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Understanding Combat-Related Special Compensation (CRSC) & Concurrent Retirement and Disability Pay (CRDP)

Rochelle Bobroff, Director of Lawyers Serving Warriors®
Clarissa Cashmore, Staff Attorney

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Presenters



Rochelle Bobroff

- Director of NVLSP's Pro Bono Program, Lawyers Service Warriors®
- Trains attorneys to assist Vets and service members with discharge upgrades, CRSC claims, medical retirement, IDES processing, etc.
- Veterans Benefits Manual editor
- J.D. from Yale Law School

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Clarissa Cashmore

- Staff attorney with NVLSP's Pro Bono Program, Lawyers Service Warriors®
- Assists Vets obtain medical military retirements and CRSC
- Veterans Benefits Manual author
- J.D. with honors from University of North Carolina School of Law

Overview

- Overview of CRDP
- Overview of CRSC
- Categories of CRSC
- Applying for CRSC
- CRDP vs. CRSC



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CRDP and CRSC

- Concurrent Retirement and Disability Pay (CRDP)
 - A years-of-service retirement and combined VA disability rating of at least 50%
 - Full restoration of military retirement pay
 - Taxable
- Combat-Related Special Compensation (CRSC)
 - Retirement based on years of service or disability
 - Partial restoration of military retirement pay
 - Tax-free

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Concurrent Retirement and Disability Pay



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What is CRDP?

- CRDP allows Vets to receive the full amount of their VA disability compensation and military retired pay
- CRDP is taxable in the same manner as military retirement pay


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Why Do We Need CRDP?

Statutory Bar to “Concurrent Receipt”

38 U.S.C. § 5304(a)

- Generally, Vets are barred from receiving, in any particular month, both
 - (1) the full amount of military retirement pay
AND
 - (2) the full amount of VA disability compensation

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Veterans Entitled to CRDP

- Vets entitled to both military retirement pay and VA disability compensation are generally required to waive all or part of one agency's monetary benefits, so that total payment received = the highest of the two entitlement amounts
- Example: GI Joe is eligible to receive \$800 in retirement pay and \$1,000 in VA disability compensation. Vet would likely waive \$800 in retirement pay to receive the larger VA payment of \$1,000.

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Authorities for CRDP

- **Statutory Authority: 10 U.S.C. § 1414**
 - **1/2004:** began phase-in period
 - **12/2004:** phase-in period ended for military retirees with a 100% VA disability rating
 - **12/2013:** phase-in period ended for military retirees with combined VA disability ratings of 50% to 90%
- **DOD Authority: Financial Management Regulation, Volume 7B, Chapter 64**

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Who is eligible for CRDP?



- CRDP is generally available to Vets who have:
 - A years-of-service retirement, and
 - A combined VA disability rating of 50% or higher
- Vets who are medically retired and have at least 20 years of service may also be eligible for CRDP

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How to apply for CRDP?



- NO APPLICATION needed for CRDP
- The effective date and amount of CRDP is determined by DFAS



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Combat-Related Special Compensation



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What is CRSC?

- CRSC is an extra payment in addition to any military disability retirement pay and/or VA disability comp the Vet may be receiving each month
- CRSC is a tax-free monthly payment provided by DOD, that is available to eligible Vets who have injuries that are combat-related, as defined by law

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Authorities for CRSC

- **Statutory Authority: 10 U.S.C. § 1413a**
 - Enacted 2002 – limited eligibility to 20-year retirees
 - 1/2008 – amended to make medically-retired Vets (no matter when discharged) eligible
- **DOD Authority: CRSC Program Guidance 2004 and 2008; Financial Management Regulation, Volume 7B, Chapter 63**

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Who is Eligible for CRSC?

Who is Eligible for CRSC?

- Must also have military retirement pay reduced by VA pay
- Have at least one combat-related injury rated by VA at 10% or higher



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What Types of Injuries/ Conditions are Eligible for CRSC?

- Injuries/conditions service-connected by VA with a disability rating of at least 10%
- If ratings increase, CRSC payments may increase
- Injuries/conditions service connected at 0% are eligible for payments, if the rating is later increased



Categories of CRSC



What Makes an Injury/Condition Combat-Related?

