



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

RJO
Docket No. 6368-15

APR 18 2016

5 U.S.C. 552(B)(6)

Dear 5 U.S.C.
552(B)(6)

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 1 April 2016. 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, your naval record and applicable statutes, regulations and policies.

A review of your record shows that you were injured by an exploding canister onboard 5 U.S.C. 552(B)(6) in February 2012. This injury and a Patellofemoral condition led to a medical board referral to the Physical Evaluation Board (PEB) on 17 June 2013. On 11 July 2013, the PEB found you unfit for continued naval service due to your lower right extremity injury. As part of the Integrated Disability Evaluation System, the Department of Veterans Affairs (VA) rated your unfitting condition 20% disabling. After the VA affirmed their rating decision upon your request for reconsideration, the PEB finalized your case and you were discharged in December 2013. Subsequent to your discharge, you filed another compensation claim with the VA and the VA increased your disability rating for your lower right extremity injury to 30%. In addition, the VA rated you for two additional service connected disabilities; carpal tunnel syndrome and sleep apnea.

The Board carefully considered your arguments that you deserve a disability retirement due to your disability conditions. You contend that the PEB incorrectly rated your unfitting condition because the VA compensation examiner forced you to flex your joints despite pain. Also, you claim the PEB failed to properly diagnose you with carpal tunnel syndrome and sleep apnea. Unfortunately, the Board disagreed with your rationale for relief. First, the Board concluded the PEB

correctly rated your unfitting condition of lower right extremity injury since it relied upon two separate determinations by the VA that your disability condition was ratable at 20%. In the absence of evidence that shows the VA incorrectly rated your unfitting condition prior to your discharge, the Board concluded no change is required to the PEB's final rating. The Board was not convinced by the VA's decision to increase your disability rating effective 29 May 2014. Since the VA did not apply your increase back to the date of your discharge, the Board concluded their decision is a new rating based on evidence that your condition worsened after your discharge. Second, the Board also concluded that the PEB did not err by not referring your carpal tunnel syndrome and sleep apnea conditions. Several factors went into this decision including your failure to raise the conditions in rebuttal after your medical board or PEB findings were made available to you. Further, the Board was unable to find evidence in your record that supported a finding that either of those conditions made you were unfit for continued naval service. The mere presence of a medical condition or specific correspondence of any manifestations thereof to an entry indicating a disability rating contained in the VA Schedule for Rating Disabilities is insufficient to warrant either a finding of unfitness for continued naval service or a specific disability rating by the PEB in the absence of demonstrated duty performance impairment of sufficient magnitude as to render a Service member unfit for continued naval service. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application. Your request for a personal appearance before the Board has also been denied. The Board felt it had sufficient evidence to make a decision in your case and your presence was not required. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new evidence within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in this case. 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,

5 U.S.C. 552(B)(6)

SCOTT F. THOMPSON
Executive Director