



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. 2770-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

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 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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 17 April 2001. On 17 May 2006, you were notified by the Physical Evaluation Board (PEB) that you were unfit and you were to be placed on the temporary disabled retired list (TDRL). The PEB found that your unfitting conditions were not combat related. Thereafter, on 19 June 2006, you were transferred to the TDRL. While you were on the TDRL you were reviewed by an Informal PEB (IPEB), which, in May 2008, found that your condition had stabilized, that you were unfit with a rating of 40%, and that your injuries were not the result of a combat related injury. On 30 May 2008, you accepted the results of the IPEB. Subsequently, you were transferred to the PDRL.

On 12 August 2015, the Department of Veterans' Affairs (VA) determined that you had certain service connected disabilities. You eventually filed a claim for Combat Related Special Compensation (CRSC), which was denied. The entirety of your CRSC file is not available, but the Board was able to review three requests for reconsideration of the denial of your CRSC claim dated 25 May 2022.

In your petition, you seek to be awarded CRSC. In support of your application, you provided a written statement in which you contend that your medals demonstrate that you were in combat, that you served faithfully, you were injured in combat, and the VA has rated you at 100% due to combat. You further assert that the Navy can access its records to confirm much or all of your assertions.

Unfortunately, the Board 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 qualify for payment of CRSC. In reaching its decision, the Board noted that it is not an investigative body. Accordingly, your assertion that the Navy can access its records to determine that you served in combat and incurred injuries as a result of that combat, and entitled to CRSC, is incorrect. To the contrary, the available records demonstrate that in transferring you to the TDRL in 2006, the PEB found your unfitting condition was not incurred as a result of a combat related injury. Similarly, in transferring you to the PDRL in 2008, the IPEB again found your unfitting condition was not incurred as a result of a combat related injury. Further, a review of your available service records does not reveal documented evidence that you received injuries as a direct result of engaging in armed conflict or any of the other bases for CRSC set forth in Section 1413a of Title 10, United States Code. With respect to your assertions in support of your petition, the Board did not observe evidence that you were in receipt of medals that indicated you were injured in combat, such as a Combat Action Ribbon or a Purple Heart Medal. Nor did the Board find the VA documentation that you provided to be persuasive evidence that you were injured as a direct result of combat while you were on active duty. As a result, absent additional evidence that you meet the criteria for CRSC, the Board found insufficient evidence exists to support a finding that you are entitled to CRSC for any of your VA rated disability conditions.

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,

6/6/2023

