress disorder to the extent caused by combat-related events while deployed in Iraq in 2003 and 2010-2011. The DASA (RB) directs the ABCMR to consider the matter and issue a recommendation for his review.

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

- Index of Exhibits
- Cover letter, WilmerHale, dated 20 November 2024
- Legal brief (13 pages)
- DD Form 149 (Application for Correction of Military Record)
- Exhibit 1, U.S. Court of Federal Claims, Remand Order Number 24-vv-1063, filed 22 October 2024
- Exhibit 2, DD Forms 214 (Certificate of Release or Discharge from Active Duty) (four)
- Exhibit 3, DA Form 4960-5-WT (Bronze Star Medal Certificate), dated 21 June 2011
- Exhibit 4, PTSD Initial Disability Benefits Questionnaire, dated 5 August 2019
- Exhibit 5, DD Form 2860 (Claim for CRSC), dated 12 May 2020
- Exhibit 6, DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), dated 19 September 2019
- Exhibit 7, Orders 326-2204, U.S. Army Installation Management Command, Fort Benning, GA, dated 22 November 2019
- Exhibit 8, letter, U.S. Army Human Resources Command (AHRC), Fort Knox, KY, dated 13 July 2020 (CRSC denial)
- Exhibit 9, DD Form 2860, CRSC Reconsideration, dated 29 September 2020
- Exhibit 10, letter, AHRC, Fort Knox, KY, dated 23 December 2020 (CRSC reconsideration denial)
- Exhibit 11, memorandum in support of correction of records regarding application for CRSC

- Exhibit 12, ABCMR Docket Number AR20220004356, Record of Proceedings (ROP), dated 27 October 2022 and allied letters
- Exhibit 13, letter, WilmerHale, response to AHRC advisory opinion, dated 22 September 2022
- Exhibit 14, U.S. Court of Federal Claims, Complaint, dated 12 July 2024
- Exhibit 15, U.S. Court of Federal Claims, Motion and Stay of Proceedings, filed 18 October 2024
- Exhibit 16, CRSC, U.S. Code (USC), Title 10, Section 1413a, Revised Program Guidance, as amended January 2004
- Exhibit 17, letter, Department of Veterans Affairs (VA), dated 14 June 2021
- Exhibit 18, Congressional Record, Vol. 149, No 56, dated 8 April 2003
- Exhibit 19, DA Form 199-2 (U.S. Army Physical Disability Agency (USAPDA) Revised PEB Proceedings), dated 26 August 2020
- Exhibit 20, Medical Evaluation Board (MEB) Narrative Summary (NARSUM), dated 9 August 2019
- Exhibit 21, DA Form 3947 (MEB Proceedings), dated 22 August 2019
- Exhibit 22, Service Treatment Records, dated 13 August 2019
- Exhibit 23, ABCMR Docket Number AR20120018589, dated 14 May 2013
- Exhibit 24, ABCMR Docket Number AR20120017285, dated 8 August 2013
- Exhibit 25, ABCMR Docket Number AR20230008456, dated 1 December 2023
- Exhibit 26, ABCMR Docket Number AR20240000116, dated 22 August 2024
- Exhibit 27, ABCMR Docket Number AR20120022347, dated 22 August 2013
- Exhibit 28, Article, News and Terrorism – Improvised Explosive Device (IED) Attack, National Academies and Homeland Security
- Exhibit 29, ABCMR Docket Number AR20150012092, dated 15 September 2016

FACTS:

1. The applicant filed her original ABCMR application in 2022. At that time, her request for correction of her record to show she was entitled to CRSC was denied. A majority of the Board found the evidence confirming the applicant's deployment to a combat zone, both as an enlisted member and an officer, sufficient to confirm her PTSD is related to a combat event. The member in the minority concurred with the conclusion of the advisory official that there was insufficient evidence to confirm the applicant's personal exposure to armed conflict and a direct causal relationship between a qualifying combat related event and her PTSD. The member in the minority determined AHRC's decision to deny CRSC for PTSD was not in error or unjust. A majority of the Board determined the applicant should be approved for CRSC based upon her combat-related PTSD. The Board recommended that all Department of the Army records be corrected to show that her request for CRSC based upon PTSD was approved. On 25 September 2023, the Deputy Assistant Secretary of the Army (DASA), Review Boards, overturned the

Board's recommendation based upon the lack of evidence showing specific combat event(s) resulting in the applicant's PTSD.

