

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-117

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FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on March 23, 2007, upon receipt of the completed application, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 19, 2007, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who retired from the Coast Guard on December 31, 1983, as a senior chief petty officer, asked the Board to correct his Coast Guard military record to show that his cervical arthritis and tinnitus are combat related, which would entitle him to Combat Related Special Compensation (CRSC).¹ The applicant alleged that he incurred a back injury while serving as a flight mechanic in the Air Force in Vietnam from 1965 to 1969 and that the back injury was the cause of his current cervical arthritis at C-6/7. He further alleged that his tinnitus was caused by the excessive noise he endured while performing in-flight and ground duties around combat vehicles in Vietnam. The Department of Veterans' Affairs (DVA) has found both conditions to be service connected.

In support of his allegations, the applicant submitted a copy of his CRSC application form, on which he wrote that in September 1968 "[w]hile performing pre-flight of C-130 Aircraft [for the Air Force in Vietnam, he] slipped and fell on wet surface from top of aircraft into the flight deck, catching [him]self with [his] right arm resulting in injury to C-6/7 vertebrae." He also wrote that from 1965 to 1969, "[n]umerous hours of flying as flight mechanic on C-130 air-

¹ CRSC allows military retirees to receive both retired pay and disability compensation if they are in receipt of retired pay based on at least 20 years of service and have a compensable service-connected, "combat-related" disability. Under 10 U.S.C. § 1413a(f), a "combat-related" disability "(1) is attributable to an injury for which the member was awarded the Purple Heart; or (2) was incurred (as determined under the criteria prescribed by the Secretary of Defense)--(A) as a direct result of armed conflict; (B) while engaged in hazardous service; (C) in the performance of duty under conditions simulating war; or (D) through an instrumentality of war."

craft and related flight excess noise led to the onset of tinnitus.” In addition, the applicant applied for CRSC based upon his diabetes mellitus, which he alleged was caused by exposure to Agent Orange in Vietnam; and upon diabetes-related peripheral neuropathy in his arms and legs.

VIEWS OF THE COAST GUARD

On August 23, 2007, the Board received an advisory opinion on the case from the Judge Advocate General (JAG). He stated that the Coast Guard Personnel Command (CGPC) has determined that the applicant’s diabetes, peripheral neuropathy, and tinnitus are combat related and has already granted the requested relief with respect to those disabilities. He recommended that the Board grant no further relief because there is no evidence in the record before the Board that the applicant’s cervical arthritis is combat related. The JAG adopted the findings and analysis of the case provided in a memorandum prepared by CGPC.

CGPC stated that after serving in the Air Force from March 22, 1963, to May 24, 1971, the applicant served in the Coast Guard from June 28, 1971, until his retirement on January 1, 1984. Regarding the applicant’s claim that his cervical arthritis is combat related, CGPC stated that the applicant’s alleged mishap in September 1968 is not documented in sufficient detail in his Coast Guard medical records and that

[t]here is no objective medical evidence (i.e. entry in the medical record, etc.) in [the applicant’s] record that shows this disability occurred as a direct result of a combat related circumstance. We recommend [that the applicant] submit documentation that clearly shows the injuries happened as a result of combat-related activity. In particular, [he] should request reports (i.e., injury, medical, mishap, etc.) from the Air Force during which the incident may have occurred.

CGPC attached to its memorandum a copy of a letter to the applicant dated April 18, 2007, which states that his diabetes, peripheral neuropathies, and tinnitus are combat related and that he is eligible for CRSC because at least 10%² of his combined DVA disability rating (60%) has been determined to be combat related.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 24, 2007, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

SUMMARY OF THE RECORD

A Statement of Creditable Service in the applicant’s Coast Guard records shows that he served in the Air Force from March 22, 1963, through May 24, 1971. On April 17, 1967, the applicant underwent an Initial Flight Physical Examination at an Air Force hospital in Japan. He was found qualified for Flying Class III, and the only significant prior medical conditions noted were a tonsillectomy and hernia.

² Under 10 U.S.C. § 1413a, only “compensable” disability ratings qualify a veteran for CRSC. Therefore, the rating applied by the DVA to the service-connected, combat-related disability must be 10% or higher to qualify a veteran for CRSC.

On July 8, 1967, the applicant sought treatment for a laceration on his right thumb, which required two “deep tight” stitches. No cause of the laceration is stated on the medical report.

On August 21, 1967, the applicant sought treatment for a sprained left ankle. The doctor noted that the applicant said he had twisted his ankle when jumping off a pallet in an aircraft.

On December 19, 1967, the applicant underwent an annual flight examination at the Air Force hospital in Japan. Aside from the laceration of his right thumb, the applicant denied “any other significant medical or surgical history” since his prior examination.

From July 30 to August 8, 1968, the applicant received injections at the hospital in Japan to treat “acromioclavicular bursitis” (inflammation in his shoulder).³ A doctor reported his condition as “spasm of trapezius muscle, left, cause undetermined.”

