



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

[REDACTED]
Docket No. 3591-16

JUN 1 1 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 May 2017. 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. In addition, the Board considered the advisory opinion contained in Director, Secretary of the Navy Council of Review Boards letter 5220 CORB: 002 of 1 March 2017; a copy of which was provided to you for comment.

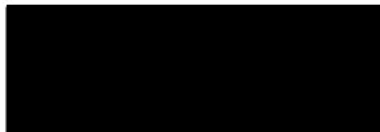
A review of your record shows that you reenlisted in the Navy Reserve in April 1995 after serving two previous enlistments in the Army and Navy Reserve. You were diagnosed with fibromyalgia in 2001 which resulted in your placement in a Temporary Not Physically Qualified status and led to BUMED's determination that you were not physically qualified for retention. In 2003 and 2004, you requested a Physical Evaluation Board review of your physical qualifications in accordance with applicable regulations but were discharged on 20 March 2006 without a review.

The Board carefully considered your arguments that you deserve to be reinstated to the Disability Evaluation System and placed on the disability retirement list with back pay, allowances, and all associated benefits. Unfortunately, the Board disagreed with your rationale for relief. In making their finding, the Board substantially concurred with the advisory opinion contained in Director, Secretary of the Navy Council of Review Boards letter 5220 CORB: 002 of 1 March 2017. Consistent with your comments to the advisory opinion, the Board considered the evidence in your record and concluded that while regulations may not have been followed in your case, no

error resulted in your record as a result. First, the Board concluded that you were not physically qualified for retention based on your inability to perform your duties or the physical fitness assessment from late 2001 through 2006. The fact you were on narcotics to control the pain associated with your fibromyalgia also convinced the Board you were not physically qualified for retention. Based on this finding, the Board determined that your narrative reason for discharge would be the same had your case been reviewed by the PEB prior to your discharge. Second, the Board lacked the evidence to find that your fibromyalgia and hypertension conditions were incurred in or aggravated by your service. Both conditions are considered chronic conditions and there was a lack of evidence that showed a nexus between your Reserve service and the conditions. Consistent with the Board's findings, and as pointed out in the advisory opinion, there was no line of duty benefits associated with either condition at the time you were being processed for separation. As a result, the Board found that neither of these conditions qualified for referral to a medical board or consideration for a disability retirement under the Disability Evaluation System. Finally, the Board considered whether an injustice occurred in your case to warrant a change to your record as requested. In the end, the Board concluded that the level of injustice in your case did not warrant a change to your record since the likely result of a 2006 PEB review in your case would have ended the same. The advisory opinion provided by Director, Secretary of the Navy Council of Review Boards, regarding the likely finding by the PEB, convinced the Board that their analysis of your case was correct. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application. 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 at this time. 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 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,



Executive Director