2. Subsequently, the applicant filed a lawsuit in the U.S. Court of Federal Claims. The parties asked to remand the case for the ABCMR to hear and reconsider the CRSC issue. Both parties requested that the Court grant the motion to voluntarily remand the case to the agency for further action and stay proceedings until a determination is rendered by the ABCMR. A federal agency's motion for a voluntary remand is commonly granted because it allows an agency to correct its own potential errors without expending the resources of the court in reviewing a record that may be incorrect or incomplete.

3. On remand, the ABCMR shall reconsider and explain whether the applicant is entitled to CRSC for PTSD based upon the claims asserted by the applicant in this action and the governing statutes and regulations in this case. In making this determination, the ABCMR shall explain whether it is crediting statements provided by the applicant, and, if it is not crediting this evidence, explain the legal basis of the ABCMR's denial of CRSC. The ABCMR shall consider all of the issues raised by the parties, and other issues the ABCMR deems appropriate, pursuant to the ABCMR's broad authority.

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

- a. On 19 June 1996, the applicant enlisted in the U. S. Army Reserve (USAR).
- b. On 18 January 2003, Orders M-018-0020, issued by the 375th Transportation Group (Composite), ordered the applicant to active duty in support of Operation Enduring Freedom, effective 19 January 2003.
- c. The applicant was honorably released from active duty on 27 September 2003. The DD Form 214 shows she served in support of Operation Iraqi Freedom in Kuwait and Iraq from 13 February through 23 August 2003 and completed 8 months and 13 days of net active service.
- d. On 23 October 2004, the applicant extended her enlistment in the USAR.
- e. On 7 October 2008, she completed her oath of office and was appointed as a Reserve commissioned officer.
- f. On 14 November 2008, Orders A-11-823185, issued by AHRC, St. Louis, MO, ordered the applicant to active duty, effective 4 January 2009, for the completion of her active duty commitment.

g. On 4 January 2009, the applicant was appointed a Regular Army (RA) Medical Service officer.

h. On 19 September 2019, an informal PEB found the applicant physically unfit for retention and recommended she be placed on the temporary disability retired list (TDRL) with 100 percent (%) disability for:

- knee pain; onset in 2005; experienced knee pain while running during a period of active duty not deployed to a combat zone
- right knee traumatic arthritis and valgus malalignment (100%)
- left knee traumatic arthritis, impairment (10%)
- left knee traumatic arthritis, extension (0%)
- PTSD (50%); onset in 2014 following deployment to Iraq in 2003 and 2010 through 2011; condition attributed to stressor of being engaged with indirect fire and IEDs, witnessing casualties, and as a direct result of armed conflict

i. The PEB determined the following conditions not to be unfitting:

- cervical spondylosis with degenerative disc disease
- right side cervical radiculopathy
- left sided cervical radiculopathy
- low back pain, lumbar strain
- migraine headaches
- mild sensorineural hearing loss
- left hand strain, spasm
- bilateral pes planus
- hammertoes
- hypertension
- no cardiac diagnosis for claim arrhythmia
- claim of blurry vision, no diagnosis

j. The applicant was advised her conditions(s) were determined to be combat related under the provisions of Title 26, U.S. Code (USC), Section 104 or Title 10, USC, Section 10216, which may not qualify for CRSC under Department of Defense (DoD) Financial Management Regulation 7000.14, Chapter 63.

