

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2005-164**

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXX, SS1 (Ret.)

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**FINAL DECISION**

**AUTHOR:** Ulmer, D.

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on September 9, 2005, upon receipt of the applicant's completed application and military records.

This final decision, dated June 29, 2006, 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 SS1, asked the Board to correct his Coast Guard military record by showing that his back injury and post-traumatic stress disorder (PTSD) are combat-related, which would entitle him to Combat Related Special Compensation (CRSC)<sup>1</sup>. In this regard the applicant stated the following:

At morning station aboard the [cutter], off the west coast on June 17, 1958 I injured my back while on patrol. I was caught between a one-inch pipe on my back and the ship's railing. This was caused when a cable wire railing struck my right abdomen it threw me between the pipe stand and knocked me out. There was a witness, [a] Chief Gunners mate.

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<sup>1</sup> CRSC is a recently enacted law (2002) that allows certain retirees to receive both retired pay and disability compensation. To be eligible the veteran must be in receipt of retired pay based on 20 years or more of service, and must have a compensable service-connected disability from the Department of Veterans Affairs (DVA). In addition, the DVA service-connected disability must be combat-related.

I re-injured my back in December 1958, while aboard [the cutter]. We were between Japan and Hawaii when the ship was called to General Quarters. The re-injury happened during this drill when I slipped and fell directly down on my buttocks, compressing [my] spine. A fellow shipmate died during this period. I feel that because my injuries happened during this period of General Quarters that it meets the criteria for Combat-Related Compensation.

The applicant submitted a copy of a July 12, 2005, letter from Commander, Coast Guard Personnel Command (CGPC) denying his claim for combat-related special compensation. CGPC informed the applicant as follows:

We did receive the requested medical documentation regarding your injuries, which precipitated your disabilities. However, after reviewing this evidence, you have not shown the connection between your injuries and a combat related event. For example, your anxiety disorder as diagnosed mentions your reaction to the death of your father. It makes no mention of any specific traumatic event which occurred that would normally be combat related. Furthermore, your degenerative arthritis of the spine disability does not evidence any treatment record for a precipitating impairment that would be considered combat related within the meaning of the law.

The applicant was advised that he could appeal CGPC's decision to the Board for Correction of Military Records.

### **SUMMARY OF THE RECORD AND SUBMISSIONS**

The applicant enlisted in the Coast Guard on May 17, 1955. He retired on May 31, 1975 with 20 years of active service. On January 31, 1975, the applicant underwent the customary medical examination to determine whether he was medically qualified for retirement. The examining physician found the applicant qualified for retirement, but noted that the applicant had some low back pain as determined by an orthopedic consult. The examining physician found this condition to be NCD (not considered disabling). Subsequently, the applicant was retired from the Coast Guard.

#### *Coast Guard Medical Record Entries Related to the Applicant's Back Injury and PTSD*

A medical note dated June 17, 1958, states that the applicant was struck in his mid abdomen at approximately 8:00 a.m. while aboard ship. The note further states that the applicant "was not knocked unconscious" but noted pain in the left abdomen and flank, which was aggravated by deep breathing.

On June 17, 1958, the applicant reported to the base infirmary complaining about pain in his stomach. The applicant reported to medical personnel that he was bringing in a line and was struck in the abdomen with a stanchion, knocking him unconscious momentarily. To rule out the rupture of his spleen, the applicant was referred to a United States Public Health Service (USPHS) hospital.

The applicant was admitted to the USPHS on June 17, 1958, and he was discharged on June 30, 1958. The narrative summary noted some "mid left CVA (cost-vertebral angle) and left flank tenderness" during the physical examination. Later into his hospital stay, the medical report noted "minimal CVA tenderness" had subsided. The applicant was given 30 days of convalescent leave, after which he was returned to full duty. The discharge diagnosis was a contusion of the left kidney and contusion of the abdominal wall.

The medical record indicates that the applicant was hospitalized on May 12, 1964, after he passed out. The narrative summary states that the applicant was conscious "but didn't move any part of [his] body, and would not respond to painful stimuli or to vocal stimuli." The applicant's physical and neurological examinations were normal. The summary states that the applicant was fully alert on May 13, 1964, and stated, "he has been very nervous and upset, especially since his father's death a few weeks ago." The applicant was discharged from the hospital on May 14, 1964, with a diagnosis of acute anxiety reaction.

On August 13, 1971, the applicant was noted to have low back pain without muscle spasm. He was treated with heat and found fit for full duty.

