



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. 2357-23
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 29 February 2024. The names and votes of the panel members 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 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 shows that you enlisted in the Marine Corps and commenced a period of active duty on 6 November 1996. On 30 July 2011, you were transferred to the TDRL and issued a Certificate of Release or Discharge from Active Duty (DD Form 214). On 6 August 2014, you were reviewed by a periodic physical examination (PPE), which directed that you be placed on the permanent disability retired list (PDRL) for the same conditions, and at the same disability level, for which you were placed on the TDRL. The specific date you were transferred to the PDRL does not appear to be available in your official military personnel file. After your discharge, the Department of Veterans' Affairs (VA) awarded you several service connected disabilities. Thereafter, you filed a request for Combat Related Special Compensation (CRSC) with the CRSC Board. The CRSC Board granted your request for CRSC by letter dated

14 September 2022. A review of the CRSC document that you provided shows that the CRSC Board assigned CRSC effective dates of 1 October 2016 for some VA diagnostic codes and for February 2017 for other VA diagnostic codes.

In your petition, you requested to have your CRSC payments backdated to the date you were placed on the TDRL. In support of your request, you contend that the six-year statute of limitations imposed by the CRSC Board was inconsistent with a recent legal case by the Court of Federal Claims, a copy of which you included with your petition.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. In its review of your contention, the Board observed that the legal case you provided was not the controlling case on the issue that you raised. Rather, the Board's legal guidance revealed that the legal case of *Soto v. United States*, decided by the United States Court of Appeals for the Federal Circuit on 24 February 2024, was the relevant controlling legal case. According to that case, the six year statute of limitations set forth in the Barring Act, 31 U.S.C. § 3702 applies to claims for CRSC such as yours. 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,

3/14/2024