k. On 22 November 2019, Orders 326-2204, issued by Headquarters (HQs), U. S. Army Garrison, Fort Benning, shows the applicant was honorably retired, effective 16 February 2020 and placed on the TDRL, effective 17 February 2020, with 100% disability. The 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. The disability resulted from a combat related injury.

l. The applicant was honorably retired, effective 16 February 2020. A DD Form 214 shows she completed 11 years, 1 month, and 13 days of net active service, with service in Iraq from 23 June 2010 through 6 June 2011.

m. On 13 July 2020, AHRC informed the applicant her initial claim for CRSC due to PTSD was denied. Her request could not be approved as the evidence provided and her service record did not reflect a direct causal relationship between the disability claimed and a CRSC qualifying event. Though the claim contained the PEB proceedings, it did not include any supporting documentation to verify combat exposure or any other CRSC qualifying criteria. U.S. Army Physical Disability Agency (USAPDA) determinations are in reference to laws other than CRSC, which may result in a variance between USAPDA determinations and CRSC.

n. On 26 August 2020, the USAPDA provided an administrative correction to the informal PEB proceedings which was conducted at Joint Base San Antonio on 19 September 2019. The administrative correction did not change the disposition, reduce the disability rating for the unfitting conditions, take away a favorable administrative determination, change or delete a diagnosis rendered by the MEB, or remove a diagnosis listed under unfitting condition.

o. On 23 December 2020, AHRC informed the applicant her request for reconsideration for CRSC due to PTSD and migraine headaches including migraine variants was denied. It could not be approved as the evidence provided and her service record did not reflect a direct causal relationship between the disabilities claimed and a CRSC qualifying event. The applicant stated her PTSD resulted from traveling through dangerous areas, vehicle tipping over and crashing, incoming IEDs, small rounds, small arms fire, several explosions, and seeing dead bodies. 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. The disability or injury must be linked to a combat related event. She did not provide evidence or supporting documentation to show she was engaged with a hostile enemy and was not awarded the Combat Action Badge. Though the VA may approve a disability as service connected, it did not automatically qualify the conditions as combat related per CRSC guidelines.

p. Some evidence the applicant must provide includes military documentation and military medical records that establish a direct causal relationship between a qualifying combat related event and the disability claimed. For mental health disabilities, award recommendations (DA Forms 638), copies of combat badges, evaluation reports, and wartime chain of command statements corroborating exposure to armed conflict, duties and/or actions in the claim. Wartime chain of command must be First Sergeant and/or Company Commander or higher. For other disabilities, submit military medical treatment records generated at the time that clearly shows the disability was the result of a combat related event.

q. On 6 December 2021, the informal PEB determined the applicant was physically unfit for retention and recommended the applicant be placed on the Permanent Disability Retired List (PDRL) with 100% disability for:

- PTSD (100%)
- right knee traumatic arthritis and valgus malalignment (30%)
- impairment, left knee traumatic arthritis (10%)
- limitation of flexion, left knee traumatic arthritis (10%)
- limitation of extension, left knee traumatic arthritis (0%)

r. The disability disposition was based on disease or injury incurred in the line of duty in combat with an enemy of the U. S. and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. The disability did result from a combat related injury under the provisions of Title 26, USC, Section 104 to Title 10, USC, Section 10216. As of 29 December 2021, there were three attempts of communication with the applicant via telephonic and electronic mail. The initial attempt on 14 December 2021 which was verified as a positive telephonic contact. She was informed she had 10-days to select her election of options, which she failed to do. She did not request an extension.

s. On 3 January 2022, Orders D003-32, issued by the USAPDA, shows the applicant was removed from the TDRL on 3 January 2022 and placed on the PDRL with 100% disability.