Direct Result of Armed Conflict

Direct Result of Armed Conflict

PTSD and CRSC



- PTSD is a mental disorder caused by traumatic experiences (called a “stressor”)
- PTSD is diagnosed by medical professionals based on the stressors experienced by the patient
- A diagnosis of PTSD is an affirmation by the medical professional that the patient experienced stressors that caused PTSD
- Combat stressors may lead to other mental health conditions, such as anxiety or depression

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Armed Conflict PTSD Success Story



- An Army Staff Sergeant deployed to Iraq three times as an Infantryman in heavy combat areas. He raided target houses and was repeatedly exposed to small arms fire, heavy artillery fire, and explosives. He suffered from nightmares of traumatic events, intrusive memories, and emotional numbing. He was diagnosed with PTSD.
- Vet received CRSC for PTSD under the Armed Conflict category.



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Instrumentality of War



- Includes 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
- This category includes wounds caused by a military weapons; accidents involving a military combat vehicle; injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material

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Instrumentality of War

- This category may also include instrumentalities not designed primarily for military service, if the use of the instrumentality subjects the individual to a hazard peculiar to military service
 - Example: Assault with a shovel
- There must be a causal relationship between the instrumentality of war and the disability

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Instrumentality of War

- Examples:
 - Hand crushed by armored vehicle hatch
 - Injured by shrapnel on grenade range
- Injuries not approved for CRSC include hand crushed while operating a fork lift in a combat zone


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Instrumentality of War Success Story

- The service member served in the Army and Air Force as a Wheeled Vehicle Mechanic, deploying to Iraq and Afghanistan. While pushing a Humvee tank backward in training, it rolled over his leg, injuring his foot and ankle. Other soldiers had to push the Humvee off his leg.
- Vet received CRSC for foot and ankle conditions under the Instrumentality of War category.

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Conditions Simulating War



- Disabilities resulting from military training, such as war games, airborne operations, grenade and live fire weapons practice, and hand-to-hand combat training
- Does not include physical training activities, such as calisthenics, jogging, or recreational sports activities



Conditions Simulating War



- Examples:

- Injured while performing combatives training
- Injured during a combat vehicle rollover training exercise

• Injuries not approved for CRSC include physical or mental injuries incurred during a training exercise not simulating war

Simulating War Success Story



- In preparation for deployment to Iraq, an Army Captain participated in live fire vehicular training. The vehicle hit a ditch. He was pinned against the vehicle by another soldier, with the magazine of a firearm protruding into his back. He suffered a slipped disc which led to disc disease and radiculopathy.
- Vet received CRSC for his disc disease and radiculopathy under the Conditions Simulating War category.



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Hazardous Service

- Includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty
- The injury or disease must be the direct result of actions taken in the performance of such service



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Hazardous Service

- **Example:**

- Injuring knee while performing airborne or parachute duties
- Serving in a combat zone alone does not qualify as hazardous service for CRSC



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Hazardous Service Success Story

- An Airman worked in prisons performing detainee operations in Afghanistan. He encountered volatile situations during riots and entering locked areas with enemy combatants. He subsequently experienced anxiety with panic attacks and nightmares. He was diagnosed with PTSD.
- Vet received CRSC for PTSD under the Hazardous Service category.



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Purple Heart Disabilities

- The Purple Heart is awarded to service members who are wounded or killed as a result of armed conflict
- Need sufficient causal relationship between the disability and the injury for which a Purple Heart was awarded



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Combat-Related Presumptive Conditions

- Certain presumptive conditions automatically qualify as combat-related:
 - Presumptive Conditions associated with:
 - Toxic Exposure/Burn Pits
 - Agent Orange Exposure
 - Persian Gulf War service
 - Mustard gas and Lewisite
 - Good to have a VA rating decision that indicates that the disability is based on one of these presumptions

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Exposure to Burn Pits and Environmental Toxins

- On military bases in Iraq and Afghanistan, garbage disposal was done by dumping trash, medical waste, asbestos, and other chemicals into a burn pit. The trash was then lit on fire with jet fuel.
- Service members who were deployed to the Middle East and other locations were exposed to smoke, fumes, and gases from the burn pits and other environmental toxins.
- Many of those servicemembers have developed respiratory illnesses and rare forms of cancer tied to exposure to burn pits and other environmental toxins.

