



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

[REDACTED]
Docket No. 5648-17
DEC 26 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 U.S.C. §1552. Your case was reconsidered in accordance with procedures that conform to *Lipsman v. Secretary of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). You were previously denied relief by the Board on 12 December 2011.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 December 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. However, after careful and conscientious consideration of the entire record, the Board determined that while your request does contain new information not previously considered by the Board, it does not warrant relief. Accordingly, your request has been denied.

The Board carefully considered your arguments that you deserve Combat Related Special Compensation (CRSC) based on your Post-Traumatic Stress Disorder (PTSD) that was incurred as a direct result of armed conflict and through an instrumentality of war. Unfortunately, the Board disagreed with your rationale for relief. Title 10, United States Code, Section 1413a provides the statutory authority for CRSC. The statute authorizes payment for combat related disabilities, under the criteria prescribed by the Secretary of Defense, if, among other requirements, it meets the definition of a combat related disability under 10 U.S.C. §1413a. paragraph (e). In your case, you contend that your PTSD condition is eligible for CRSC under subparagraphs (2)(A) and (2)(D) of paragraph (e), specifically the sections that identify disabilities that are incurred as a direct result of armed conflict and those incurred through an instrumentality of war. After consideration of the other CRSC requirements, the Board determined that you are qualified for payment of CRSC if your disabilities meet the definition of a "combat related disability" under the 10 USC §1413a.(e) and Secretary of Defense (SECDEF) CRSC guidance.

First, the Board examined your claim that your PTSD condition qualifies as a disability incurred as a direct result of armed conflict. The SECDEF guidance states that a disability incurred as a direct result of armed conflict is a disability that is “incurred in the line of duty as a direct result of armed conflict.” Armed conflict is further defined to include “war, expedition, occupation of an area or territory, battle, skirmish, 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 terrorist.” (Emphasis added.) The guidance also states that incurring a disability in an area of armed conflict or while participating in combat operation is not sufficient to support a combat related determination. In your case, the PTSD condition was incurred as a result of rocket or mortar attacks you experienced as a Service member stationed in Iraq during Operation Iraqi Freedom. So there was no question regarding your line of duty status. The larger question for the Board to consider was whether your PTSD was incurred while you were engaged with a hostile or belligerent nation, faction, force or terrorist. You argue that your disability qualifies under this provision since Operation Iraqi Freedom is clearly an armed conflict and the American military was engaged with combatants. This is where the Board disagreed with your rationale for relief. The Board did not consider receiving indiscriminate indirect fire as an incident which meets the definition of “engaged” with the enemy. In their opinion, making such a finding would expand the potential pool of Service members who would qualify for CRSC to almost everyone who served in a combat zone during Operation Iraqi Freedom since indirect fire by the enemy onto U.S. installations was a common occurrence and many suffer from some aspect of PTSD as a result. The Board concluded your rationale for relief would expand the definition to include those members specifically excluded by the SECDEF guidance, i.e. those Service members who incurred a disability only while serving in an area of armed conflict or while participating in combat operations. As an analogy, it would be no different than if a Service member developed PTSD when a naval vessel on which he was travelling almost strikes a floating mine or another who develops PTSD when their HUMVEE almost runs over a land mine. In both cases, the fear of injury or death is very real and may cause the development of PTSD but it does not necessarily mean the member was engaged in armed conflict, for the purposes of CRSC, since there was no engagement with the enemy and the policy guidance makes it clear that service in the a combat area alone is insufficient to qualify for CRSC. The Board discussed the need for clarifying SECDEF CRSC guidance as it pertains to mental disorders but concluded, based on existing guidance, you were not engaged with the enemy when you received indirect rocket or mortar fire. The Board believes that Congress provided for circumstances for which injuries are incurred when not directly engaged with the enemy by allowing members to qualify for CRSC under 10 U.S.C. §1413a.(e)(1) when they earn a Purple Heart.

Second, the Board considered whether your PTSD condition qualifies for CRSC under the instrumentality of war provision. Regrettably, the Board determined it does not. While the Board believes you correctly outlined the criteria for qualifying under this CRSC provision, the Board felt it does not apply in your case. The Board concluded this provision exists to cover disabilities incurred that are not covered by the other combat related disability provisions. The Board determined that SECDEF never intended for one section of his policy guidance to authorize CRSC under circumstances when it is specifically excluded by the same policy guidance in another section. As an example, travelling through a combat zone heavily populated by enemy units could easily be interpreted as “engaged in hazardous service” that would be

equivalent to or exceeding the hazards faced by Service members when engaged in activities specifically listed in the SECDEF CRSC guidance, e.g. diving duty, aerial flight, etc. So travelling through a combat zone as part of routine combat operations and developing PTSD, under many circumstances, could qualify for CRSC under 10 U.S.C. §1413a.(e)(2)(B) by using your rationale. However, adopting that interpretation of the SECDEF guidance would undermine the guidance restrictions for disabilities incurred as a direct result of armed conflict and, in the Board's opinion, results in an unreasonable interpretation of the SECDEF CRSC guidance. Therefore, the Board determined you do not qualify for CRSC under 10 U.S.C. §1413a.(e)(2)(D) since they believe, for the reasons described above, CRSC is specifically not authorized in your case under the SECDEF policy guidance applicable to 10 U.S.C. §1413a.(e)(2)(A). Accordingly, the Board again concluded no error or injustice exists in your case.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken again. 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 the absence of sufficient new and material evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

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,



Executive Director