5. In the processing of the applicant's previous request to the ABCMR an advisory opinion was provided by AHRC on 1 August 2022. The Chief, Special Compensation Branch opined that AHRC was unable to verify a combat related event in relation to her injuries of PTSD and Migraine Headaches including Migraine Variants. As evidence, she submitted a DA Form 199 that found her condition to be combat related due to armed conflict. However, due to differences in program guidance, AHRC must verify a condition is combat related independent from the PEB findings. AHRC did not find documentation which confirmed her personal exposure to armed conflict as required by program guidance. To award mental health conditions, the applicant must provide official military documentation that establishes a direct causal relationship between a qualifying combat related event and the disability.

6. The applicant submitted comments in response to the advisory opinion. On behalf of the applicant, counsel stated:

a. The advisory opinion applied the wrong evidentiary standard and demanded a much higher burden of proof than the standard mandated by the DOD. CRSC program guidance states that determinations are based upon a preponderance of available

evidence. An applicant for CRSC can satisfy her burden by simply showing that it is more likely than not that her injuries are combat related.

b. The advisory opinion applied the wrong documentary standard. Nowhere in the CRSC program guidance or authorizing statute was there any reference to a requirement that an applicant submit “official military documentation that establishes a direct causal relationship between a qualifying combat related event and the disability” in order to prove that an injury is combat related. The CRSC requires objective and credible “documentary information.” All evidence and information must be considered in adjudicating CRSC claims; records may be considered if they appear regular and are consistent with military documents and procedures used at the time.

c. Most importantly, the applicant did in fact submit official military documentation corroborating the direct causal relationship between her disability and a qualifying combat related event or an instrumentality of war: namely, her retirement orders, which were submitted with her appeal. The advisory opinion failed to address her official military documentation, the PEB findings, and her Bronze Star Medal.

d. The advisory opinion ignored the applicant’s claim that her PTSD was caused by instrumentalities of war. In the event that the ABCMR found that her PTSD was not the result of armed conflict, the applicant argued in the alternative that her PTSD was the result of instrumentalities of war. The advisory opinion does not address this claim. The CRSC board also failed to address the applicant’s claim that her PTSD was caused by IEDs, small arms fire, and small rounds.

6. The applicant provides:

a. Exhibits 1 to 15 are summarized, in pertinent part, in the ROP above.

b. Exhibit 16, USC, Title 10, USC, Section 1413a, provides the Revised Program Guidance for CRSC, as amended January 2004.

c. Exhibit 17, a letter from the VA, dated 14 June 2021, shows the applicant has a service connected disability rating of 100% for PTSD with major depressive disorder and alcohol use disorder, claimed as PTSD military sexual trauma, insomnia, emotional trauma, nightmares, chronic stress, depression, anxiety paranoia, aggression, dysthymic disorder, mood disorder, and the uncertainty of combat deployments and alcohol dependency.

d. Exhibit 18, Congressional Record, Vol. 149, No 56, dated 8 April 2003, shows that during the applicant’s deployment in 2003, her compound sustained IED, mortar fire, and small arms attacks from enemy combatants.

e. Exhibits 19 to 22 are summarized, in pertinent part, in the ROP above.

f. Exhibits 23 to 27 and Exhibit 29, contain previous ABCMR decisions wherein the ABCMR has granted considerable weight to the findings of both the PEB and VA in granting CRSC to Veterans.

g. Exhibit 28, Article, News and Terrorism – IED Attack, National Academies and Homeland Security, provides that IEDs, mortar devices, and guns are designed primarily for military service and were intended for such use at the time the applicant was repeatedly exposed to them. Her PTSD is a direct result of her repeated exposure to traumatic and violent incidents involving these instrumentalities of war.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board determined an error or injustice did not occur when the applicant was denied Combat Related Special Compensation (CRSC).

2. The Board reviewed the provisions of 10 USC section 1413a and DoD FMR 7000.14-R Volume 7B, chapter 63 to determine whether the preponderance of the evidence supported the applicant's claim for CRSC. The Board concluded that it did not because the applicant's accounts of involvement in armed conflict or instrumentalities of war are uncorroborated. The regulation states that an uncorroborated statement that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC.

