



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. 4801-22
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.

You have filed several petitions with this Board in the past, so a brief summary of your service is as follows: You entered active duty with the Navy in May 1982. After service assignments that included █, █, and █, you retired from the Navy on 30 September 2003, as a result of having completed sufficient service for such.

In 2018, you filed a petition with this Board in which you contended you deserve service credit for 30 years of active-duty service, retroactive promotion to paygrade E-9, and placement on the disability retired list. You raised a number of assertions regarding your alleged mistreatment by your chain of command onboard █ and your unfitness for continued naval service in 2003 for post-traumatic stress disorder (PTSD), chronic fatigue syndrome, irritable bowel syndrome, and bilateral carpal tunnel. On 19 March 2020, this Board denied your request and provided a fulsome explanation of its rationale based on a careful review of the entirety of your service record and your submissions.

In 2021, you submitted another petition with this Board seeking relief similar to the relief that you sought in your 2018 petition, and you also sought Combat Related Special Compensation (CRSC). After reviewing your petition, the Board reported its determination to you by its letter

dated 3 May 2022. In its letter, the Board explained the rationale for its decision after reviewing the materials you provided as well as service record documents. The Board also explained to you that your petition did not appear to include materials supporting your request for CRSC.

In your current petition, you included materials relating to your request for CRSC. According to your petition, you contend you are entitled to CRSC because you were traumatized by your service in Beirut, Lebanon, as well as by serving in Southwest Asia during the Gulf War and other Combat Zones, and that you suffer from post-traumatic stress disorder. In addition, you contend that when you were able to return to American soil, you were directly targeted by the 9/11 attacks.

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 determined the preponderance of 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. In making this finding, the Board noted that presence in a combat area is insufficient to merit CRSC and there must be evidence of direct engagement with combatants to qualify under the armed conflict provision. To the extent that any of the conditions you claim are deemed service connected by the Department of Veterans Affairs (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. Similarly, the Board found insufficient evidence to reverse its prior decisions regarding disability benefits, retroactive promotion to E-9, or the granting of service credit. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

Despite its negative finding on your petition, after review of your service record, the Board recognized and commended you for your honorable service to your country.

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,

9/15/2022