On the Report of Medical Examination for his October 30, 1968, annual flight examination, the doctor noted that the applicant “denies all significant medical or surgical history since last examination” and found him qualified for Flying Class III.

On March 9, 1971, the applicant underwent a pre-discharge physical examination. On his Report of Medical History, he denied having “back trouble of any kind,” nerve pain, or any problems with his neck, arms, or hands. The past medical conditions he reported included a childhood tonsillectomy, a 1957 herniography, and a trauma to his right knee in 1969. A doctor noted on March 12, 1971, that the applicant reported “trauma to [left] knee 2 [years] ago in airplane. Still complains of pain.” On the Report of Medical Examination, the doctor wrote that the “[p]atient denies all other medical and surgical history” and found him fit for duty or separation.

On May 11, 1971, the applicant underwent a physical examination pursuant to his application to enlist in the Coast Guard. On his Report of Medical History, the applicant denied having “back trouble of any kind,” nerve pain, or any problems with his neck, arms, or hands. According to a doctor’s note, the applicant admitted that he had been injured on an aircraft at an air base in Japan in 1969 but stated that “medical attention [was] not required.” The physician noted that there had been “[n]o significant medical history since last physical examination.”

On June 28, 1971, the applicant enlisted in the Coast Guard. On September 3, 1971, the applicant sought treatment for weakness and numbness in his right hand. The doctor reported that his decrease in sensation suggested a problem at his C-6/7 disk. According to the doctor, the applicant stated that he had undergone traction after injuring his right shoulder three years earlier

when he grasped onto the edge of a hatch as he was falling through. He had throbbing pain in shoulder for 1 month but no pain, weakness [unreadable] of the arm or hand. He then felt well until 5 weeks ago when he again noted dull throbbing pain in [his right] shoulder, which has persisted to the present time. The pain radiates down the lateral [unreadable] of the arm to the elbow and to the [unreadable] area. In past few days his palm and all five fingers have felt “half asleep.” No record [of] shoulder or neck injury. ... Imp[ression]: C6-7 radiculopathy—most likely due to cervical spondylosis or soft disc. ...

³ DORLAND’S ILLUSTRATED MEDICAL DICTIONARY, 25TH ED. (1974), pp. 21, 257.

From September 21 to October 12, 1971, the applicant was hospitalized at the Portsmouth Naval Hospital because of pain and weakness in his right arm and shoulder. The doctor noted that the applicant attributed his condition to “a fall in an airplane three years previously, but there were no neurologic signs at that time.” The doctor reported that his

[r]eview of cervical spine films taken locally showed these also to be normal. ... The patient failed to respond to bed side cervical traction. Accordingly on 29 September 1971 a myelogram was performed and this revealed a minimal defect at C6-7 which might have represented a tiny spondylitic spur. The patient was started on vertical traction with which he improved markedly. Symptoms disappeared, triceps strength returned and numbness abated. ...

On September 1, 1972, the applicant sought issuance of various Air Force medals, including a Vietnam Service Medal with eight bronze stars and a Republic of Vietnam Campaign Medal. He did not request a Purple Heart. His commanding officer recommended that the requested medals be issued because, he wrote, the applicant’s “Air Force discharge certificate confirms that the listed medals were earned.” The applicant’s request was granted.

On March 25, 1975, the applicant was treated for back pain after he rolled his snow mobile.

On the Report of Medical History for his annual flight examination on December 7, 1976, the applicant reported that he had injured his neck in 1971.

On January 30, 1978, the applicant sought medical treatment for pain in his right elbow, which radiated down to his right hand. The doctor diagnosed him with chronic tendonitis and noted that the applicant reported having broken his neck in 1971.

In July 1980, the applicant had an x-ray of his cervical spine. The results were normal. On September 17, 1980, a neurologist for the Coast Guard reported that the applicant had been hospitalized in 1971 for cervical radiculopathy at C-7 following a neck injury and that occurrences of pain and numbness had gradually increased.

On July 14, 1983, the applicant underwent a physical examination in anticipation of his retirement. On the Report of Medical History, the applicant noted, *inter alia*, that he had been hospitalized in 1971 when he temporarily lost the use of his right arm due to branchial neuropathy, which was resolved through physical therapy; that he suffered from chronic tendonitis in his elbow; and that he had suffered hearing loss, although his audiogram was within normal limits. On the Report of the Medical Examination prepared for the applicant’s retirement physical examination on July 14, 1983, the doctor found that he had no disqualifying disabilities and was fit for retirement. The applicant retired from the Coast Guard on January 1, 1984.

A DVA report dated February 24, 1986, states that the applicant attributed his “neck problem and right arm and left hand problem” to a 1968 fall inside an aircraft when he caught his weight on his right arm.

