



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02351

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His back injury be changed from non-combat to combat-related, so he may qualify for monetary benefits authorized under the Combat-Related Special Compensation (CRSC) program.

APPLICANT CONTENDS THAT:

He was injured during combat operations in Kuwait and other areas. The CRSC board determined that since a doctor was not present at the time of his injury, a determination could not be made on the spot.

In support of his request, the applicant provides copies of his Department of Veterans Affairs (DVA) claim, an eyewitness statement, two letters from his medical providers, and his medical records.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant served on active duty in the Regular Air Force from 28 Jun 85 to 31 Jul 05. On 1 Aug 05, he retired from the Air Force, having served 20 years, 1 month and 3 days on active duty.

On 24 Aug 05, the DVA awarded him a compensable disability rating of 10 percent for each of the following service-connected disabilities: asthma, scar residuals - back, degenerative joint disease - back, and tinnitus.

The applicant submitted a claim for CRSC for his hearing, lungs and back. On 6 Dec 11, his claim was partially approved for tinnitus. He requested reconsideration of the board's disapproval of compensation for his back but his requests were disapproved on 28 Feb 12 and 16 May 12. The board determined no evidence was provided to confirm his disability was the direct result of armed conflict, hazardous service, instrumentality of war, or simulating war.

The CRSC program was established to provide compensation to certain retirees with Combat-Related disabilities that qualify under the criteria set forth in Title 10, United States Code, (10 USC) Section 1413a.

AIR FORCE EVALUATION:

AFPC/DPSDC recommends denial. DPSDC states the applicant's conditions do not meet the mandatory criteria for compensation under the CRSC program as outlined under the provisions of 10 U.S.C., Section 1413a. CRSC law requires documentation confirming a direct link to a combat-related event. The provided documentation does not confirm the applicant sustained an injury or incurred his back condition from a combat-related event.

DPSDC states the fact that a member incurred a disability during a period of hazardous service is not sufficient by itself to support a combat-related determination. There must be a definite, documented, causal relationship between the hazardous service and the resulting disability. By law, determinations of whether a disability is combat-related will be based on the preponderance of available documentary information. 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.

When making combat-related determinations the board looks for documentation from the time of injury confirming the event and the injury described. An example could be a medical notation showing "member has been complaining of back pain since a mortar explosion threw him against a wall two days ago." There is no in-service medical documentation from 1998 confirming a back injury from a combat-related event. Furthermore, the in-service medical documentation provided do not reflect a combat-related event as the cause of the applicant's back condition.

Although the burden of proof lies with the applicant to provide supporting documents (per DD Form 2860, *Claim for Combat-Related*

Special Compensation), DPSDC attempted to obtain documentation from the VA to justify approval of the applicant's claim. However, DPSDC was unable to obtain supporting documentation. Specifically, they requested in-service medical records for a back injury in 1998. Since they have been unable to obtain documentation confirming the applicant's condition was caused by a combat-related event, DPSDC was unable to approve the applicant's condition for CRSC.

The complete DPSDC evaluation, with attachments, is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 11 Sep 12 review and comment within 30 days (Exhibit D). As of this date, this office has not received a response.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The available evidence of record does not support a finding that the service-connected back injury he believes is combat-related was incurred as the 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; and, therefore, does not qualify for compensation under the CRSC Act. Therefore, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. In view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

The following members of the Board considered Docket Number BC-2012-02351 in Executive Session on 14 Jan 13, under the provisions of AFI 36-2603:

Panel Chair

Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-02351 was considered:

- Exhibit A. DD Form 149, dated 23 May 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Record.
- Exhibit C. Letter, AFPC/DPSDC, dated 29 Aug 12, w/atchs.
- Exhibit D. Letter, SAF/MRBR, dated 11 Sep 12.

Panel Chair