



**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. 2322-21  
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 application on its merits. 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, applicable statutes, regulations, and policies, the 31 January 2022 advisory opinion (AO) provided by a qualified medical professional, as well as your 4 March 2022 response to the AO.

A review of your records shows that you enlisted in the Navy and commenced a period of active duty on 10 September 2007. You began to exhibit symptoms of lymphedema, and on 16 July 2015, your commanding officer provided a non-medical analysis concerning your fitness to serve in your rating of Quartermaster in light of your medical condition:

The member is unable to perform the primary duties of a Quartermaster onboard a ship or shore based on her present medical condition. She is currently being treated for Lymphedema: The member has the following limitations: No Physical Readiness Test, no deployments and member should wear tennis shoes/sneakers. She has shown no sign of progress in her medical condition and therefore is unable to perform duties and assigned tasks required of the Quartermaster's rating without putting herself or others at risk of serious injury.

Thereafter, in August 2015, you were referred to a physical evaluation board (PEB) due to a finding that you had lymphedema.

In October 2015, an Informal PEB (IPEB) found that you were unfit for service. In addition, you were evaluated by the Disability Evaluation System Rating Activity (D-RAS) of the Department of Veterans' Affairs. The D-RAS proposed that you receive a rating under VA Code 7799-7121 at 10% for each lower extremity (Lymphedema for lower left and lower right extremity), for a total Department of the Navy disability of 20%, which would result in a separation with severance.

Separately, on 2 December 2015, as part of the Disability Evaluation System Pilot Program, the Department of Veterans' Affairs (VA) made its own determination of service connected disabilities, and it made a finding of 30% service connected disability for adjustment disorder with depressed mood and anxiety, explaining that:

A higher evaluation of 50 percent is not warranted for chronic adjustment disorder unless the evidence shows occupational and social impairment with reduced reliability and productivity due to such symptoms as:

- flattened affect
- circumstantial, circumlocutory, or stereotyped speech
- panic attacks more than once a week
- difficulty in understanding complex commands
- impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks)
- impaired judgment
- impaired abstract thinking
- disturbances of motivation and mood
- difficulty in establishing and maintaining effective work and social relationships

On 17 March 2016, you appealed the finding of the IPEB and sought a formal PEB (FPEB). Your FPEB was to be held on 26 April 2016, and, in the meantime, you received a psychiatric addendum to present to the FPEB by a Navy psychiatrist, █. The addendum, which has been fully reviewed by the Board and the AO, explained, in part, that:

[Petitioner's] psychiatric illness is chronic, recurrent, and carries a significant risk of relapse, precluding the patient from returning to full duty or worldwide deployability in the military, she clearly lacks the resilience to ever handle the rigors of full military duty again.

At the FPEB on 26 April 2016, you requested that the FPEB find you be unfit based on: (1) Lymphedema, Left; (2) Lymphedema, Right; (3) Migraine Headaches; and (4) Adjustment Disorder with Depression, Anxiety, and to be placed on the Permanent Disability Retired List (PDRL). The FPEB found you Lymphedema, Left and Lymphedema, Right, but found you fit for Migraine, Adjustment Disorder with Depression, and Anxiety, explaining:

ADJUSTMENT DISORDER WITH DEPRESSION ANXIETY does not preclude the continued performance of duties and is not separately unfitting or contributing to the unfitting conditions. The member has had difficulty adjusting to the physical limitations and pain caused by her bilateral lower extremity edema. She was not referred for this condition and no addendum was submitted. Her treating providers, with clear knowledge of the member's referral to the PEB assessed that she had no psychiatric limitations. Specifically, page 47 of the Alpha evidence, which is a Psychiatric note dated March 15, 2016, states "patient is on Limited Duty and pending PEB for Primary Lymphedema. Patient without any psychiatric limitations adversely affecting job performance. Therefore, the Formal Board determined this condition does not preclude the continued performance of duties and is not separately unfitting or contributing to the unfitting conditions.

