



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

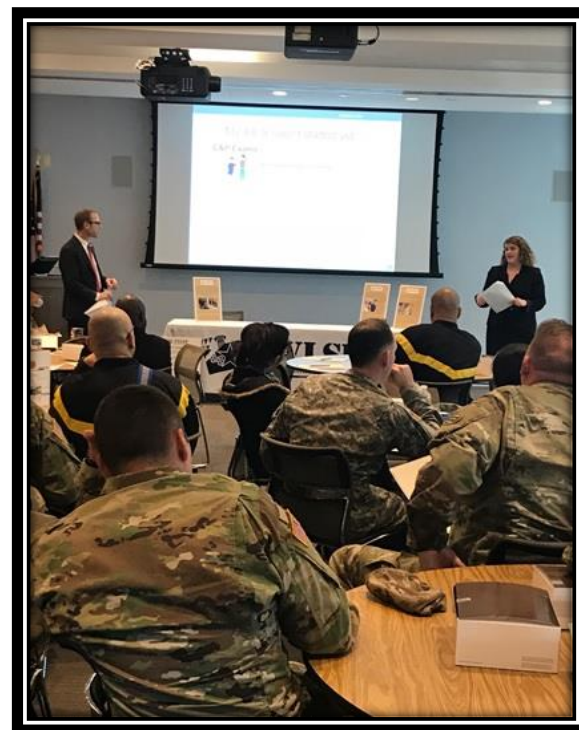
Know Your Rights and Responsibilities Avoid Missing Out on a Military Medical Retirement

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Agenda

- Overview of National Veterans Legal Services Program (NVLSP) and Lawyers Serving Warriors® (LSW) program
- Integrated Disability Evaluation System
- IDES Quicktips
- Boards for Correction of Military/Naval Records
- Combat-Related Special Compensation



NVLSP: Who Are We?

National Veterans Legal Services Program (NVLSP) is a nonprofit organization formed in 1981. We work to ensure that our nation's disabled veterans and active duty personnel receive the benefits to which they are entitled.

- **What We Do:**

- Individual Attorney Representation and Class Action Lawsuits
- Training & Mentoring of Veterans Advocates
- Publication of Training Materials- Including the *Veterans Benefits Manual*
- Lawyers Serving Warriors®

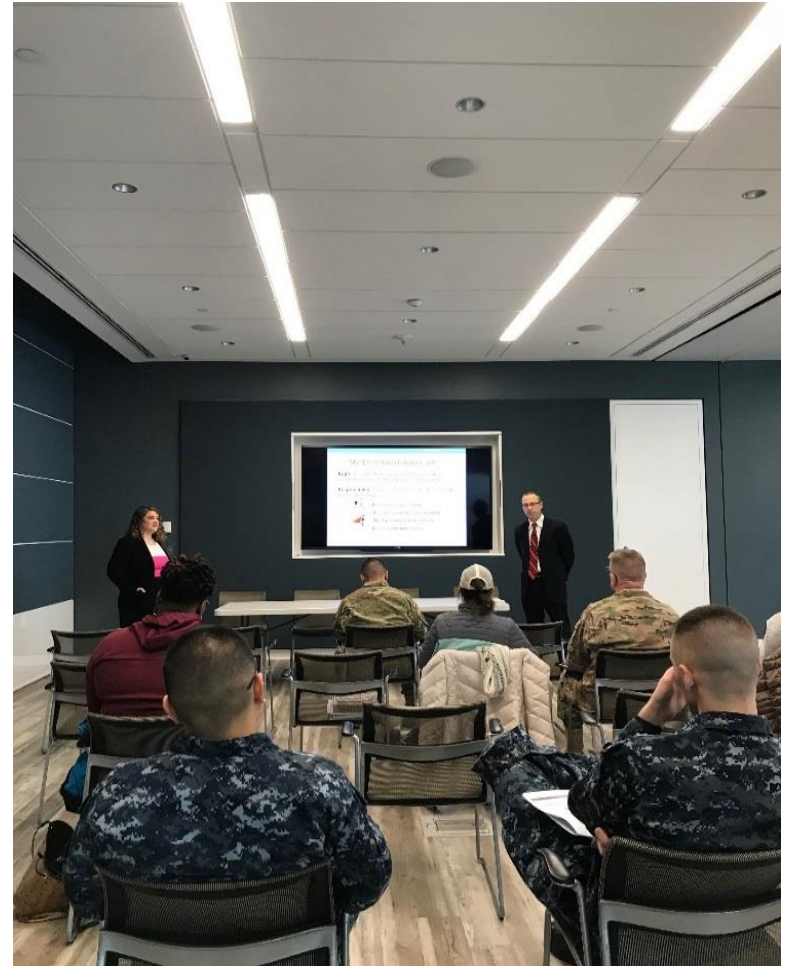
Lawyers Serving Warriors® (LSW)

