



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. 5117-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. 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 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 10 October 2024. The names and votes of the panel members 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 enlisted in the Navy Reserve on 11 December 2006. During your time in the Reserve, you served periods of active duty from 17 January 2007 to 1 June 2007, 13 June 2008 to 19 May 2009, and 31 December 2009 to 14 May 2010. You were eventually referred into the Disability Evaluation System (DES), and an Informal Physical Evaluation Board (IPEB) convened on 26 September 2014 found you to be unfit due to Post-Traumatic Stress Disorder (PTSD) with a 50% rating. The IPEB also found that you had a separately, not disabling condition of Alcohol Dependence. Finally, the IPEB found that your disability did not result from a combat related injury. Thereafter you were placed on the temporary Disability Retired List (TDRL). While you were on the TDRL, you were evaluated by an FPEB. On 28 December 2017, the FPEB rated your unfitting condition at 10%, which would have resulted in your discharge from the TDRL. In its Formal Rationale explaining its decision, the FPEB wrote:

[Petitioner] was a member of the Navy Reserve from 2006 to 2010. He deployed once to █ from September 2008 until May 2009 where he worked as an equipment operator transporting supplies to and from bases. He denied being involved in direct combat but did report exposure to “stressful situations.” He was

seen twice in theater for skin conditions and on his Post-Deployment Health Assessment completed 25 February 2009, he reported having suffered from vomiting while in theater. A post-deployment mental health evaluation was completed on 08 April 2009 at which time he was found to have “no psychological abnormalities.” He completed a demobilization physical the following day and was cleared to demobilize. On 21 December 2009, the member was seen for a periodic health assessment and was found to have “no deployment limiting medical or emotional concerns.”

On 31 January 2018, you filed a Petition for Relief (PFR) seeking review of the findings of the FPEB. In your PFR you argued, through legal counsel, that you did not receive notice of the FPEB hearing, and that, had you received the notice, you would have attended the hearing and provided documentation that supported continuing your disability rating at 50%. In your PFR, you did not argue, and you provided no facts in support of a finding, that your disability should be considered combat related. On 6 February 2018, Director, Secretary of the Navy Council of Review Boards (CORB) granted your PFR, directing the PEB to issue new findings reflecting that your disability rating remained at 50% and that you be transferred to the Permanent Disability Retired List (PDRL). That same day, the FPEB issued new findings in accordance with the PFR determination, and again finding that your disability was not combat related and directing that you be placed on the PDRL.

On 23 October 2018, you filed your original claim for Combat Related Special Compensation (CRSC), in which you explained that, during your deployment, you witnessed many explosions and accidents where individuals were injured. You described an incident where you were in a convoy of 30 vehicles and a Marine fell asleep behind the wheel of his truck and almost killed your crew. You also described another time where a trailer disconnected as a result of an “IED blast” “while going 40 mph” and you hit your head on the windshield, and that vehicles got stuck under power lines and you were surrounded by townspeople who were armed. Finally, you also asserted that you missed your son being born.

On 27 February 2019, the CORB, through its CRSC Board, denied your request for CRSC due to PTSD. According to the CRSC Board, the fact that you may have “incurred the disability during a period of war (or simulated war) or in an area of armed conflict, or while participating in combat (or simulated combat) operations is not sufficient to support a combat-related determination.” The CRSC Board further explained that there “must be a definite causal relationship between the armed (or simulated) conflict and the resulting disability. Your application does not establish that combat-related events caused your diagnosis.”

In your petition, you request review of the CRSC Board’s decision, and that you be awarded CRSC. In support of your request, you asserted that, while you were deployed you were in a traumatic vehicle accident that changed you forever. You asserted that, during one convoy in particular, you were a passenger in a medium tactical vehicle replacement (MTVR), and the driver of the vehicle did not secure the tow components correctly. Then, while traveling “at approximately 40 mph,” the tow component came apart and sparks disbursed everywhere, and the cabin filled with smoke. You stated that you thought you were struck by an explosive device and that your experience aggravated your already troubled thoughts, caused you to develop

severe symptoms of PTSD, and that you have never been the same. You also argued that the MTRV is an instrumentality of war, and it caused your injury.

The Board carefully reviewed your petition and the material that you provided in support of your petition and disagreed with your rationale for relief. In reaching its decision, the Board concurred with the findings of the CRSC Board, finding that the facts underlying your disability at issue do not support an award of CRSC. At the outset, the Board observed that you provided no contemporaneous evidence that you suffered a combat-related injury. Indeed, the PEB, at every stage in your review within the DES, determined that your disability was not a combat-related injury. Further, the Formal Rationale of the FPEB in December 2017 explained that you had denied being involved in direct combat but that you did report exposure to “stressful situations.” As cited in the Formal Rationale also described that you completed a post-deployment health assessment on 8 April 2009, and you were found to have “no psychological abnormalities.” Thereafter, on 21 December 2009, you were seen for a periodic health assessment and were found to have “no deployment limiting medical or emotional concerns.”

Although you filed a PFR concerning the determination of the PEB, your PFR did not address or challenge the lack of combat-related injury finding. In addition, the Board was not persuaded by your new argument that the motor vehicle in which you were traveling was an instrumentality of war that caused your injury. The Board found that your recitation of the facts concerning the alleged injuries caused by this vehicle shifted, lending less credence to your assertions. In your initial claim for CRSC, you alleged the trailer that the motor vehicle was pulling broke off as a result of an “IED blast,” whereas it is now your position that the trailer broke off because the driver failed properly to secure the trailer. Even if there were some method of resolving the apparent discrepancies in your assertions, the Board observed that you provided no documentation or indicia that this alleged incident caused a combat-related injury. 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,

11/8/2024

