



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

█  
Docket No. 1444-21  
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 26 May 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. The Board also reviewed the 4 February 2022 advisory opinion (AO) from a medical professional, a copy of which was provided to you and to which you did not provide a response.

The Board determined that a 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 you enlisted in the Navy and commenced a period of active duty on 4 September 1990. You contend that, on or about 14 February 1991, you were injured in a forklift accident. According to your Certificate of Release or Discharge from Active Duty (DD Form 214), you were discharged, on 22 October 1991, with an Honorable characterization of service due to physical disability – entitled to receive severance pay.

In your petition, you requested that your 10% medical discharge rating be changed to 30%. In support of your request, you contend that you were later rated by the Department of Veterans' Affairs (VA) with a 40% service connected disability rating, of which 10% was assigned to tinnitus. Thus, according to your contention, your medical discharge from the Navy should have been 30%.

In order to assist it in reviewing your petition, the Board obtained the 4 February 2022 AO. According to the AO:

[t]he preponderance of evidence provides insufficient objective documentary support for any aspect of the request, including the petitioner's enlistment, claimed unfitting (forklift) accident, Department of the Navy Physical Evaluation Board processing or post discharge VA processing. Regarding this Advisory Opinion, it is noted, SECNAVCORB is not an investigative body and, hence, must rely on access to records sufficient to make a timely, informed recommendation to the BCNR.

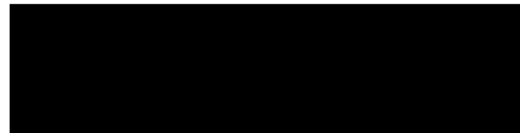
Accordingly, the following records are missing from the submitted evidence: DD 214, Service Treatment Record, Personnel performance assessments, Medical Evaluation Board Report, Department of the Navy Physical Evaluation Board findings, civilian (including Veterans Administration) medical evaluation and treatment records and complete VA disability Compensation and Pension evaluations and Disability Rating Decisions including VA Diagnostic Codes.

The Board carefully considered your arguments, including the entirety of your petition and its enclosures, and disagreed with your rationale for relief. After a careful review of the available service record documents, as well the entirety of your petition, the Board did not discern any error or injustice in connection with the disability rating for which you were discharged. The Board determined that the presumption of regularity applied to the process employed with respect to your service disability findings. Finally, with respect to your assertion that the VA later provided you service connected disability findings that were higher than the disability rating that you received at the time of your discharge, the Board noted that any such findings from the VA did not persuade the Board. As mentioned previously, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board concluded the VA evidence you provided was did not meet the substantial evidence standard to overcome the presumption of regularity. Accordingly, the Board determined there was insufficient evidence of error or injustice to merit a change to your record and the preponderance of the evidence did not support relief in your case.

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,

6/1/2022



Deputy Director

Signed by 