- Lawyers Serving Warriors is NVLSP's **pro bono** project.
- Provides free legal assistance through a network of volunteer attorneys to veterans of all eras with various military disability issues.
- NVLSP attorneys serve as mentors and subject matter expert for the volunteer attorneys.



How LSW Helps Service Members

- Clinics on military installations
 - “Know Your Rights”
 - Individual counseling.
- MEB/PEB representation
- Dual processing administrative separation cases
 - Service member’s disability caused or contributed to the misconduct



How LSW Helps Veterans – DoD

- Medical Retirements
 - Board for Correction of Military Records (BCMR)/ Board for Correction of Naval Records (BCNR)/ Physical Disability Board of Review
 - Integrated Disability Evaluation System (IDES)
 - Court of Federal Claims and/or District Court
- Combat-Related Special Compensation
 - Initial applications and reconsideration
 - BCMR/BCNR
 - Court of Federal Claims and/or District Court
- Discharge Upgrades:
 - Discharge Review Board (DRB)
 - BCMR/BCNR
 - District Court



How LSW Helps Veterans – VA

- Program for Military Sexual Trauma (MST) Survivors
 - Initial VA Benefit applications and appeals for survivors of Military Sexual Trauma (MST)
- Appeals of VA Benefits Denials – All Conditions
 - US Court of Appeals for Veterans Claims (CAVC) and remands to the Board of Veterans' Appeals (BVA)
- Complex legal matters before the VA
 - VA Caregiver Program appeals.



Our Contact Info for Free Legal Services

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Military Disability Retirement Through The Integrated Disability Evaluation System



What is a Medical Retirement?

Medical Retirement is issued when a service-connected medical condition(s) is severe enough to interfere with the proper performance of one's military duties and that injury(s) is rated at 30% or more by the VA.

Medical retirement compensation is different from VA disability compensation:

- Medical retirement compensates **ONLY** for conditions that bring about the end of one's service.
- VA disability compensation is intended to compensate for all service-connected disabilities that interfere with civilian employment, but do not necessarily bring about the end of one's military service.

Benefits of a Medical Retirement

- A medical retirement bestows the same benefits given to Service members who serve 20+ years in the military, including:
 - Military healthcare (TRICARE) for the veteran, his or her spouse, and his or her children until the age of 18.
 - A monthly payment (that equates to the veteran's disability).
 - A retired military ID card to get onto military installations.



How to Obtain a Medical Retirement

- In Service:
 - **Integrated Disability Evaluation System (IDES).**
- Post-Discharge:
 - **Board for Correction of Military Records (BCMR).**
 - **Physical Disability Board of Review (PDBR), only where service member was medically-separated from the U.S. military between September 11, 2001 and December 31, 2009.**
 - **U.S. Court of Federal Claims or District Court.**

IDES

- The **Integrated Disability Evaluation System (IDES)** is the joint DoD-VA process by which DoD determines whether Wounded, Ill, or Injured (WII) service members are fit for continued military service.
- **IDES Includes:**
 - *VA examinations:* for all referred and claimed conditions.
 - *A Medical Evaluation Board (MEB):* DoD medical professionals who document a service member's medical status and evaluate whether a Service member's conditions meet/fail the Service branch's retention standards.
 - *A Physical Evaluation Board:* DoD board comprised of officers and physicians who determine whether a service member is FIT/UNFIT for duty.
 - *Ratings:* If a service member is found unfit for any condition, he or she will receive VA ratings for ALL claimed conditions. The DoD will adopt the VA rating for all unfitting conditions.

Criteria for Determining Fitness/Unfitness for Military Service



- Unable to perform the duties of his or her office, grade, rank, or rating.
- The medical condition imposes unreasonable requirements on the military to maintain or protect the service member.
- A service member can be considered unfit due to the overall effect of two or more impairments (Combined Effect).

What Makes a Condition “Unfitting”

- **A Condition is Unfitting:**
 - Prevents a SM from performing the requirements of his MOS, his basic soldiering duties, and/or alternative APFT.
 - Places an unreasonable burden/risk on the Army and/or the SM.