Combat-Related Presumptive Conditions, Interim Rules



Regulations Leading up to the PACT Act

- VA concluded that particulate matter pollution from burn pits and environmental toxins is associated with chronic asthma, rhinitis, and sinusitis (8/2021), and nine rare respiratory cancers (4/2022) (38 C.F.R. § 3.320)
- Presumptions apply to Vets with service in SW Asia Theater of Operations and other countries in Asia and Africa (expanded further in the PACT Act)
- VA presumes that these Vets have been exposed to particulate matter
- CRSC boards regularly approved asthma, rhinitis, and sinusitis following the release of this guidance

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Combat-Related Presumptive Conditions in PACT Act



- Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 expands the VA presumptive conditions and qualifying service.
- PACT Act created presumptions of service-connection for over 20 conditions as due to exposure to burn pits and other toxins, including those already in VA regs as related to fine particulate matter, and two new conditions related to Agent Orange

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Qualifying Period of Service



- The PACT Act expanded qualifying periods of service:
 - on or after 8/2/1990, performed active service while assigned to a duty station in, including airspace above—Bahrain; Iraq; Kuwait; Oman; Qatar; Saudi Arabia; Somalia; or U.A.E.; or
 - on or after 9/11/2001, performed active service while assigned to a duty station in, including airspace above, Afghanistan; Djibouti; Egypt; Jordan; Lebanon; Syria; Yemen; Uzbekistan; or any other country determined relevant by the VA Secretary

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PACT Act Burn Pit Presumptive Conditions



- Cancers of the following type—Head, Neck, Respiratory, Gastrointestinal, Reproductive, Lymphoma, Kidney, Brain, Melanoma, Pancreatic
- Chronic bronchitis
- Chronic obstructive pulmonary disease
- Constrictive bronchiolitis or obliterative bronchiolitis
- Emphysema
- Granulomatous disease
- Interstitial lung disease
- Pleuritis
- Pulmonary fibrosis
- Sarcoidosis
- Chronic sinusitis
- Chronic rhinitis
- Asthma
- Glioblastoma



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CRSC Claims Related to Burn Pits/Toxins



- Due to the presumption, the evidence needed to support a CRSC claim related to burn pits/toxins is much less than that required for other injuries.
- Need to provide evidence showing that Vet had a qualifying period of service
- Documentation showing that Vet is service-connected for the presumptive condition
- VA is beginning to use “burn pit” on codesheets
- Do not need to go back to VA if already service-connected and ask them to code as presumptive
- Under PACT Act, condition may manifest at any time

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Formal Guidance, PACT Act



- Formal VA guidance for the PACT Act became effective in 1/2023. All CRSC Boards are now adjudicating PACT Act claims.
- Formal guidance includes an appendix (Appendix A) with a table of approved VA diagnostic codes for each condition
 - Appendix includes a list of cancers for various categories covered under the PACT Act
 - The diagnoses identified within their respective categories do not represent an exclusive, exhaustive list

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Formal Guidance, PACT Act

- Only chronic diseases qualify for presumptive SC
- For established cancers, only malignant tumors qualify (as opposed to benign neoplasm or any other non-malignant disease)
- Skin cancers, other than melanoma, only qualify if the location of the malignancy is the head or neck
- All melanomas qualify, regardless of location
- Sarcomas may only be considered if located in the head or neck areas or located within a presumptive body system malignancy (such as renal sarcoma)
- Only primary cancers may be considered as a presumptive disease. Metastatic or secondary cancers do not warrant presumptive SC.

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Combat-Related Secondary Conditions

- Secondary Condition: A condition VA has service-connected because it was caused or aggravated by another SC disability (primary condition)
 - Ex: Muscle damage of calf due to bullet wound (primary condition) results in knee instability (secondary condition)
 - For a secondary condition to qualify for CRSC, the primary condition must be combat-related under one of the categories of disabilities eligible for CRSC
 - If primary condition is combat-related, the secondary condition is automatically combat-related
 - This does not automatically include conditions that VA says are “associated with” another condition

Applying for CRSC

Steps for Preparing a CRSC Application



- **Step 1: Identify potential CRSC disabilities by determining which disabilities are service-connected by VA**
 - Identify the most recent VA rating decision
 - From the most recent rating decision, identify all service-connected disabilities (review the codesheet)
- **Step 2: Review military personnel file, military medical file, and any other client documents for information that supports a combat-related determination for any of the disabilities identified**

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Steps for Preparing a CRSC Application



- Step 3: Complete a CRSC Application (DD Form 2860)
- Step 4: Draft a supporting statement or letter addressing each combat-related disability, with supporting documents attached as exhibits
- Step 5: File with the branch from which the Vet retired. Army and Navy have email options for submission.
- Est. wait time: 90 days for Army, 120 days for Navy
- Typically another 3-4 weeks after a decision to hear form DFAS

