



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. 1570-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 17 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, as well as the 6 January 2022 advisory opinion (AO) provided by a qualified medical professional, a copy of which was provided to you, and to which you did not provide a response.

A review of your records shows that, upon graduation from the U.S. Naval Academy, you were commissioned an officer in the Marine Corps and commenced a period of active duty on 29 May 2012. In or about May 2015, you engaged in mental health treatment due to two 2012 sexual assaults. You reported symptoms of post-traumatic stress disorder (PTSD) as a result of these incidents, which resulted in your inability to continue on active duty. In December 2016, an Informal Physical Evaluation Board (IPEB) found that you were unfit for continued naval service for the condition of PTSD and you were assigned a 70% disability rating as submitted by the VA Disability Evaluation System Rating Activity Site (D-RAS). You were then released from active duty on 30 January 2017 and placed on the Temporary Disability Retired List (TDRL).

On 13 July 2018, you underwent a Periodic Physical Examination (PPE) for your unfitting condition. An IPEB re-evaluated your unfitting condition and determined the appropriate rating based on interim functioning and the evidence within the PPE was 30%. On 30 September 2019, it was recommended that you be transferred from the TDRL to the permanent disability retired list (PDRL) with a 30% disability rating based on findings of major depressive disorder (MDD)

– Moderate. You noted your disagreement with this finding and you requested reconsideration. On 19 November 2019, the PEB reported the results of your request for reconsideration, finding that a 10% disability rating was appropriate. You were granted the ability to appeal this finding by the President of the PEB. At your hearing on your appeal, which was on 13 February 2020, you were represented by two attorneys, a qualified disability legal assistance attorney from the Office of the Judge Advocate General’s Code 16, as well as a civilian retained counsel. Based on the information provided at the time of the hearing, you entered into a stipulation stating that you were considered unfit due to PTSD and MDD at 30%, not combat related, and not incurred in a combat zone. You were determined fit to continue naval service as a result of Still’s disease. As a condition of the stipulation, you and the PEB agreed that you would be placed on the PDRL.

In your petition, you seek a “reconsideration” of the PTSD and MDD disability findings because your quality of life has only worsened in the years following your active duty discharge. You specifically request a disability rating of 50% or higher. In support of your petition, you contend that your life has become more difficult, and that since your release from active duty, the battle that you fight every day has not diminished. You state that the scars run deep, the tissue is damaged, and the hurt is still sharp. You explain that your conditions have created marital difficulties with your husband, and that you spend the majority of your days “isolated, irritable, and ready to start a fight with him for no other reason than I feel attacked or controlled.” You also state that you would like to work, but you are unable.

In connection with your assertion relating to your mental health condition, the Board obtained the AO. According to the AO,

the evidence establishes the Formal Physical Evaluation Board (FPEB) held on 13 February 2020, appropriately applied a 30% rating for the Unfitting condition of Post Traumatic Stress Disorder under VA Diagnostic Code 911. Additionally, the FPEB appropriately considered the Applicant’s second petitioned condition of Still’s Disease and determined it was not unfitting, which the Applicant agreed to as part of a stipulation agreement.

The AO concluded, “[a] review of the record shows no evidence of irregularity in the conduct or results of PEB processes.”

In reviewing your record, the Board concluded the preponderance of the evidence does not support a change in your disability retirement rating. In reaching its decision, the Board concurred with the findings of the AO and it did not observe any irregularity in the conduct or results of the PEB process. Indeed, at the time of your disability finding, your medical condition had been monitored from at least December 2016 through your final hearing on 13 February 2020, during which you were represented by two legal counsel, who assisted you in reaching a stipulation on your unfitting condition. The fact your condition worsened after your placement on the PDRL was determined to be a matter under the cognizance of the Department of Veterans Affairs. The Board determined that the military was only responsible for assigning a rating commensurate with your disability condition at the time of your placement on the PDRL. As discussed above, the Board found no basis to question a rating decision agreed upon by you and

your legal counsel. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your 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,

4/5/2022

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Deputy Director
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