During an annual medical examination on April 10, 1972, the applicant complained of low back pain. The medical report stated the physical examination of the applicant's back and the x-ray were normal. It also noted that the condition was not considered to be disabling.

As previously stated, the applicant was found to have mild low back pain during his retirement medical examination on January 31, 1975. The condition was not considered disabling and the applicant was instructed on appropriate exercises and back care. The applicant was found fit for retirement and "qualified to perform duties of rate/rank."

#### *DVA Records*

The applicant first filed a claim with the DVA in 1990. The DVA initially denied the applicant's disability and compensation claim. The applicant appealed and the case was remanded to a regional office for further development. Subsequently, the DVA

found support for the applicant's disability claim in the Coast Guard record and the cutter's logs and granted the applicant a 100% service connected disability rating for PTSD and a 10% disability for arthritis of the lumbar spine. The DVA decision noted that the applicant served during the Vietnam era but it made no mention of a relationship between the applicant's disabilities and combat.

An April 25, 1991 letter from a team leader of the applicant's local veterans' center explained how the applicant incurred his back injury and the events that contributed to the applicant's subsequent development of PTSD. He offered the following:

1. While stationed [on a cutter] on June 17, 1958, [the applicant] was caught around his waist by a cable as they were getting underway. Veteran thought he was going to die as he lost consciousness. Veteran was hospitalized in the Naval hospital in Alameda. Veteran stated he stayed in the hospital from 6/17-6/30, 1958. Veteran related sleeping disturbance regularly as a result of flashbacks about this incident. Veteran continuously visualizes the possibility of being killed in that incident.

2. Veteran was also caught in a tidal wave between Midway Island and Hawaii. Veteran related the horror of the entire crew as the [cutter] was tossed about. Twelve men were injured severely and one was lost at sea. Veteran recalls this experience many times and cries as he relates how he helped his shipmates to stay alive during that experience.

3. Veteran recalls the earthquake in Kodiak, Alaska, in 1964. While going to his ship . . . he was overwhelmed by the tidal wave that followed the earthquake. Veteran was trapped in his car but managed to escape. When he and other shipmates tried to get back to the ship again they were overwhelmed by another wave. Veteran was submerged, drank water and felt very dizzy and sick because of this incident. The fear of dead (sic) overwhelmed him. This incident often brings intrusive thoughts about near misses with death. His reactions are crying, rage over the loss of his shipmate, sleep disturbance, and nightmares followed by depression.

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

On May 23, 2005, the Board received an advisory opinion from the Office of the Judge Advocate General (JAG). He recommended that the applicant's request for relief be denied.

The JAG stated that the applicant offered no evidence to support his claim that the Combat Related Special Compensation (CRSC) Board erred or committed any injustice when it determined that his disabilities were not combat-related. The JAG stated that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (Fed. Cir. 1992). Moreover, he stated that the applicant bears the burden of proving error under 33 C.F.R. § 52.24. In this regard, the JAG offered the following:

(a) *Low Back Disorder*. Applicant claims that he initially injured his back while performing duties during a mooring evolution on 17 June 1958. According to Applicant's record, the injury occurred on 16 June 1958. A physician diagnosed Applicant with contusions of the left kidney and the abdominal wall on 17 June 1958. The record makes no mention of an injury to Applicant's back or spine. Applicant claims that he re-injured his back in December 1958 when the ship was at GQ. Applicant asserts that he fell on his buttock, thereby causing a compression of his spine. His record makes no mention of the alleged injury or any follow-on diagnosis or treatment. Furthermore, Applicant offers no documentary or testimonial evidence to show that the cutter was at GQ or that it was performing any type of duty within the scope of [the combat related compensation statute] at the time of his alleged fall. The Board of Veterans' Appeal decision does not refer to the December 1958 incident as a reason and basis for finding and concluding that applicant's low back disorder is service connected. Instead, the Board linked the low back disorder to "the latter years of [Applicant's] service."

(b) *PTSD*. Applicant claims that his PTSD is combat-related. Apparently, he bases this claim on the fact that his PTSD stems, in part, from the December 1958 incident when one of his shipmates was lost at sea. The Board of Veterans' Appeals concluded that the December 1958 incident was one of several stressors leading to the diagnosis of PTSD. The Board's decision, however, provides no facts to support a determination that Applicant's PTSD is combat-related. Neither the applicant nor his record provides documentary or testimonial evidence of the Applicant or [the cutter] being involved in a combat-related event, as defined [by the law] in December 1958.

