



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No. 5375-17
DEC 15 2017

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 November 2017. 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.

A review of your record shows that you entered active duty with the Marine Corps in March 1999 and successfully served until your placement on the Temporary Disability Retirement List on 30 August 2016 after being found unfit for continued naval service due to Bi-Polar Disorder by the Physical Evaluation Board (PEB). In making their findings, the PEB determined your condition was not a combat related injury as defined by 26 U.S.C. § 104(b)(3). As a result of your disability, you applied for Combat Related Special Compensation (CRSC) but were denied by the CRSC Board on 12 October 2016 after the Board determined it lacked evidence that a specific combat related event caused your diagnosis. On 24 April 2017, the Department of the Navy overturned the PEB's findings after concluding the PEB erroneously substituted the diagnostic code for Bi-Polar Disorder for Post-Traumatic Stress Disorder (PTSD) and that your PTSD was caused by your exposure to combat in Iraq; thereby making your PTSD condition a combat-related injury under 26 U.S.C. § 104(b)(3). You applied for reconsideration to the CRSC Board based on this new evidence but was again denied based on lack of evidence that your PTSD was caused by a specific combat related event.

The Board carefully considered your arguments that you deserve CRSC based on the Department of Navy's finding that you suffer from PTSD and your condition is considered a combat related injury under 26 U.S.C. § 104(b)(3). Unfortunately, the Board disagreed with your rationale for

relief. CRSC is authorized under 10 U.S.C. § 1413a and defines a disability as combat related if it is attributable to an injury for which a service member was awarded the Purple Heart or was incurred as a direct result of armed conflict as determined under criteria prescribed by the Secretary of Defense. There are other criteria under which CRSC may be awarded but the Board considered your case under the criteria of 10 U.S.C. § 1413a(e)(2)(A) since that is the basis of your claim and there was no evidence presented that you qualified under other criteria. In your case, the Board considered the source of your PTSD and concluded that the basis of your condition was the traumatic experiences you experienced during your two deployments to the Iraq from 2005 through 2007. Your medical board report of 24 September 2015 states that you were subject to direct and indirect fire and were once blown out of your rack during your deployments. In addition, your record shows you processed detainees while operating in and around the city of Fallujah; recovered the remains of fallen Marines; and, processed the Personnel Casualty Reports and Red Cross Messages on 22 Marines killed in action and over 300 wounded, all of whom you personally knew. The 24 April 2017 decision letter from the Department of the Navy regarding your PEB findings also mentions you were involved in firefights with the enemy as the basis for granting you a combat related determination under 26 U.S.C. § 104(b)(3). However, despite all the medical findings based on your statements, the Board was unable to find documentary evidence that your PTSD was incurred as a direct result of armed conflict; specifically, that you incurred your condition while engaged with the enemy. As pointed out in the CRSC denial letter of 30 May 2017, the Secretary of Defense has mandated that there must be official documentary evidence that meets the burden of proof that your PTSD condition qualifies under 10 U.S.C. § 1413a(e)(2)(A). In your case, there was no documentary evidence to support a finding that you were engaged with a hostile or belligerent nation, faction, force, or terrorists. The most probative evidence for the Board was your lack of a Combat Action Ribbon (CAR) despite the existence of 2007 award write-up from your chain of command. This led the Board to agree with the CRSC Board that there was insufficient evidence to support a finding that your condition met the "direct result of armed conflict" criteria for CRSC under the Department of Defense guidance. The fact the Department of the Navy determined you met the criteria for a combat related injury under 26 U.S.C. § 104(b)(3) did not persuade the Board to make a similar finding under 10 U.S.C. § 1413a. Despite the similar language used under both provisions, the Board concluded the Title 26 provision does not contain the same statutory requirement of 10 U.S.C. § 1413a that your injury must meet the criteria prescribed by the Secretary of Defense. This led them to find that the Department of the Navy, when applying 26 U.S.C. § 104(b)(3), was not required to meet the same standard as the CRSC Board and could rely on your statements to medical providers to support their findings that you were involved in a firefight. The Board could not find evidence to support a similar finding under 10 U.S.C. § 1413a since there is no documentary evidence to support your statements that you were "engaged" with the enemy. The 2007 CAR write-up you provided shows that you received fire from the enemy but did not engaged in a firefight. This would be similar to a majority of military members who served in a combat zone who were subject to indirect fire and developed PTSD.

The Board concluded that extending the 10 U.S.C. § 1413a definition of "incurred as a direct result of armed conflict" to include PTSD suffering members who received but did not return fire would create too broad of a class of members entitled to CRSC. In their opinion, to find otherwise would be inconsistent with the Secretary of Defense's intent based on the limiting

policy guidance provided. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence not previously 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,

A solid black rectangular box used to redact the signature of the Executive Director.

Executive Director