3. The evidence shows the applicant deployed to Iraq in 2003 and 2010. In 2019 she was found unfit for knee conditions and PTSD and medically retired. As part of the process she was sent to a psychologist for a consultative exam. The psychologist took a history, examined the applicant, and completed a PTSD Disability Benefits Questionnaire (DBQ). The DBQ listed three stressors the applicant considered traumatic including the 2003 combat deployment where she said she experienced IEDs, mortar attacks, and human remains. The psychologist checked the box that the stressor was adequate to support the diagnosis of PTSD and was related to the applicant's fear of hostile military or terrorist activity. The Board could find no indication the psychologist corroborated the information provided by the applicant or inquired further about potential combat origins of the PTSD or the extent of combat experiences. The Board determined the PTSD DBQ was evidence of the examination of the applicant, her brief report of experiences in

her 2003 deployment, and the diagnosis of PTSD but not sufficient to verify a combat related event in relation to PTSD for purposes of CRSC.

4. The Board next reviewed the determination of the Physical Evaluation Board (PEB) that the applicant's unfitting PTSD condition was a direct result of armed conflict and resulted from a combat -related injury. The DA Form 199 indicated the condition was due to the stressors of being engaged with indirect fire and improvised explosive devices and witnessing casualties. The form also noted the behavioral health examiner attributed this condition to combat and life circumstances. The Board did not see documentation mentioned or included with the PEB determination of a combat related event other than the applicant's uncorroborated statements to the consultative examiner. The Board is not bound by the PEB's unsupported findings as it determines whether the applicant's CRSC results should be amended.

5. The Board reviewed the applicant's retirement orders that state the disability was a direct result of armed conflict and resulted from a combat-related injury. The Board determined the orders are only evidence of the PEB determination and are not sufficient to verify a combat related event in relation to PTSD for purposes of CRSC.

6. The Board considered all of the statements from the applicant and determined that some experiences, as described, do not meet the definition of "combat-related" and all statements remain uncorroborated. As noted above, the applicant is recorded on the DBQ as telling the psychologist in 2019 that she experienced IEDs, mortar attacks, and human remains in Iraq in 2003. She stated in the first application for CRSC that she was exposed to and engaged in direct fire, IEDs, and vehicle turnovers while engaged in conflict as a truck driver in 2003 and saw numerous casualties. In her second application she provided more details of her 2003 experiences and wrote that she travelled through dangerous areas to pick up and deliver supplies, her vehicle tipped over and crashed on a narrow road, she saw dead bodies, and her compound took incoming IEDs, small rounds, and explosions so she had to take cover. Later she provided documentation of the 319th Detachment receiving a Presidential Unit Citation for actions in Iraq from 21 March to 24 April 2003. The description in the Congressional Record stated "vehicles of the company came under heavy enemy fire more than once" in an ambush attempt. However, only Soldiers who participated in the action were eligible for the award and the award is not shown on applicant's DD Form 214. Furthermore, the applicant did not describe a convoy coming under enemy fire in an ambush during her 2003 tour of duty in Iraq or claim she was a participant in this particular event so this documentation does not corroborate her account.

7. The applicant described her 2010 deployment in the first CRSC applicant by stating that she was on a convoy struck by small arms fire. In her second CRSC application she described small arms fire directly hitting her convoy and returning fire and that her unit received a Bronze Star for these actions. The applicant did receive a Bronze Star Medal for her exceptionally meritorious service (rather than heroic achievement, heroic service, or with valor) during her overall deployment to a combat zone but the medal was for contributing to the unit's "overall success during combat operations" and does not appear to be for personally participating in combat.

8. The Board considered the applicant's alternative claim that her PTSD was caused by instrumentalities of war in the form of IEDs, small arms fire, and small rounds. The Board does not question the quality of the applicant's service or the nature and severity of her illness, however, her accounts of combat involvement (including her reports of IEDs, small arms fire, and small rounds) remain uncorroborated for purposes of determining eligibility for CRSC.

