

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-032**

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**FINAL DECISION**

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the applicant's completed application on February 10, 2015, the Chair docketed the case and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 20, 2015, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a retired [REDACTED] asked the Board to correct his record to show that his seizure disorder is combat related so that he will be eligible for combat-related special compensation (CRSC).<sup>1</sup> He alleged that no one knows exactly what caused his seizures to start, but he believes that they were a direct result of the stress he experienced while doing his job at the small boat station, Coast Guard Station St. Simons Island, Georgia. The applicant stated that his work at this station included running patrol boats for search and rescue; planning and organizing search and rescue missions; and standing watch as Officer of the Day. He argued that because his work was very stressful, his seizure disorder should be considered combat related or, at least simulated combat related, which would also qualify him for CRSC. In support of this argument, he submitted copies of some of his military and medical records, which are summarized below.

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<sup>1</sup> 10 U.S.C. § 1413a (authorizing combat-related special compensation (CRSC) and defining a combat-related disability as a disability that is "compensable under the laws administered by the Secretary of Veterans Affairs and that—

- (1) is attributable to an injury for which the member was awarded the Purple Heart; or
- (2) was incurred (as determined under criteria prescribed by the Secretary of Defense)—
  - (A) as a direct result of armed conflict;
  - (B) while engaged in hazardous service;
  - (C) in the performance of duty under conditions simulating war; or
  - (D) through an instrumentality of war."



### SUMMARY OF THE RECORD

The applicant enlisted on November 9, 1981, and was medically retired from the United States Coast Guard on July 25, 1988. His military records show that he became a [REDACTED] while assigned to Group [REDACTED] in 1984 but was then disqualified due to seasickness after he was transferred to Station [REDACTED]. He received the following medals while in the Coast Guard:

- A Meritorious Unit Commendation and a Humanitarian Service Medal for his service at [REDACTED]
- A Meritorious Unit Commendation for his service at [REDACTED]
- A Good Conduct Medal for the three-year period from November 9, 1981, to November 8, 1984.

The applicant was not awarded the Purple Heart, and the record does not show that he participated in any combat or simulated combat during his service. According to the applicant's medical records, while assigned to Station [REDACTED] in 1987, he began "experiencing 'spells' characterized by generalized jerking movements of the arms and legs" while sleeping, followed by confusion and disorientation. In October 1987, his coworker found him shaking in his bed with his eyes rolled back in his head. The applicant's wife witnessed a second such seizure the same month. The applicant told his doctor that at least four such incidents had occurred since April 1987.

The applicant was evaluated at the naval hospital in [REDACTED] and diagnosed with a seizure disorder. He was subsequently processed under the Coast Guard's Physical Disability Evaluation System, retired, and placed on the Temporary Disability Retired List on July 26, 1988. On July 25, 1993, the applicant was permanently retired subsequent to a Physical Evaluation Board finding a total combined disability rating of 40%. During the applicant's last medical evaluation prior to his permanent retirement on March 2, 1993, the doctor found that while his seizure disorder continued, his condition was under good pharmacological control. The record shows that at this time, the applicant was working as a mechanical engineer.

The applicant's medical records show that his seizure disorder is deemed to be service connected because he incurred it while on active duty, but the records do not show that the cause of the disorder has been determined or that it was attributed to any particular incident or accident.

On November 27, 1996, following his retirement from the Coast Guard, the Department of Veterans' Affairs (DVA) awarded the applicant an 80% disability rating for his seizure disorder and 100% for "unemployability." In 2013, the applicant applied to the Coast Guard to have his condition designated combat related so that he would be eligible for CRSC. On June 10, 2014, the Coast Guard informed the applicant that his request was denied because although his seizure condition is "service connected," it did not meet the criteria for being deemed combat related.

### **VIEWS OF THE COAST GUARD**

On August 21, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief. In so doing, he adopted the findings and analysis provided by the Personnel Service Center (PSC), which emphasized that 10 U.S.C. § 1413a and DOD guidance clearly define the situations where CRSC is appropriate. Furthermore, PSC noted, according to the medical evaluations and the DVA's rating decision, although the applicant started having seizures while in the Service, there is no direct correlation between the applicant's work with the Coast Guard and his seizure disorder. The Coast Guard's advisory opinion emphasizes the following positions:

- Under 10 U.S.C. § 1413a, the eligibility requirements are set out for the service member to receive combat-related disability. The veteran must either have a disability that is attributable to an injury for which the member was awarded a Purple Heart or the injury must fall under criteria prescribed by the Secretary of Defense. The Coast Guard states that the applicant does not fall into the first category because he was not awarded a Purple Heart for an injury.
- Furthermore, the applicant's seizure disorder does not conform to any of the definitions provided in the regulations prescribed by the Secretary of Defense. His seizure disorder is not a direct result of armed conflict or an instrumentality of war and was not incurred while performing duties under conditions simulating war. The Coast Guard also argued that the applicant's seizure disorder was not incurred while he was engaged in hazardous service, which is defined in DoD 7000.14-R § 630602 as including such duty as "aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty."