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Tips for Evidence Evaluation



- **Helpful Statements to Support Claim:** When reviewing VA and military records, look for phrases that tell "how" injury/condition was incurred or aggravated, such as:
 - injury is more likely than not caused by airborne duty, field training exercise (FTX), IED explosion, or specific instrument of war while training
 - hurt knee or shoulder during an airborne jump, with bad landing
 - hearing loss caused by acoustic trauma
 - hatch cover hit head during training
 - shot in the leg by enemy in Iraq

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Tips for Evidence Evaluation

Key Documents to Support CRSC Claim


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Dispelling Common Myths

- None of the following automatically qualify for CRSC:
 - Seeing dead bodies
 - Buddy got CRSC for similar condition or event
 - PEB found that condition was combat-related (except for presumption for Navy)
 - VA coded condition as related to combat
 - Survived military sexual trauma or racial discrimination while deployed

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Common Reasons for Denial

- **No contemporaneous medical evidence**
 - Ex: degenerative back injury, Board may point to age or wear and tear, even if the wear and tear is from parachute jumps. They will look for a specific event or events, and corroborating medical treatment.
- **Injury does not qualify as combat-related**
 - ex: sleep apnea not connected to asthma
- **Evidence does not support exposure to direct armed conflict**
 - Will sometimes ask for a command statement

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CRSC/CRDP Success Story



- A Navy Vet with over 20 years of service applied on his own for CRSC and was awarded 70% for PTSD. NVLSP and a partner firm assisted in appealing several conditions, and identifying a presumptive condition.
- Vet was awarded 100% CRSC. He can now elect between his full CRDP or full CRSC payments.



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CRSC Appeals Process



- CRSC request for reconsideration
- Appeal to the BCMR (Army, Air Force, Coast Guard) or BCNR (Navy, Marines)
- Appeal to Court of Federal Claims if w/in 6 years of first denial
- Appeal to U.S. District Court if more than 6 years from initial denial and procedural error
- NVLSP can assist with CRSC appeals at all levels!

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Effective Dates for CRSC Awards



- **Effective date for a CRSC award will be the later in time of the following 3 dates:**
 1. Effective date of the VA disability compensation award for a combat-related disability or disabilities
 2. Date the Vet was retired from a military service branch
 3. Effective date of the law that created entitlement to a CRSC award for that retiree
 1. May 2003 for longevity retirees
 2. June 2008 for medical retirees

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Retroactive CRSC Payment



- DOD has restricted retro payments to 6 years for applicants who file a CRSC claim more than 6 years after they were initially eligible to apply for CRSC
- Vet may be entitled to a retroactive CRSC payment depending on the effective date of the CRSC award
- NVLSP has a class action lawsuit in the U.S. Court of Appeals for the Federal Circuit (*Soto v. United States*) challenging DOD's practice of restricting CRSC payments to 6 years
 - NVLSP won case at U.S. District Court and Gov't has appealed

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CRDP vs. CRSC



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CRDP vs. CRSC



- A Vet cannot receive both CRDP and CRSC
- A Vet entitled to both is allowed by DFAS to choose whether to receive CRDP or CRSC
 - **May make election during annual open season election period in January**
- If a Vet does not elect either CRDP or CRSC, DFAS will automatically elect whichever program yields the highest gross amount
 - **Note: CRDP taxable, so CRSC may be lower than gross CRDP, but higher than net CRDP**

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CRDP vs. CRSC, Taxes

- CRDP is normally taxable, unless retired pay is non-taxable
 - If so, CRDP is also non-taxable
 - Retired Pay can be non-taxable if the retirement paperwork submitted to DFAS states that the disability is a direct result of a combat-related injury
- CRSC and VA Disability Compensation are non-taxable

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CRDP vs. CRSC

- Minimum VA disability rating
 - CRDP: 50%
 - CRSC: 10%
- Qualified injury/illness
 - CRSC: Combat-related
 - CRDP: Service-connected

- Available to medical retirees with less than 20 years of service?
 - CRDP: No
 - CRSC: Yes
- Divisible by divorce courts
 - CRDP: Yes
 - CRSC: No

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QUESTIONS?



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NVLSP VA Benefit Identifier App

NVLSP Training Opportunities