



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. 9360-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 request for reconsideration of the denial of your previous petition on 13 March 2025. 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 enlisted in the Navy on 26 January 1995 and served on active duty until you completed your required service on 25 January 1998. Eventually, you re-affiliated with the Navy, obtained a commission, and served several years, which included both active and reserve service. You commenced your final period of active duty service on 17 June 2016. During that period of active duty service, you were evaluated for placement into the Disability Evaluation System (DES), and on 4 October 2021, a Medical Evaluation Board (MEB) was prepared. In the report of the MEB, your commanding officer provided a non-medical assessment (NMA), and you provided a written statement. In the NMA, your commanding officer checked that the conditions for which you were evaluated by the MEB were not incurred in a combat zone. On 9 November 2021, the Department of Veterans' Affairs (VA), in its role within the Integrated Disability Evaluation System (IDES) provided its proposed ratings.

On 8 April 2022, you were reviewed by an Informal Physical Evaluation Board (IPEB), and, on 8 April 2022, the IPEB found you unfit for Category I conditions of (1) Monoplegia of Lower Limb Affecting Unspecified Side at 80% and Other Spondylosis, Lumbar Region at 20%. The IPEB found as Category III conditions (not separately unfitting and do not contribute to the unfitting conditions) of Complex Regional Pain Syndrome of Right Lower Limb. The Board further found that your disability was incurred while entitled to receive basic pay, it did not occur during a period of unauthorized absence, it was not the result of intentional misconduct or willful neglect, it occurred after 14 September 1978, and it did not result from a combat related injury as defined by Title 26 U.S. Code Section 104(b)(3). The IPEB noted that all members concurred in the Decision.

On 13 April 2022, you prepared your election of options, selecting that you accepted the findings of the IPEB. Thereafter, you were retired to the Permanent Disability Retired List (PDRL) effective 27 July 2022. On 13 March 2023, the Combat Related Special Compensation (CRSC) Board granted you CRSC for residuals of lung cancer and bilateral tinnitus.

In your application, you request that your retirement orders directing you to the PDRL reflect that your retirement was "Combat Related" vice "Not Combat Related." In support of your request, you contend that there were several medical conditions that led to your retirement, one of which was lung cancer, which caused neuropathy and paralysis in your arms and legs. You explain that your Navy doctor referred you to a civilian doctor who found the linkage between your cancer and the weakness in your arms. You state that you retired effective 27 July 2022, but your orders did not state "Combat Related." You further state that following your retirement, you applied for, and were granted, CRSC for lung cancer and tinnitus. In this regard, you explain that the CRSC Board ruled that your lung cancer was Combat Related - Instrumentality of War- Gulf War Service, and that the PACT Act Section 705 supports your position.

The Board carefully reviewed your contentions and the material that you submitted in support of your request for reconsideration, and the Board determined that it found no error or injustice in your naval records. In reaching its decision, the Board observed that it applies a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In your case, the available IDES records reflect that your commanding officer did check that the conditions for which you were being reviewed did not incurred in a combat zone. Next, the IPEB that reviewed you for fitness to continue service specifically noted that your conditions were not incurred in a combat zone. The Board considered your argument that the CRSC Board later granted you CRSC, but the Board observed that the IPEB and the CRSC Board used different standards as they are different programs. Notably, the IPEB reviews medical conditions to determine whether such conditions are unfitting, while the CRSC Board reviews conditions in order to determine whether certain conditions (which may or may not have been found to be unfit) are eligible for an award of CRSC. Further, the Board was not persuaded by your citation of the PACT Act, which is a statute that applies to the VA and not to the service Disability Evaluation System. Accordingly, the Board observed that you provided insufficient evidence to overcome the presumption of regularity, and it denied your request.

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,

3/28/2025