Thus, the Coast Guard recommended that the Board deny relief because the applicant has failed to meet his burden of proof.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On August 21, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond in writing within thirty days. No response was received.

### **DOD GUIDANCE**

The Department of Defense's "Combat-Related Special Compensation Revised Program Guidance," issued in January 2004, states the following regarding combat-related determinations under the CRSC program:

Direct Result of Armed Conflict - The disability is a disease or injury incurred in the line of duty as a result of armed conflict. The fact that a member incurred the disability during a period of war or an area of armed conflict or while participating in combat operations is not sufficient to support a combat-related

determination. There must be a definite causal relationship between the armed conflict and the resulting disability.

Armed conflict includes a war, expedition, occupation of an area or territory, battle skirmish, raid invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or terrorists.

Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in custody of a hostile or belligerent force while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

While Engaged in Hazardous Service - Such service includes, but is not limited to aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of such hazardous service required that the injury or disease be the direct result of actions taken in the performance of such service. Travel to and from such service, or actions incidental to a normal duty status not considered hazardous are not included.

In the Performance of Duty Under Conditions Simulating War - In general this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training, repelling and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics and jogging or formation running and supervised sport activities.

Instrumentality of War - Incurrence during an actual period of war is not required. However, there must be a direct causal relationship between the instrumentality of war and the disability. The disability must be incurred incident to a hazard or risk of the service.

## FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record. The applicant was discharged July 25, 1988, but CRSC was not enacted until 2002.<sup>2</sup>

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<sup>2</sup> Pub. L. 107-314, Div. A, Title VI, § 636(a)(1), Dec. 2, 2002, 116 Stat. 2574, *codified at* 10 U.S.C. § 1413a.



The applicant apparently discovered CRSC and sought this designation in 2013, and the Coast Guard denied his request in June 2014. Therefore, the BCMR application is timely.

3. The applicant alleged that the Coast Guard has erroneously and unjustly denied him a combat-related designation for his seizure disorder, which he incurred while a member of the Coast Guard. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."

4. To show that his seizure disorder should properly be considered eligible for CRSC, pursuant to 10 U.S.C. 1413a, the applicant must show by a preponderance of the evidence that his seizure disorder is "attributable to an injury for which the member was awarded the Purple Heart" or that it was incurred, according to DOD Guidance,

- (A) as a direct result of armed conflict;
- (B) while engaged in hazardous service;
- (C) in the performance of duty under conditions simulating war; or
- (D) through an instrumentality of war.

The applicant never received a Purple Heart and was not involved in armed conflict while in the Coast Guard. Likewise, there is no evidence that he was ever injured by an instrumentality of war or that he performed duty "under conditions simulating war," as described in DOD's Guidance. In this regard, the Board notes that search-and-rescue operations at a small boat station are not combat simulations.

5. The only remaining question is whether search-and-rescue operations constitute "hazardous duty" under DOD's Guidance and whether there is substantial evidence that the applicant's seizure disorder was a direct result of his work in search-and-rescue operations. DOD's guidance defines "hazardous duty" as duty such as "aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty." These duties can all be potentially fatal or severely disabling. Given these examples, the Board finds that there is no evidence in the record that the applicant performed duty that constitutes "hazardous duty" for the purpose of 10 U.S.C. § 1413a. Nor is there evidence that his seizure disorder was a direct result of such duty. The applicant argued that his work was stressful, but stressful duty is not necessarily hazardous in the way that parachuting and demolition duty are hazardous. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that his seizure disorder was a direct result of hazardous duty under DOD's Guidance.

6. Accordingly, the application should be denied because the applicant has not proven by a preponderance of the evidence that the Coast Guard's determination that his seizure disorder does not qualify him for CRSC is erroneous or unjust.

**(ORDER AND SIGNATURES APPEAR ON PAGE)**

**ORDER**

The application of [REDACTED] USCG (Retired), for correction of his military record is denied.

November 20, 2015

