



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. 7516-21
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 8 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 considered the 6 July 2022 from advisory opinion from Director, Secretary of the Navy, Council of Review Boards, as well as your response to the AO.

A review of your record shows that you entered active duty with the Navy in March 1992. According to your petition, in June 2010, you injured your back and shoulder while participating in MRAP egress training. In addition, you assert that you incurred post-traumatic stress disorder (PTSD) and migraines while deployed to █. On 31 March 2020, having reached sufficient service, you retired from the Navy.

In your petition, you seek reconsideration for an award of Combat Related Special Compensation (CRSC) for the following injuries, which you contend were combat-related: PTSD with bruxism and memory loss at 50%, migraines at 30%, LU radiculopathy at 20%, lumbosacral strain at 20%, left shoulder impingement with rotator cuff tendonitis at 20%. In support of your request, you contend that you are currently in therapy and taking new PTSD medication (Sertraline). You stated that you have attached all new documents from your war time experience in Kuwait and Afghanistan and a psychological evaluation, conducted on 7 June 2021, which states that you suffer severe anxiety and hypervigilance from military war time service. You also included a document demonstrating your participation in MRAP egress war time training and a statement

from the Sailor who participated in the event with you. Finally, you presented additional service record documentation including awards and a medical suitability form from your command prior to your individual augmentation, which stated you had none of these medical conditions prior to [REDACTED]

The Board carefully considered your arguments in support of your reconsideration of your denial of CRSC. 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 Heat 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 order to assist it in reviewing your request, the Board sought the 6 July 2022 AO, which was considered unfavorable to your request. According to the AO:

In his application for CRSC, [Petitioner] stated his PTSD with bruxism, memory loss, and migraine headaches resulted from witnessing numerous IED explosions in close proximity to vehicles located ‘forward of the vehicle [he] was traveling in,’ as well as being ‘told that the [REDACTED] National Army had 10 percent Taliban as students that [his] team was teaching on a daily basis.’ For an injury or disability to meet the criteria for combat-related due to armed conflict, there must be a definite, documented, causal relationship between the armed conflict and the resulting disability. [Petitioner’s] claim does not establish that his disability was the direct result of armed conflict and therefore does not meet CRSC program criteria.

[Petitioner] stated that his lumbar radiculopathy, lumbosacral strain, and left shoulder impingement syndrome with rotator cuff tendonitis occurred as a result of falling out of his seatbelt during a HMMWV trainer evolution, in which the HMMWV simulates a vehicle rollover accident. An Instrumentality of War combat-related determination require a direct causal relationship between the instrumentality and the disability. Falling off, slipping, on, running into, tripping over, jumping off of, or attempting to lift an instrumentality of war does not meet CRSC program criteria, therefore [REDACTED] [REDACTED] claim does not establish that the injury resulted from the operation or mishap of an instrumentality of war.

The AO concluded, “[t]he documents provided by [Petitioner] did not overcome the burden of proof and were insufficient to support a combat-related determination for CRSC. I must recommend denial of his request.”

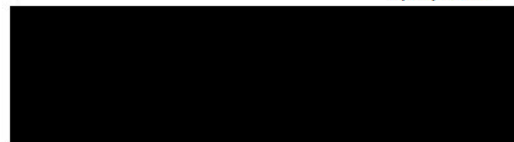
You provided a response to the AO and stated you are “unable to produce any more documents from my individual augmentation” and that you were “part of a five person Navy team sent for an Army signals intelligence billet which a lot of documentation for events wasn't filed.” You further explained state there was no mishap form given to you as a result of the vehicle accident, and that the combat related instrumentality of war was the trainer itself, and that you did not “simply ‘fall out of my seatbelt’ insinuating the accident was no big deal.”

After careful consideration of your petition and all documentation, the Board determined the preponderance of the evidence does not support a finding that you met the criteria for payment of CRSC. In reaching its decision, the Board concurred with the finding and overall rationale of the AO. The Board found the AO to be complete in its analysis. In particular, the Board observed, among other things, that there was an insufficient demonstration of a definite causal connection between the armed conflict/instrumentality of war and the resulting disability. The Board agreed with the AO that you have not overcome the required burden of proof needed to support a finding that your disability conditions met the CRSC program criteria. Accordingly, the Board found no error or injustice in your naval record and denied your requested relief.

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,

8/22/2022

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Executive Director

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