



**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. 5103-22  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was 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 23 May 2023. 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.

The Board determined that a 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.

As set forth in the Board's 30 July 2021 letter to you denying your previous petition, 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 you were exposed to trauma associated with witnessing death, small arms fire, and rocket attacks in connection with a mortar attack. You explained that you were on perimeter guard duty, on 18 March 2004, during an attack on your compound. You served in Iraq for more than a year after this event, and on 11 June 2005, you were released from active duty due to completing your required service. In connection with your release from active duty, you would have received a pre-discharge physical. Available service records provide no indication that you suffered any combat injury during your period of active duty. In addition, your Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting your period in Iraq makes no indication of combat service. You accepted a set of

active duty orders in October 2005 and served through the end of the year, when you were released from active duty. There is no information set forth in your service records covering this period of time that you had suffered any injuries as a result of combat. Next, more than two years after the incident in Iraq, in August 2006, you accepted another set of active duty orders in the Marine Corps and thereafter served 12 years of active duty.

In or about 2017, you exhibited medical conditions such that you were referred to the Physical Evaluation Board (PEB) for a determination of your fitness to serve. On 22 May 2018, the PEB found that you were unfit due to cervical spondylosis, with a finding that it was rated at 30%. With respect to post-traumatic stress disorder (PTSD), the PEB found that your PTSD was not separately unfitting, and it did not contribute to your unfitting condition. On 30 August 2018, you were transferred to the temporary disabled retired list (TDRL) due to the sole unfitting condition of cervical spondylosis, which was determined to have not resulted from a combat related injury. On 8 November 2018, the Department of Veterans' Affairs issued to you a Ratings Decision, which, *inter alia*, granted you a service connected disability for PTSD rated at 70% effective 31 August 2018. Thereafter, 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. On 16 October 2020, you were transferred from the TDRL to the Permanent Disability Retired List (PDRL) with the same rating as when you were on the TDRL.

In 2021, you filed a petition with this Board seeking review of the denial of your application for CRSC. In your petition, you asserted that you qualified for CRSC based on armed conflict and instrumentality of war due to your PTSD. You argued that your PTSD was incurred during the 18 March 2004 attack on your compound as well as your exposure to various munitions that were directly and indirectly fired at you. By letter dated 30 July 2021, the Board denied your petition. In its letter, the Board described Section 1413a of Title 10 of the United States Code, which provides the statutory authority for payment of CRSC. The Board also described that the Office of the Under Secretary of Defense issued a Directive Type Memorandum on 27 April 2004 that provided guidance on CRSC. Additionally, the Board described Department of Defense Regulation 7000.14-R (Financial Management Regulation), which 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 connection with reviewing your prior petition, the Board obtained an advisory opinion (AO), dated 2 April 2020. According to the AO, with formatting adjustments:

The CRSC Board denied PTSD due to the lack of official documentary evidence he sent to the Board. The applicant believes his disabilities were incurred during a period of AC, providing his personal statement and a buddy statement in support of his claim. His medical records were based solely upon what he told his doctors and counselors had occurred. However, since there is a lack of documented

evidence for an AC determination, his claim alone is insufficient to support an AC determination.

To support a combat-related determination it is not sufficient to only state the fact a member incurred the disability during a period of war, or in an area of armed conflict or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability. There is no evidence of combat awards, nor did the applicant provide sufficient official documentary evidence to support his involvement in combat operations.

In its 30 July 2021 letter, the Board explained that it found (1) that you provided insufficient evidence that you were engaged with the enemy to qualify for CRSC based on armed conflict and (2) that you did not qualify based on instrumentality of war.

In your current petition, for reconsideration, you assert that the plain reading of the law establishing CRSC and the Department of Defense's promulgating Program Guidance requires finding that your PTSD was incurred through an instrumentality of war. You argued, in the alternative, that your Petitioner's PTSD was a direct result of armed conflict. In support of your petition, the new matter that you submit is primarily your invocation of a petition relating to another Marine who was granted CRSC due to PTSD as a result of the same mortar attack that you allege caused your PTSD.

In the review of the case that you submitted, the Board observed that each petition for CRSC is to be reviewed on its own merits. In denying your petition for reconsideration, the Board observed that, as noted above, the Department of Defense Regulation 7000.14-R (Financial Management Regulation), states that "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 reaching its decision denying your petition, the Board observed that after your 2004 deployment to Iraq, which was during a period you were serving in a reserve status, and despite your alleged PTSD as a result of the incident in Iraq, you voluntarily accepted active duty orders in the Marine Corps. You thereafter served for a period of approximately two months, and then for approximately twelve more years in the Marine Corps on active duty without incident. Thus, the Board found that the connection between your PTSD diagnosis and the mortar attack are tenuous and lacked the direct connection required to be awarded CRSC. In the Board's observation, individuals with combat related PTSD generally seek to avoid being returned to stressor situations, and your willingness to continue to volunteer for active duty periods is inconsistent with you suffering PTSD in 2004. In making this finding, the Board observed that the VA findings upon which you base your CRSC claim were not made until after you left active duty in 2018 and the VA findings are by their nature manifestation based; they are not based on findings contemporary to service. The Board acknowledged this diagnosis of your PTSD, but it was not convinced that it could be traced directly to the 2004 event in question.

With respect to the case that you assert is a favorable comparator to your situation, that Marine left the Marine Corps just a few years after the mortar attack, and continued treatment for his PTSD. In addition, in contrast to the lack of material you provided concerning your involvement in the mortar attack, the Fitness Report of the Marine that you cite as a comparator specifically documents his involvement in the mortar attack. As described in the Financial Management Regulation described above, after its review of all “relevant documentary information” the Board weighed it in “relation to known facts and circumstances, and determinations” and determined that the material you provided was insufficient for the Board to change its prior finding denying your request for CRSC. In addition, the Board substantially concurred with the AO in your prior, denied Petition. Ultimately, the Board determined that your petition failed to demonstrate the required definite causal relationship between the armed conflict and/or instrumentality of war and the resulting disability. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

6/2/2023

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Executive Director

Signed by: █