- **Proving a Condition is Unfitting:**
 - Profile
 - Medical notes
 - Commander’s statement
 - Buddy statements

Medical Retirement vs. Separation

Retirement

- Tricare for SM & family.
- DoD retired ID.
- Possibility of CRSC.
- Higher of VA/DoD monthly payments.
- Eligible to apply for CRSC.

Severance

- One time cash infusion.
- VA care for SM for service-connected conditions.
- VA disability payments.

IDES Quick Tips

My IDES hasn't started yet ...

Define Desired Outcome: You can't support FITNESS & UNFITNESS at the same time.

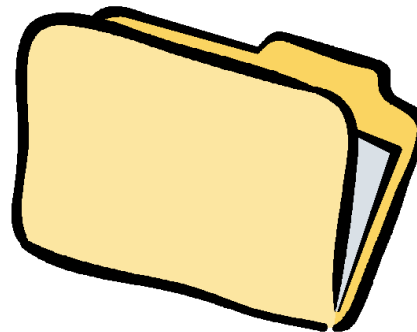


My IDES hasn't started yet ...

Right: To have the VA, MEB and PEB review ALL service-connected conditions regardless if they are cause for referral.

Responsibility: Assemble a list of all your service-connected conditions for your VA form 21-0819 when meeting with your VA Military Service Coordinator (MSC).

- **TIP:** Request your medical records from your PEBLO and/or the Records Department to review PRIOR to your meeting with your MSC.



My IDES hasn't started yet ...

Right: To a VA Compensation and Pension (C&P) examination for each referred and claimed condition.

Responsibility: To punctually attend ALL scheduled C&P exams. This Means:



- Don't refuse range of motions.
- Don't over or under perform intentionally.
- Don't try to "suck it up" at the exams.
- Don't miss your appointments.

My IDES hasn't started yet ...

Right: Right to seek counsel, military and/or civilian (at own expense).

- **TIP:** NVLSP provides civilian assistance free of charge!

Responsibility: Reach out/Communicate with Counsel

- Don't wait! Schedule an initial meeting with your selected counsel as soon as your IDES process starts.
- Provide counsel with releases to obtain all medical records.
- Let counsel know of any responses from the MEB/PEB.
- Obtain supporting documents requested by counsel.

I'm at the MEB ...

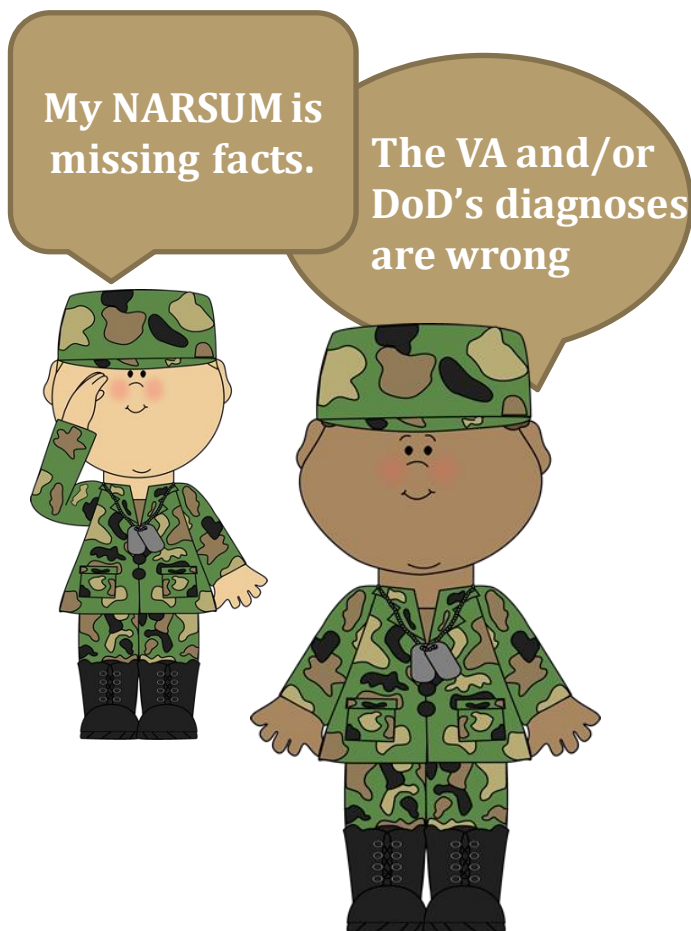
Right: To have the MEB document all medical condition(s) and your entire medical history as part of narrative summary (NARSUM).