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

On February 9, 2006, the BCMR received the applicant's response to the views of the Coast Guard. The applicant offered evidence already in the military record on how he incurred his back injury and the events that probably contributed to his PTSD. He

did not offer any evidence of a nexus between his disabilities and combat or any combat-related activities.

## APPLICABLE LAW AND GUIDANCE

### *10 U.S.C. 1413a.*

Section 1413a. (Combat-related special compensation) of title 10 of the United States Code provides for the following:

"(a) Authority. The Secretary concerned shall pay each eligible combat-related uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

"(b) Amount. (1) Determination of monthly amount. Subject to paragraphs (2) and (3), the monthly amount to be paid an eligible combat-related disabled uniformed services retiree under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to any disability for the retiree that is not a combat-related disability . . .

"(c) Eligible retirees. For purposes of this section, an eligible combat-related disabled uniform services retiree referred to in subsection (a) is a member of the uniformed services entitled to retired pay who--(1) has completed at least 20 years of service in the uniformed services that are creditable for purposes of computing the amount of retired pay to which the member is entitled or is entitled to retired pay under section 12731 of this title . . . (other than by reason of section 12731b of this title . . . and (2) has a combat-related disability.

"(d) Procedures. The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related uniform services retiree. Such procedures shall apply uniformly throughout the Department of Defense.<sup>2</sup>

"(f) Combat-related disability. In this section, the term 'combat-related disability' means 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 the criteria

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<sup>2</sup> CGPC informed the BCMR staff that it follows the CRSC guidance provided by the Department of Defense in processing its CRSC claims.

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."

### *Department of Defense (DOD) CRSC Program Guidance*

DoD Combat-related Special Compensation Revised Program Guidance January 2004 states that the following criteria, terms, definitions, explanations will apply to making combat-related determinations in 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 section 1552 of title 10 of the United States Code.

2. Congress only recently (2002) enacted CRSC granting certain members entitlement to both retired pay and disability compensation. Therefore, the applicant could not have made a claim prior to the enactment of the law. His August 11, 2005 application to this Board is timely. In this regard, the Board notes that the CRSC panel denied his claim on July 12, 2005 and he filed with the Board on August 11, 2005, which was well within the Board's three-year statute of limitations.

3. In order to qualify for CRSC the applicant needs to show that he is in receipt of retired pay based on 20 years of service, that he has service-connected disabilities rated to be at least 10% disabling by the DVA, and that his disabilities are combat related. The record establishes that the applicant is retired with 20 years of active service and that the DVA rated his back injury as 10% disabling and his PTSD as 100% disabling.

4. However, he has failed to prove that his service-connected disabilities are also combat-related. A service-connected disability and a combat-related disability are not synonymous. A service-connected disability simply means that an injury or disease was incurred during a period of active duty. See Chapter 2.A.47 of the Physical Disability Evaluations System Manual. A combat-related disability means that the injury or disease is service-connected and was incurred as a direct result of armed conflict, while engaged in hazardous service, while performing duty under conditions simulating war, or through an instrumentality of war. See 10 U.S.C. § 1413a(e). Nothing in the applicant's military record suggests that the applicant was involved in combat or any combat-related activities at the time he incurred his back injury or experienced the stressful events that contributed to his PTSD. The applicant stated that he was at morning quarters when he first injured his back and at general quarters when he re-injured his back. There is no evidence, however, that these two events were combat-related. While the earthquake and rough seas experienced by the applicant during his Coast Guard service were probably traumatic events, there is nothing in the record to



support a conclusion that they were combat-related. Moreover, the DVA decision makes no finding that the applicant's disabilities were combat-related. The applicant has failed to prove that his injury and disease are combat-related.

5. Accordingly, the applicant's request should be denied for lack of proof of error or injustice.

6. The applicant should contact the Coast Guard to determine whether he is eligible for concurrent retirement and disability payments under 10 U.S.C. § 1414. This is an entitlement for some veterans who have a 50% or higher disability rating and who are receiving retired pay based on 20 years of active service.

**[ORDER AND SIGNATURES ON NEXT PAGE]**

**ORDER**

The application of SS1 XXXXXXXXXXXXXXXXXXXXX, USCG (Ret.), for correction of his military record is denied.

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David Morgan Frost

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James E. McLeod

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Darren S. Wall