



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. 5247-20
Ref: Signature Date

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Dear ■

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. 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 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 application on 15 July 2021. 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. In addition, the Board considered the advisory opinions contained in Senior Medical Advisor CORB letter 1910 CORB: 002 of 15 May 2021 and Director CORB letter 1910 CORB: 001 of 21 May 2021; copies of which were previously provided to you for comment.

A review of your record shows that you entered active duty with the Navy in September 2001. After a period of uneventful active duty, you were involved in a boating accident during training that resulted in head trauma and loss of consciousness in November 2010. Subsequently, starting in May 2012, you failed a series of Physical Fitness Assessments by failing to meet Body Composition Assessments (BCA). Meanwhile, you were seen by mental health professionals in January 2013 who noted that you displayed an anxious and depressed mood but were otherwise psychologically fit for full duty. Despite this medical finding, you were referred to the Physical Evaluation Board (PEB) on 3 July 2013 for Dysthymia, Generalized Anxiety Disorder, and Traumatic Brain Injury. After failing your third BCA in April 2013, you were recommended for a readiness waiver but denied by Commander, Navy Medicine East in July 2013. As a result, after being found fit for active duty by the PEB on 3 October 2013, you were notified of administrative separation processing for weight control failure and acknowledged your rights. You were discharged on 15 November 2013 for weight control failure with an Honorable characterization of service. Post-discharge, the Department of Veterans Affairs (VA) rated you for a number of disability conditions that initially resulted in a combined 90% rating but is currently at 100%. On 23 January 2020, this Board denied your prior application to be placed on the disability retirement list.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list. You rely on your VA rating to substantiate your claim that you were unfit for continued naval

service at the time of your discharge. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion in your case.

In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; or the member's disability imposes unreasonable requirements on the military to maintain or protect the member. In your case, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for a finding of unfitness for continued naval service. Specifically, the Board relied on the 16 January 2013 psychological examination that determined you were psychologically fit for full duty. Additionally, the Board noted that your performance evaluation issued upon your discharge reflected traits of 4.0 for quality of work, 3.0 for professional knowledge, and 3.0 for personal job accomplishments. These traits scores indicated to the Board that you were performing your assigned duties at fleet standards for your paygrade and rate. With the exception of your assigned 1.0 trait score for military bearing due to your weight control issues, the Board determined you were performing above fleet standards despite the existence of your disability conditions and could have continued your military career but for your inability to maintain your weight within Navy weight standards. The Board also considered that your trait scores remained relatively unchanged from your March 2013 performance evaluation indicating that there was little to no change to your performance in the months during the PEB adjudication of your case until your release from active duty in November 2013. In the Board's opinion, this evidence of sustained superior performance supports the advisory opinion determination that the evidence in your case is insufficient to support your request to be placed on the disability retirement list. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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,

7/19/2021



Deputy Director

Signed by:

