



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

█  
Docket No. 947-21  
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.

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, sitting in executive session, considered your application on 11 March 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.

A review of your record shows that you entered active duty with the Navy in July 1992. After being struck by a vehicle in April 2000, you were eventually placed on limited duty before being referred to the Physical Evaluation Board (PEB). The PEB determined you were fit for active duty leading to your discharge from the Navy on 20 December 2001 at the completion of your required active duty. You were assigned a RE-R1 reenlistment code with an Honorable characterization of service. On 11 January 2021, your Department of Veterans Affairs (VA) provider stated that you continue to suffer from symptoms caused by your April 2000 accident. You assert that the VA has assigned you a combined 80% disability rating.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list. You assert that your attorney failed to submit your entire medical record as part of your PEB review and that you were unfit for continued naval service at the time of your discharge from the Navy. Unfortunately, the Board disagreed with your rationale for relief.

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 unfitness. Specifically, the Board examined your performance leading up to your discharge after you were deemed fit for active duty by the PEB. On a performance evaluation ending on 8 November 2001, you were assigned a 4.29 trait average and recommended for retention and early promotion. In addition, you were described as a "top performer" within the command. The Board also noted that the November 2001 performance evaluation actually improved significantly from your performance evaluation of 15 March 2001. In that evaluation, you were assigned a 3.43 trait average which indicated you were performing well above the fleet average for your paygrade. Based on this evidence of superior performance in the months leading to your discharge from the Navy, the Board concluded you were able to perform the duties of your office, grade, rank or rating. Additionally, the Board found no evidence that your condition imposed an unreasonable requirement on the Navy to protect you or represented a decided medical risk to you or the safety of others. Therefore, the Board determined the PEB findings were supported by the evidence despite evidence that you continue to suffer symptoms after your discharge from the Navy. The Board also considered your VA rating but determined it was not probative on the issue of unfitness for military service since 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. Ultimately, in making their findings regarding your fitness for duty, the Board chose to rely on your documented performance just prior to your discharge from the Navy rather than the VA statement issued 20 years after your release from active duty. 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,

3/15/2021



Deputy Director

Signed by:

