



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. 6844-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 27 April 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. In addition, the Board considered the 14 March 2023 Advisory Opinion (AO) from the Director, Secretary of the Navy Council of Review Boards. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

A review of your record revealed that you entered active duty naval service on 9 November 2005. You deployed in support of █ and █ from 2 November 2006 until 30 April 2007. You underwent your second deployment from 2 February 2008 to 1 August 2008.

On 28 August 2019, you were transferred to the Permanent Disability Retirement List (PDRL). The Department of Veterans Affairs (VA) service connected the following conditions: Post Traumatic Stress Disorder (PTSD), cervical radiculopathy, right upper extremity, and cervical radiculopathy left upper extremity, intervertebral disc syndrome, radiculopathy left lower extremity, cervical spondylolisthesis, irritable bowel syndrome (IBS)/gastroesophageal reflux disease (GERD), and migraines. The VA initially rated your PTSD condition at 50%; however, on 2 July 2020, the VA increased the rating for this condition to 70%, effective 31 March 2020.

Subsequently, you requested Combat Related Special Compensation (CRSC) for the conditions of IBS and GERD, Tinnitus, and PTSD. Your initial application was denied; you applied for reconsideration, and on 26 May 2021, the Combat Related Special Compensation Board (CRSCB) determined that your

IBS/GERD and Tinnitus conditions were combat-related due to Instrumentality of War. The CRSCB determined your PTSD was not combat related. The CRSCB found your application did not establish the specific combat-related events that caused the diagnosis of PTSD. You appealed the decision with CRSCB and on 11 May 2022, the CRSCB determined your erectile dysfunction was also combat-related under the provision of conditions simulating war, but did not find the PTSD as a combat-related condition. You again appealed the decision and on 8 July 2022, the CRSC Board determined again that your PTSD was not combat-related noting the following:

The fact that you incurred disabilities during a period of simulating war or in an area of simulated armed conflict or while participating in simulated combat operations is not sufficient by itself to support a combat-related determination. There must be a definite, documented, causal relationship between the simulated armed conflict and the resulting disability.

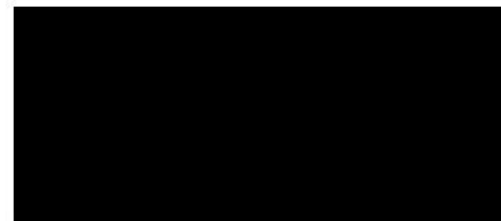
You argue in your petition to the Board that your PTSD is a direct result of a combat-related injury due to armed conflict and under conditions simulating war on the basis that you escaped confinement from a hostile or belligerent force. To support your contention you provided a personal statement stating you and your fellow crewman encountered three fishing dhows while in a "hostile body of water" and you asked those onboard if they spoke English. When they replied that they only spoke Farsi and you saw an Iranian flag and "political propaganda" you made the decision to leave the area. You also provided a ship deck log, training certificates, and VA medical records to support your request.

The Board carefully reviewed your petition and the material that you provided in support of your petition. Unfortunately, the Board disagreed with your rationale for relief. The Board concurred with the AO that the evidence provided does not support the claim. The AO noted that there is no evidence that you were pursued by the enemy or that the enemy attempted to capture or detain you and your crewmember. Additionally, the ship deck log that you provided as evidence documents that there was a loss of communications between the boat you were on and the [REDACTED] but does not corroborate enemy contact or evading enemy capture. Moreover, the training certificates standing alone do not prove that your PTSD resulted from that specific training. Finally, the Board noted that VA medical records from 11 years post-incident are not contemporaneous to establish the connection between the incident and diagnosis. Consequently, the Board concluded that there was insufficient evidence to support 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,

5/22/2023

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