



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. 5582-23
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 26 October 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 Marine Corps and commenced a period of active duty on 18 April 2011. In December 2021, you were placed into the Disability Evaluation System for a variety of conditions for which you were retired due to permanent disability effective 30 December 2021. You were originally retired as a Staff Sergeant, but you filed a petition with this Board, which informed you by letter dated 14 April 2023 that it granted your requested relief to be retired as a Gunnery Sergeant due to your selection for promotion prior to your disability retirement.

On 8 March 2022, you filed a claim for Combat Related Special Compensation (CRSC) for a variety of conditions totaling 24 claims. On 22 June 2022, your CRSC claim was denied by the CRSC Board, which specifically addressed each of your claims. The CRSC Board concluded by stating:

The CRSC Branch is required by reference (a) to review documentary evidence. The Office of the Secretary of Defense mandates that the applicant must meet the burden of proof identifying cause of each disability claimed for the CRSC benefit. Official documents usually include but are not limited to: DD-214; Combat Action Ribbon (CAR); Award/Medal with combat distinguishing device ("V"); Extracts from service personnel records; VA Rating Decisions; VA counseling notes or intake interviews citing combat stressors; Service medical record entries identifying the cause of the diagnosis; Results of audiometric examinations while still on active duty; Copies of Safety Mishap Reports or Line of Duty Investigations citing cause of injury; Casualty Evacuation Reports and/or Situation Reports. The fact that the VA established your diagnoses as service connected means they were incurred during your military career; not that they are combat-related. VA is not chartered nor authorized to make combat-related determinations. Your application package does not establish that specific combat-related events caused your diagnosis/diagnoses.

In your petition, you seek to have this Board review the decision of the CRSC Board and award you CRSC. In support of your Petition, you assert that your claims for CRSC were denied because you were unable to produce notes from a Corpsman. You further assert that you provided all medical records available on Tricare online to prove your injuries occurred on deployment, live fire ranges, and combat fitness tests.

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 a review of your available service records, the record before the CRSC Board, as well as the material that you provided, does not reveal documented evidence that you received injuries as a direct result of engaging in armed conflict, while engaged in hazardous service, in the performance of duty under conditions simulating war, or through an instrumentality of war as 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 any contemporaneous medical evidence or any other documentary evidence that indicated you were injured in combat, such as a Combat Action

Ribbon or a Purple Heart Medal. Nor did the Board find the Department of Veterans Affairs documentation that you provided to be persuasive evidence that you were injured 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. Further, the Board also found that there was no other basis for an award of CRSC for any of your claims and that your assertion that you provided “all medical records available on Tricare online to prove your injuries occurred on deployment, live fire ranges, and combat fitness tests” fell far short of the type of documentation that is required to be awarded CRSC. In sum, the Board observed that you provided insufficient evidence to support your claims for CRSC. 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,

11/23/2023

