



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. 1430-21
Ref: Signature Date

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Dear Petitioner:

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 3 March 2022. 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. Additionally, the Board considered the 13 January 2022 advisory opinion (AO) of a qualified medical professional, which was provided to you for response and to which you did not provide a response.

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.

A review of your record shows that, having served in the U.S. Army, you enlisted in the Navy and commenced a period of active duty on 11 March 1982. On 21 November 1986, you were diagnosed with bilateral uveitis and referred to a medical evaluation board. On 16 December 1986, the medical board determined that you would need to continue therapy, that your prognosis was good, and that you should be referred to a physical evaluation board (PEB). As a result of the PEB, on 24 March 1987, you were placed on the temporary disability retired list (TDRL) due to bilateral uveitis. In 1992, you were assigned a permanent disability rating of 10%, removed from the TDRL, and separated with severance pay.

In your petition, you contend that you are entitled to a permanent disability and medical retirement based on your condition. You also contend that you are entitled to back pay for an approximately two-year period during which you contend you did not receive payment from the Navy. Your request for back pay will be separately addressed and is not addressed herein. In support of your contention relating to your medical condition, you have provided a finding by the Department of Veterans' Affairs (VA), which you

contend found that you have a 70% service connected disability due to your eye condition. You further contend that you are currently considered unemployable because of your vision and you were unemployable while on active duty as determined by a medical evaluation board and the PEB. In addition, you state that the VA, examining the same injury or condition, and reviewing the same standards for making a rating, resulted in a higher rating commensurate with your disability.

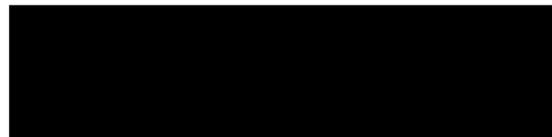
In connection with your contentions, the Board obtained the 13 January 2022 AO. The AO explained that the Navy's final rating is determined by the severity of the medical condition at the time of stability and/or expiration on the TDRL, and does not change if the condition subsequently worsens. According to the AO, "the 10% rating for uveitis applied during the 8-year period following the original PEB unfit finding. It was not until August 1995 that the VA increased the rating . . ." The AO concluded that, "based on the evidence provided, VASRD Code 6000 rated at 10%, is the most appropriate rating for Uveitis based on the Applicant's 02 May 1990 TDRL examination."

In reviewing your petition, the Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, to include the medical documentation and VA findings that you provided in support of your claim. After careful review of the all of the material, the Board determined to deny your requested relief. In reaching its decision, the Board substantially concurred with the findings of the AO, particularly its finding that, at the relevant and applicable time frame, the PEB decision was supported by the medical evidence. Specifically, the Board relied upon the TDRL periodic physical examination results from 2 May 1990 that documented your visual acuity at 20/20 uncorrected in both eyes. Finally, with respect to your reliance upon VA findings from several years after your separation, as explained in the AO, the Navy's final rating is determined by the severity of the medical condition at the time of stability and/or expiration on the TDRL, and does not change if the condition subsequently worsens. So the fact your condition worsened and resulted in a higher VA rating years after your removal from the TDRL was not persuasive to the Board. Accordingly, the Board observed no error or injustice in your discharge and denied your petition.

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,

3/23/2022



Deputy Director