Responsibility: Review the NARSUM and ensure it addresses all conditions and symptoms. No one, including your PEBLO and/or attorney, knows your medical history as well as you.

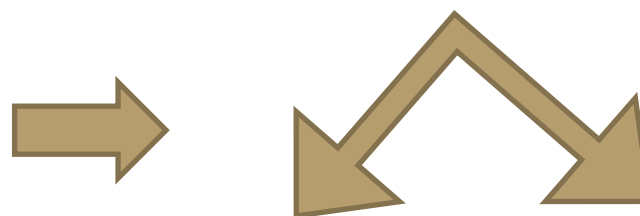


I'm at the MEB ...

Diagnoses:



Does the diagnosis/NARSUM address the body part affected and all your symptoms?



NO

Appeal with evidence of a different diagnosis by a medical professional.

YES

An appeal may not be necessary as ratings are not based on diagnoses but on body part effected and the severity of symptoms.

I'm at the MEB ...


Right: To have the military consider each VA diagnosis as a potentially medically unacceptable/duty limiting condition.

Responsibility: Having a diagnosis does not make a condition medically unacceptable/duty limiting. Obtain documentation from a medical provider and/or command that shows condition prevents your further service.

- **TIP:** Consider whether you are at a medical retention determination point, have been provided optimal treatment, and/or whether your condition interferes with service.

I'm at the MEB ...

Documentation:



My doctor/commander won't provide the documentation I need to support my appeal.

- There is no way to require your commander/NCO/doctor to provide documentation.
- If, you think there is a basis for the documentation, get a second medical opinion and/or reach out to another senior officer/NCO.

I'm at the PEB ...

The Barracks Lawyer

- Identical conditions can have different effects.
- The PEB is all about the effect of your condition on your military duties.
- Fitness depends on MOS, rank and symptoms, not just diagnosis.

My friend has the same condition and it is unfitting, why isn't my condition?



I'm at the PEB ...

I disagree with the PEB findings, what should I do?



GET LEGAL ADVICE:

Reach out to your attorney **IMMEDIATELY** to get legal advice and help preparing a written appeal or for a formal hearing.



I'm at the PEB ...

VA vs. DoD RATINGS:

Why is my combined VA rating so much higher than my DoD rating?



Condition	VA	DoD
Right Ankle (unfitting)	10%	10
Right Knee (unfitting)	10%	10
PTSD (fitting)	50%	
TOTAL	60*	20

The VA rates any condition incurred or permanently aggravated by service with symptomology.

The DoD applies the VA ratings for **UNFITTING** conditions.

* VA disability calculations are **NOT** based on the sum of each percentage.

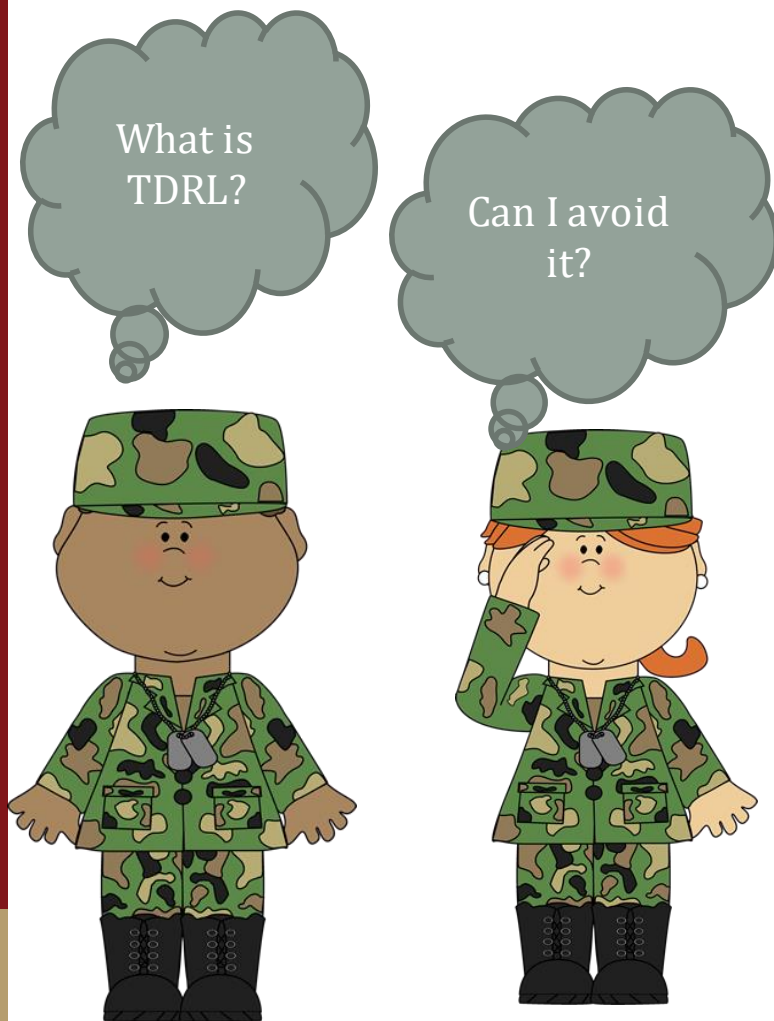
I'm at the PEB ...

