



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. 7237-21
Ref: Signature Date

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Dear Petitioner:

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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 August 2022. 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 also reviewed the 7 July 2022 advisory opinion (AO) from Director, Secretary of the Navy Council of Review Boards, a copy of which was provided to you, and to which you did not provide a response.

A review of your service record reveals that on 10 March 1986, you commenced a period of active duty in the Navy. Over the next nearly 30 years, you served various periods of reserve and active service. On 11 January 2016, you received a letter from Navy Personnel Command authorizing your transfer to the retired reserve effective 1 February 2016.

In your petition, you seek Combat Related Special Compensation (CRSC) for your tinnitus and insomnia/anxiety disorder. You contend that you incurred tinnitus and insomnia/anxiety as a direct result of armed conflict during the Persian Gulf War. In support of your request, you contend that your insomnia has been established as related to combat experiences because it was found to be service connected by the U.S. Department of Veterans' Affairs (VA). Similarly, you assert your tinnitus is from hearing loss that sustained as a result of the daily missions that were

being flown off the carrier, [REDACTED], while it was deployed to the [REDACTED] in 1991.

The Board carefully considered your petition and its attachments. To assist it in reviewing your petition, the Board obtained the 7 July 2022 AO, which was considered unfavorable to your request. The AO explained as follows:

After careful consideration, I have determined the documentary evidence sent to the Board was insufficient to support a combat-related determination for tinnitus, anxiety, and insomnia. Pertinent background information includes:

- a. [Petitioner's] claim for insomnia and tinnitus did not overcome the burden of proof that his disabilities were sustained as the direct result of a specific combat-related event. Additionally, Instrumentality of War combat-related determinations require a direct causal relationship between the instrumentality and the disability. While insomnia and tinnitus were determined to be service-connected, they were not determined to be combat-related and not approved under Instrumentality of War.
- b. [Petitioner's] claim for anxiety was not considered by the board, per reference (d), because it was not included in his initial claim for CRSC. However, based on the documentary evidence submitted to the CRSC board and BCNR, there does not appear to be a definite, documented, causal relationship between a specific combat-related event and the resulting disability (anxiety). The fact a member incurred a disability during a period of war or an area of armed conflict or while participating in combat operations is not sufficient by itself to support a combat-related determination.

The Board reviewed the entirety of the materials that you provided and carefully considered your arguments, but it 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.

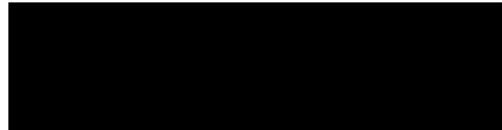
The Office of the Under Secretary of Defense issued a Directive Type Memorandum on 27 April 2004 that provided guidance on CRSC. Additionally, Department of Defense Regulation 7000.14-R (Financial Management Regulation) also addresses CRSC by stating “determinations of whether a disability is combat-related 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 concurred with the findings of the AO. In particular, the Board reiterated the finding of the AO, “[t]he fact a member incurred a disability during a period of war or an area of armed conflict or while participating in combat operations is not sufficient by itself to support a combat-related determination.” Further, the Board found that the evidence does not support a finding that you met any of the criteria for payment of CRSC. In reaching its decision, the Board observed that you provided insufficient evidence that any of your claimed conditions resulted from armed conflict, hazardous duty, performance of duty under conditions simulating war, or through an instrumentality of war. To the extent the conditions you claim were deemed service connected by the VA did not persuade the Board that they qualified for CRSC since there must be some documentary evidence that supports a finding that they were incurred under at least one of the criteria required for payment of CRSC. In your case, the Board did not find the requisite connection between your claimed afflictions and any specific event, such that you would be rendered eligible for CRSC. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your 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,

9/19/2022

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Executive Director

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