9. The Board reviewed the previous ABCMR decisions cited in the applicant's brief in support of the remand. The Board is not bound by these previous decisions but notes that they generally include some form of corroboration of the applicant's account of a combat event. The Board also determined the previous decision of the ABCMR on this matter was not supported by the preponderance of the evidence due to the lack of such corroboration.

10. Finally, the Board considered the Advisory Opinion, dated 1 August 2022, from the U.S. Army Human Resources Command (AHRC) and notes that although AHRC requires official military documentation to establish a direct causal relationship between a qualifying combat-related event and a disability, the regulation is less clear. The Board considered all the evidence, official or otherwise, and determined the preponderance of the evidence in this case does not show a corroborated account of personal exposure to armed conflict or instrumentalities of war and thus an error or injustice did not occur when the applicant was denied CRSC.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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 (USC), Section 1413a (Combat Related Special Compensation (CRSC) (c) (Eligible Retirees), states an eligible combat related disabled uniformed services retiree is a member of the uniformed services who: is entitled to retired pay (other than by reason of Section 12731b of this title); and has a combat-related disability. Effective date shall take effect not later than 180-days after the date of the enactment of this act of 2 December 2002. (e) (Combat-Related Disability), "combat-related disability" means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that: (1) is attributable to an injury for which the member was awarded the Purple Heart; or (2) was incurred (as determined under criteria prescribed by the Secretary of Defense); as a direct result of armed conflict; while engaged in hazardous service; in the performance of duty under conditions simulating war; or through an instrumentality of war.
2. Title 10, USC, Chapter 61, Section 1201 (Regulars and members on active duty for more than 30 days: retirement), (a) Retirement - upon a determination by the Secretary concerned that a member is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b). (b) Required Determinations of Disability - determinations by the Secretary that: (1) based upon accepted medical principles, the disability is of a permanent nature and stable; (2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and (3) either;

(A) the member has at least 20 years of service; or (B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either (i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service); (ii) the disability is the proximate result of performing active duty; (iii) the disability was incurred in line of duty in time of war or national emergency; or (iv) the disability was incurred in line of duty after 14 September 1978.

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

a. Chapter 63, CRSC, paragraph 1.1 Effective Date. The CRSC program became effective 31 May 2003. Payments are made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving VA disability compensation for a disability that has been determined to be combat related by the Military Department. No CRSC is payable for any month prior to June 2003.

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

c. Paragraph 5.2 (Other Combat Related Disabilities) states uncorroborated statements in a record that a disability is combat related will not, by itself, be considered determinative for purpose of meeting the combat related standards for CRSC. CRSC determinations must be made based on the program criteria.

d. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The Military Departments will determine whether a disability is combat-related based on the following criteria:

- as a direct result of armed conflict
- while engaged in hazardous service
- in the performance of duty under conditions simulating war, or
- through an instrumentality of war

e. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

f. Paragraph 6.0 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to only state the fact that a member incurred the disability during a period of war, in an

area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

(2) 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 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.

(3) 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.

(4) Instrumentality of War:

a. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

b. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

c. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

d. For example, if a member is on a field exercise, is engaged in a sporting activity, 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.

g. Paragraph 10.1 (Basis for Determination)

(1) 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.

(2) 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.

4. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered physically unfit for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

5. Title 26, USC, Section 104 (Compensation for injuries or sickness), (b) (3) (Special rules for combat-related injuries), for purposes of this subsection, the term "combat-related injury" means personal injury or sickness, (A) which is incurred; as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions

simulating war; or (B) which is caused by an instrumentality of war. In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts considered shall be the amounts which he receives by reason of a combat-related injury. (4) Amount excluded to be not less than veterans' disability compensation in the case of any individual described in paragraph (2), the amounts excludable under subsection (a) (4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the VA.

//NOTHING FOLLOWS//