Right: To have the VA reconsider your unfitting condition(s) one time while still in service.

Responsibility: Contact your attorney with any/all supporting documents to draft a VA Ratings Reconsideration (VARR).

- TIP: Get new Range of Motion (ROM) done as soon as you think the VA ROM was inaccurate.

I'm at the PEB ...



TDRL: Temporary Disability Retirement List and it occurs when an SM has a condition (mental or physical) that may get better or worse over the next 3 years.

Condition that almost always requires TDRL: PTSD.

Avoidable?: Only if medical evidence shows that it is stable for rating purposes.

I'm on the Temporary Disability Retirement List (TDRL) ...

I am on the TDRL and I worried my rating will go down.



To Help Ensure your Rating is Correct:

- Go to all of your medical appointments for your TDRL condition.
- Save any/all documentation from that treatment.
- Document any occupational restrictions due to your condition.
- Schedule a VA exam close in time to your DoD TDRL physical.

**** If your rating does go down, the above documentation will help enormously with an appeal. ****

PEB Success Story

A Special Warfare Combatant-Craft Crewman incurred a TBI when his craft experienced a bow plunge at 50 miles per hour off the coast of Iran, submerging him and the craft underwater. The Informal PEB found him FIT despite the fact that the dizziness, migraines and vertigo caused by his TBI left him unable to return to a SWCC boat or to work more than 24 hours a week in any capacity.

NVLSP and pro bono counsel represented him before the Formal PEB. He was found unfit for TBI with vertigo of central origin and migraines. His injury was found to be combat related.



Boards for Correction of Military/Naval Records



Post-Discharge Relief: Boards for Correction of Military Records

Each military branch has a BCMR/BCNR where veterans who did not obtain a medical retirement in the IDES process can submit an application for medical retirement.



Post-Discharge Relief: Boards for Correction of Military Records (BCMR/BCNR)

Veteran **WAS** provided Disability Evaluation System (DES) processing, but:

- The PEB fails to identify all unfitting conditions or fails to provide the correct disability rating, resulting in service member's separation with severance payment.

Veteran **WAS NOT** provided Disability Evaluation System processing and was separated with injuries because:

- Fulfilled his/her service obligation
- Injuries caused misconduct that resulted in administrative separation
- Military wrongly determines the service member's injury is not a compensable condition.

Post-Discharge Relief: Boards for Correction of Military Records (BCMR/BCNR)

- **Reviewers:** 3 civilians in grade of GS-15 and above review BCMR/BCNR applications.
- **Review Type:** Records review only! Submit copies of all relevant personnel and medical records. The BCMR/BCNR will have your personnel record, but may not have access to all service medical records.
- **Burden of Proof:** Applicants have the burden of proof to establish an error or injustice. The boards presume administrative regularity.
- **Statute of Limitations:** Applicants must file an application within 3 years after an alleged error or injustice is discovered. The BCMR may excuse untimely filing in the interest of justice. 10 U.S.C § 1552.

Applying to the BCMR

- **Application Form:** Complete an application on Department of Defense Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552.*
- **Supporting Evidence:**
 - Commander's Statement
 - MEB narrative summary/MEB report
 - Physical Profile/LIMDU/Abbreviated MEB Report
 - DoD/VA medical records
 - Personal statement/lay statements
 - New medical opinion (if applicable)

BCMR Best Practices

- 1. There MUST be records showing:**
 - In-service diagnosis/treatment; and
 - Inability/difficulty in-service performing basic military duties and/or the duties of Military Occupational Specialty/Rating/Air Force Specialty Code.
- 2. Increased Symptomology After Discharge:** The BCMR is *only* concerned with veteran's symptoms around the time of discharge.
- 3. VA Disability Percentage:** It is necessary for the veteran to have a combined 30 percent disability rating within 1 year of discharge. Otherwise, you need an independent medical expert to look at the veteran's symptoms at discharge and the pertinent rating schedule and estimate the disability percentage.

