



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

█
Docket No. 3412-21
Ref: Signature Date



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 29 July 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 2 April 2020 along with your response to the opinion.

A review of your record shows that you entered service with the Marine Corps Reserve in 2002. You deployed to Iraq in 2004 during which you assert being exposed to trauma associated with witnessing death, small arms fire, and rocket attacks. You provided evidence that you were on perimeter guard duty on 18 March 2004 during an attack on your compound. Upon your return from Iraq, you were diagnosed with Post-Traumatic Stress Disorder. However, you were later placed on the disability retirement list in 2018 after being found unfit for continued naval service due to Cervical Spondylosis. Upon your retirement, you applied for Combat Related Special Compensation (CRSC) based on your PTSD rating. Your application was denied by the CRSC Board on 4 March 2019 based on lack of evidence.

The Board carefully considered your arguments that you qualify for CRSC based on armed conflict and instrumentality of war due to your PTSD. You argue that your PTSD was incurred during the 18 March 2004 attack on your compound as well as your exposure to various

munitions that was directly and indirectly fired at you. 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, while engaged in hazardous service, in the performance of duty under conditions simulating war, or through an instrumentality of war. In addition, CRSC may be awarded if a disability is attributable to an injury for which a Purple Heart was awarded. The Office of the Under Secretary of Defense issued a Directive Type Memorandum on 27 April 2004 that provided guidance on CRSC. Additionally, Department of Defense Regulation 7000.14-R (Financial Management Regulation) also addresses CRSC by stating “determinations of whether a disability is combat-related for CRSC will be based on the preponderance of available documentary information where quality of information is more important than quantity. 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.”

In your case, the Board determined the preponderance of the evidence does not support a finding that you qualify for payment of CRSC under armed conflict or instrumentality of war. First, the Board determined there was insufficient evidence that you were engaged with the enemy to qualify for CRSC based on armed conflict. The aforementioned CRSC guidance requires a service member to be “engaged with a hostile or belligerent nation, faction, force, or terrorists” to qualify for CRSC as a result of armed conflict. While the Board noted that you were present during an attack on your compound and present in an area of combat, they were unable to find evidence that you were actually engaged with the enemy as required by the guidance. The Board took into consideration that you do not possess a Combat Action Ribbon or any other combat related awards that would support a finding of engaging with the enemy. In addition, the Board considered the fact that the CRSC guidance also states “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.” In the Board’s opinion, the preponderance of the evidence only supports a finding that you incurred PTSD as a result of your presence in a combat area while participating in combat operations. In making this finding, the Board applied the CRSC guidance that requires the consideration of “credible, objective documentary information” in determining whether you qualify for CRSC. Therefore, absent evidence that you were actually engaged with the enemy, the Board determined the preponderance of the evidence does not support payment of CRSC based on armed conflict. Second, the Board determined that you do not qualify for CRSC under instrumentality of war. While different types of munitions utilized in a combat area certainly qualify as instrumentalities of war, the Board determined that your PTSD was not caused by the munitions. Rather, the Board concluded that your fear of being struck by these munitions is what led to your PTSD. In making this finding, the Board considered the fact that almost everyone who serves in a combat area is subject to direct or indirect fire during some time during their deployments. By using your rationale, everyone exposed to these different type of munitions would qualify for CRSC provided they develop PTSD. Similarly, a member could qualify for CRSC if they develop PTSD based on the fear of injury caused by a passing military vehicle or an unexploded

Improvised Explosive Device. In the Board's opinion, this is inconsistent with the CRSC guidance that envisions some form of physical contact between the instrumentality of war and the injury, e.g. the example provided in the CRSC guidance describes being struck by a Humvee. In addition, the Board felt it was inconsistent with the policy guidance that limits payment of CRSC for injuries incurred by simply being present in a combat zone or during combat operations. 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,

7/30/2021

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Deputy Director

Signed by:

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