



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

[REDACTED]  
Docket No. 3847-16

MAY 22 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 27 April 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. Additionally, the Board considered the advisory opinion contained in Director, Secretary of the Navy Council of Review Boards letter 5220 CORB: 002 of 23 February 2017; a copy of which was provided to you for comment.

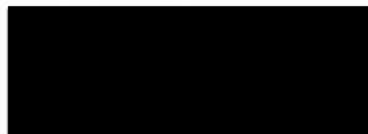
A review of your record shows that you entered active duty with the Navy in January 1990. You were determined to be unfit for continued naval service by the Physical Evaluation Board (PEB) on 14 July 2003 for low back pain and issued a 10% disability rating. You were discharged on 3 December 2003 with severance pay due to your disability. Subsequent to your discharge, you claimed a number of service connected disability conditions to the Department of Veterans Affairs (VA) including lower back pain, Gastroesophageal reflux disease (GERD), bi-lateral glaucoma, mass in right testicle, and erectile dysfunction.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list with at least a 30% disability rating due to other qualifying disability conditions that were not considered by the PEB. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion contained in Director, Secretary of the Navy Council of Review Boards letter 5220 CORB: 002 of 23 February 2017. Specifically, the Board could not find medical evidence to support a finding that you were unfit for continued naval service for any medical condition other than your lower back pain. The fact you suffer from other disability conditions and filed a claim with the

VA or was determined to actually have VA rated service connected disabilities is not dispositive of the issue of whether you were unfit for continued naval service due to those disabilities. A service member must be unfit to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay. Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating. So 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. By contrast, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. In your case, there was insufficient evidence that you suffered from a duty impairment due to a disability condition other than your lower back pain. As pointed out in the advisory opinion, there was no evidence you were treated for conditions related to your testicles or erectile dysfunction. Further there was no non-medical assessment that discussed how these conditions, including GERD and bi-lateral glaucoma, affected your military performance. 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,

A solid black rectangular box used to redact the signature of the Executive Director.

Executive Director