After the FPEB, you continued to consult with medical providers, including █ On 14 June 2016, █ reported that, "Patient on Limited Duty and pending PEB for Primary Lymphedema. Patient without any psychiatric limitations adversely affecting job performance. At this time, the patient's judgment is not impaired by their psychiatric condition . . ." You were seen again by █ on 8 July 2016, who noted, "Patient on Limited Duty and pending PEB for Primary Lymphedema. Patient without any psychiatric limitations adversely affecting job performance." You met with █ again on 29 Jul 2016, 19 Aug 2016, and 25 Aug 2016, and his notes state:

Patient was found unfit for duty and has accepted her PEB findings. She will be separating from the USN in the next 1-2 months. Patient without any psychiatric limitations adversely affecting job performance. At this time, the patient's judgment is not impaired by their psychiatric condition; therefore, they are considered responsible for their decisions and their behavior.

On 17 October 2016, you accepted the findings of the FPEB and you were honorably discharged due to disability with severance pay, non-combat.

In your petition, you contend that your FPEB failed to consider █ addendum, and, had the FPEB considered the addendum, it would almost certainly have granted you a 30% or greater disability rating for her psychiatric conditions, consistent with your VA disability rating of 50% for the same psychiatric conditions.

To assist it in reviewing your petition, the Board obtained the AO. The AO provided a fulsome description of the various steps that occurred with respect to your disability review and final disposition, including addressing the addendum provided by █ According to the AO:

the evidence regarding the Applicant's mental health condition(s), variably diagnosed as Adjustment Disorder, Major Depressive Disorder, Unspecified Anxiety Disorder, and Somatic Symptom Disorder, weighs toward fit. Although a Psychiatric Addendum drafted 20 Apr 2016 was not submitted in time for consideration by the Formal Physical Evaluation Board held 26 Apr 2016, it was considered here. Although the Addendum weighs toward unfit, the case is

considered based on the totality of the evidence. In this regard, the Addendum is wholly divergent from the remainder of the record, to include uniform findings by a psychologist, the treating psychotherapist, and the clinical notes of the psychiatrists who also drafted the Addendum, establishing that the Applicant was without any psychiatric limitations adversely affecting job performance. This is bolstered by no mention of occupational within the Non-Medical Assessment and an overall VA characterization of psychiatric impairment as not severe enough either to interfere with occupational and social functioning.

In order to find that a member is unfit for continued naval service, it must be established that the medical disease or to carry out the duties of his or her office, grade, rank or rating. Additionally, the Applicant may be found to have a medical condition that represents a decided medical risk to the health of the member or to the welfare of other members were the member to continue on active duty or in an Active Reserve status; or a medical condition that imposes unreasonable requirements on the military to maintain or protect the member. None of these criteria are met here.

You responded to the AO on 4 March 2022. In your response, you argued that the AO ignored significant portions of your health record, including that the AO failed to establish properly the first date that you sought mental health services by incorrectly stating your first contact was in July 2015, when you contend it was in May 2015. You state further that the AO ignored 38 therapy sessions that you attended as well as your multiple visits to multiple providers, and that, instead of giving weight to the several medical providers, the AO instead gave weight to the commanding officer's non-medical assessment. You also argue that the AO improperly ignored your VA findings.

In reviewing your record, the Board concluded the preponderance of the evidence does not support your rationale for relief. Rather, the Board concurred with the findings of the AO. In concurring with the findings of the AO, the Board observed that the AO properly reviewed your case in light of the totality of the evidence. The AO explained that it fully considered the addendum in its current review of the totality of your medical and treatment records. With respect to the addendum prepared by █ the Board further noted that, after your FPEB, in your several follow up appointments with █ he specifically noted that you were "without any psychiatric limitations adversely affecting job performance." With respect to your VA findings, the Board observed that in the 2 December 2015 findings of the VA, it was specifically noted that a "higher evaluation of 50 percent is not warranted for chronic adjustment disorder *unless the evidence shows occupational and social impairment with reduced reliability . . .*" (Emphasis added.) You also provided post-service findings of the VA raising your mental health conditions disability rating to 50%. To the extent you assert that the VA later found that you were subject to a higher rating for service connected disabilities, the Board noted that 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. 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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