



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. 3417-21
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 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 5 May 2020; a copy of which was previously provided to you for comment.

A review of your record shows that you entered the Navy in May 1999. You deployed to Kuwait and Iraq in February 2003 and were administered the Anthrax vaccine prior to your deployment. After being diagnosed with Essential Thrombocythemia in December 2003, you were discharged by the Navy in October 2005 based on a finding that your condition was preexisting and not aggravated by your active duty service. However, this Board placed you on the disability retirement list in July 2015 after initially determining your condition was not preexisting in an earlier Board decision. You subsequently filed for Combat Related Special Compensation (CRSC) based on an argument that your condition was developed as a result of the Anthrax vaccine. The CRSC Board denied your application on 27 February 2017 based on lack of evidence.

The Board carefully considered your arguments that you qualify for CRSC based on instrumentality of war or hazardous service. You argue that your condition developed as a result of the Anthrax vaccine. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion in your case.

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 CRSC under any of the criteria for instrumentality of war or hazardous service. For both of these categories, the CRSC guidance requires a finding that that a nexus exists between injury or disease and the instrumentality of war or hazardous service. For hazardous service, the guidance states a “finding that a disability is the result of hazardous service requires that the injury or disease be the direct result of actions taken in the performance of such service.” Similarly, for instrumentality of war the guidance states “there must be a direct causal relationship between the instrumentality of war and the disability.” In reviewing the evidence in your case, the Board found none that supports a finding that your Essential Thrombocythemia was caused by the Anthrax vaccine. So even assuming the vaccine qualifies as an instrumentality of war or is somehow related to hazardous service, the Board concluded the preponderance of the evidence does not show a nexus between your claimed disability and the vaccine. Without a nexus between your Essential Thrombocythemia and the vaccine, the Board determined there cannot be a finding that it was caused by either an instrumentality of war or due to hazardous service. Therefore, the Board found that you were appropriately denied CRSC based on your claim due to Essential Thrombocythemia. 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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