BCMR Success Story

An Army combat veteran suffered from severe Post-Traumatic Stress Disorder (PTSD) due to his exposure to many traumatic events in Iraq including fire fights and mortar attacks.

Pro bono attorneys prepared a brief, gathered medical evidence, and assisted the veteran in submitting an application to the Army Board for Correction of Military Records (ABCMR).

The Board overturned previous decisions and granted the veteran a permanent disability retirement due to his PTSD.



Combat-Related Special Compensation (CRSC)



What is CRSC?

- CRSC is an extra monthly payment provided by the Department of Defense, that is available to eligible veterans who have injuries that are combat-related.
- CRSC is a payment that is in addition to any military disability retirement pay and/or VA disability compensation that the veteran may be receiving each month.

Who is Eligible for CRSC?

The primary eligibility requirement for CRSC is that the individual must have been retired from the military either due to years of service or disability.



What Types of Injuries/Conditions are Eligible for CRSC?

- Injuries/conditions that are service-connected by the VA with a disability rating of at least 10%.

Example Veteran

- VA service-connected disabilities: PTSD (30%), Back Pain (20%), Tinnitus (10%), Hypertension (0%).

What Makes an Injury/Condition Combat-Related?

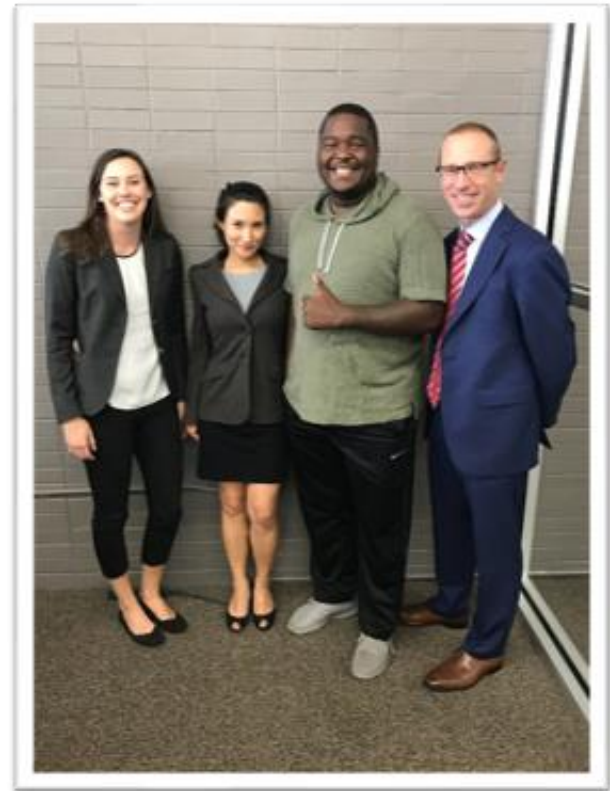
1. Injuries incurred as a direct result of armed conflict.
2. Injuries incurred through an instrumentality of war.
3. Injuries incurred in the performance of duty under conditions simulating war.
4. Injuries incurred while engaged in hazardous service.
5. Injuries for which the member was awarded the Purple Heart.

Evidence to Submit in Support of CRSC Claim

- The key to a successful CRSC application is to include all relevant evidence that supports a combat-related determination for each combat-related disability.

Important Documents:

- Purple Heart Certificate/Orders
- DD Form 214
- VA Rating Decisions
- PEB Findings
- MEB Narrative Summary
- Medical Records
- Performance Evaluations/Awards
- Statements



Applying for CRSC

- Complete a CRSC Application (DD Form 2860)
- The CRSC Application must be filed with the service branch that retired the veteran.
- In addition to the CRSC Application, the applicant should submit any medical records, award citations, lay statements, or any other evidence that supports that an injury was combat-related for CRSC purposes.

Combat-Related Special Compensation Success Story

LSW pro bono volunteers represented an Army Staff Sergeant serving in Iraq who injured his back and shoulder falling from an IED blast. He receives approximately \$1,000 per month in CRSC and obtained a back award of \$17,000.



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Questions

