



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

Docket No. 3205-21
Ref: Signature Date

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 7 October 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 April 1992. After being found unfit for Diabetes Mellitus Type II with Mixed Hyperlipidemia and Hypertension by the Physical Evaluation Board (PEB), you were released from active duty and transferred to the Temporary Disability Retirement List (TDRL) on 4 February 2005. On 10 July 2007, the PEB found you fit to return to active duty from the TDRL. On 22 April 2013, you were discharged from the Navy based on your lack of consent to reenlistment.

The Board carefully considered your arguments for placement on the Permanent Disability Retirement List (PDRL). You assert that you did not receive the 2007 PEB findings until 2010 and your unfitting condition has continued to worsen. Unfortunately, the Board disagreed with your rationale for relief. In reviewing your case, the Board concluded the Navy appropriately discharged you based on the 2007 PEB findings after you failed to consent to return to active duty. In making their findings, the Board noted that you were not discharged until approximately three years after you allegedly learned of the PEB findings in 2010. Therefore, despite your assertions that your condition has worsened over the years, the Board concluded no error or injustice exists in your record since you had the opportunity to reenlist in the Navy and

chose not to exercise the necessary due diligence to return to active duty. The fact your current symptoms precludes your return to active duty and may have worsened since the 2007 PEB determination did not persuade the Board that an error or injustice exists in your record since it was your actions that led to the Navy's decision to discharge you. As a result, based on the preponderance of the evidence, the Board found no basis to place you on the PDRL. 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,

10/12/2021

Deputy Director