



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 1050-21
Ref: Signature Date

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Dear █

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 24 November 2021. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion contained in Director CORB letter 5819 CORB: 001 of 16 April 2021 along with your response to the opinion.

A review of your record shows that you entered active duty with the Marine Corps in October 2004. You deployed to Iraq in 2005-2006 and Afghanistan in 2008. During your second deployment, you were part of a convoy that was struck by an improvised explosive device (IED) and you were exposed to indirect fire. In April 2019, you were transferred to the Permanent Disability Retirement List after being found unfit for continued naval service by the Physical Evaluation Board. After your retirement, you applied to the Combat Related Special Compensation (CRSC) Board based on your Department of Veterans Affairs ratings. On 19 June 2019, the CRSC Board granted you CRSC for your Tinnitus condition but concluded insufficient evidence exists to support a finding that your PTSD condition was the result of a specific combat related event. You submitted a reconsideration request to the CRSC Board in November 2020 that was similarly denied based on the same rationale.

The Board carefully considered your arguments that you qualify for CRSC based on your diagnosed mental health conditions including PTSD and Depressive Disorder. You provided

evidence that these conditions were the direct result of your experiences in Afghanistan. Unfortunately, the Board disagreed with your rationale for relief.

Section 1413a of Title 10, United States Code, provides the statutory authority for payment of CRSC. Based on procedures and criteria prescribed by the Secretary of Defense, it allows for payment of CRSC for combat-related disabilities incurred “as a direct result of armed conflict.” The Office of the Under Secretary of Defense issued a Directive Type Memorandum on 27 April 2004 that provided guidance on what qualifies under the armed conflict provision of the statute. It defines armed conflict as a “war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action which Service members are engaged with a hostile or belligerent nation, faction, force, or terrorists.” While this appears to be very broad definition, the guidance limits it by stating “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.” After applying this guidance to the evidence in your case, the Board determined the preponderance of the evidence does not support granting CRSC due to your mental health conditions. Specifically, the Board concluded that you incurred your mental health condition while witnessing a traumatic event from a distance and not while engaged with the enemy. Witness statements provided in your application document that the IED explosion struck your convoy approximately 500 yards away from your location. While there is no question that this explosion caused trauma to your mental condition, along with other combat area conditions such as indirect fire and death of service members, in the Board’s opinion, you were not sufficiently “engaged” with the enemy to meet the criteria for payment of CRSC. In making this finding, the Board relied on the policy guidance that states participation in combat operations or presence in a combat zone is insufficient to support a combat-related determination.

While the Board agreed with your reasoning that physical injury from ordnance is not required, since that would likely result in qualifications under the Purple Heart criteria, they felt experiencing trauma due to witnessing a combat-related event from a distance did not meet the intent of the statute or departmental guidance for payment of CRSC. They concluded that to find that CRSC should be granted in your case would essentially qualify all service member who develops a mental health condition due to witnessing a disturbing combat area incident or exposure to danger such as indirect fire. The Board found that this would go against the limiting language in the policy guidance that was intended to ensure that not every service member who develops a disability condition while serving in a combat zone qualifies for CRSC, only those directly engaged with the enemy when the injury is incurred. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

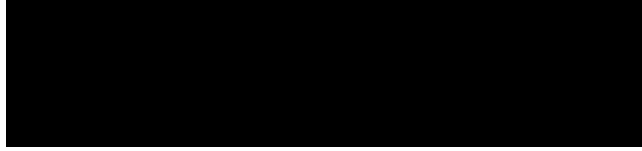
The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in

mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

11/27/2021



Deputy Director

Signed by: 