A DVA report dated August 24, 1999, states that the applicant attributed his cervical arthritis to a fall of “four or five feet from an airplane,” when he “caught himself with his right hand. This was in 1967 while he was in the Air Force in Vietnam.”

A DVA report of examination dated April 27, 2002, states that the applicant claimed that “he injured his cervical spine in 1967 when he fell into an aircraft during a pre-flight routine during a monsoon. The patient states that he had instantaneous pain in his neck radiating to his left arm, especially the medial aspect of the arm, including the third, fourth, and fifth digits. He was treated with traction. He stated a myelogram done shortly after the injury showed a herniated disk and he has some numbness and pain in his arm ever since.” The DVA examiner found that the applicant “likely suffered a herniated C6-7 disk as the result of a fall in 1967. Over the years, the patient’s herniated disk has likely degenerated and he has developed sponylitic changes in the C6-7.”

DOD GUIDANCE

The Department of Defense’s “Combat-Related Special Compensation Revised Program Guidance,” issued in January 2004, states the following regarding combat-related determinations under the CRSC program:

Direct Result of Armed Conflict - The disability is a disease or injury incurred in the line of duty as a result of armed conflict. The fact that a member incurred the disability during a period of war or an area of armed conflict or while participating in combat operations is not sufficient to support a combat-related determination. There must be a definite causal relationship between the armed conflict and the resulting disability.

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 terrorists.

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 while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

While Engaged in Hazardous Service - Such service includes, but is not limited to aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of such hazardous service required 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.

In the Performance of Duty Under Conditions Simulating War - In general this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons 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 and jogging or formation running and supervised sport activities.

Instrumentality of War - Incurrence during an actual period of war is not required. However, there must be a direct causal relationship between the instrumentality of war and the disability. The disability must be incurred incident to a hazard or risk of the service.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. As Congress enacted CRSC in 2002 and the Coast Guard only recently denied the applicant's request to have his cervical arthritis determined to be combat related, the application was timely.

2. As the Coast Guard has granted the applicant's request that his tinnitus be found to be combat related and denied his request for a combat-related determination only for his cervical arthritis, the latter is the only issue remaining for consideration by the Board.

3. Although the DVA has found the applicant's cervical arthritis to be service-connected given his hospitalization in September 1971, to be "combat related," a medical condition must be "attributable to an injury for which the member was awarded the Purple Heart" or incurred "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." 10 U.S.C. § 1413a(f). To prevail on his claim, the applicant must prove by a preponderance of the evidence that his cervical arthritis is "combat related" under 10 U.S.C. § 1413a and the guidance of the Secretary of Defense. 33 C.F.R. § 52.24(b).

4. The applicant alleged that his cervical arthritis is the result of a fall in an aircraft while he was performing a pre-flight check on an aircraft during the Vietnam War in the 1960s. However, his Air Force medical records fail to support his allegation that his cervical arthritis is combat related, as he alleged. Although the record before the Board contains many medical records from the Air Force hospital in Japan, none of them indicate that the applicant injured his neck during a fall in or from an aircraft. His Air Force records show that, apart from various colds, flus, etc., the applicant was treated for a lacerated thumb on July 8, 1967; for a sprained ankle on August 21, 1967, when he jumped off a pallet in an aircraft; and for inflammation in his shoulder—"cause undetermined"—in late July and early August 1968.

5. The Board notes that after joining the Coast Guard, the applicant suffered significant weakness and numbness in his right hand while stationed in Virginia in September 1971. When discussing his condition, the applicant told the doctor that he had injured his shoulder falling through a hatch on an aircraft three years earlier, in 1968. The possibility of an injury to the applicant's cervical spine was first reported in his medical records in September 1971, when a myelogram showed a "minimal defect at C6-7 which might have represented a tiny spondylitic spur." Medical reports dated December 7, 1976; January 30, 1978; and September 17, 1980, show that the applicant reported having broken or injured his neck in 1971. However, following his retirement, the applicant told his doctors that his problems with his right hand and arm stemmed from a fall in an aircraft in 1967 or 1968.

6. In light of all the evidence of record, the Board finds that the applicant has not proved by a preponderance of the evidence that the Coast Guard erred in finding that his cervical arthritis is not combat related. Although his Air Force medical records are numerous and detailed, none show that he injured his neck during a fall in an aircraft during a pre-flight check.

The first medical report of a neck injury in the record is dated September 1971, when the applicant was serving in the Coast Guard in Virginia, and there is no evidence that this neck injury was combat related. While it is possible that the applicant injured his neck while serving in the war in 1967 or 1968, there is insufficient evidence in the record to support the allegation.

7. Accordingly, the application should be denied because the applicant has failed to prove by a preponderance of the evidence that he is entitled to that part of the requested relief that the Coast Guard has denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG (retired), for correction of his military record is denied.

Steven J. Pecinovsky

J. Carter Robertson

Richard Walter