



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. 4099-21
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 limitation and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 February 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 a 13 January 2022 advisory opinion (AO) of a qualified medical professional, a copy of which was provided to you, and to which you provided a response dated 19 January 2022.

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 enlisted in the Navy and commenced a period of active duty on 4 April 1996. You served without incident until December 2016, when you were diagnosed with Ulcerative Colitis and you were treated through January 2017 with reported improvement of symptoms. You were evaluated by a Medical Evaluation Board (MEB) on 27 April 2018. A more complete recitation of your medical treatments is set forth in the 13 January 2022 AO. On 29 November 2018, a Physical Evaluation Board (PEB) convened to consider your medical conditions and to evaluate the findings of the MEB, including proposed Department of Veterans' Affairs disability ratings. The PEB found you unfit for duty and recommended that you be placed on the Permanent

Disability Retired List (PDRL) with a combined disability rating of 60%. Thereafter, on 28 December 2018, you were retired to the PDRL.

In your petition, you contend that the PEB erroneously rated your fecal incontinence and Ulcerative Colitis conditions, and you request that your PDRL rating be raised to 100% because you state you are “fully incontinent and unable to work.” In support of your petition, you provided several personal statements and in-service medical records that were previously available for the PEB and VA Ratings process. You also provided a VA Rated Disabilities Summary, which indicates 100% Total Combined Disability by VA. In connection with your contentions, the Board obtained the 13 January 2022 AO, which, after a fulsome description of your medical evaluations at the pertinent times during your active service, concluded that:

The mere presence of a medical condition corresponding to a disability rating contained in the VASRD is insufficient to warrant either a finding of unfitness for continued Naval service or a specific disability rating by the Department of the Navy PEB in the absence of demonstrated duty performance impairment of sufficient magnitude as to render a Service member Unfit for Continued Naval Service. By contrast, eligibility for Compensation & 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.

In summary, the preponderance of evidence provides insufficient support for the request. This is due to the presence of objective clinical evidence that the applicant’s unfitting conditions of Ulcerative Colitis with Irritable Bowel Syndrome and Gastroesophageal Reflux Disease and Symptoms of Fecal Incontinence; Rectal Prolapse Surgically Repaired (Stable) were appropriately evaluated separately as unfitting and the levels of disability at the time of medical retirement were appropriate given the objective clinical documentation at the time of separation.

In response to the AO, you provided the Board your 19 January 2022 rebuttal, in which you describe your medical treatment from several physicians and the difficulties that you suffer on a daily basis. You summarize your rebuttal as follows:

My argument is in one summary: I got discharged with Ulcerative Colitis. Then they damaged my rectum, which made me incontinent. Then I got severe mental health problems as a result, and that is still Ulcerative Colitis with some symptoms? I’ve not once been symptom-free from UC only stop bleeding for a period. There are people with more minor PTSD/Depression/Anxiety/MD that are higher than 60%, people with less than acute Ulcerative Colitis higher than 60%, and not permanently incontinent higher than 60%. I have those problems with chronic pain fibromyalgia, and I barely have 60%.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition. In your case, the Board determined the preponderance of the evidence did not support a finding that the PEB findings in your case were erroneous. The Board noted

that the PEB adopted the proposed VA ratings for your PEB determined unfitting conditions. Therefore, they found no basis to increase the ratings for those disability conditions. Regarding your mental health condition, in concurring with the findings of the AO, the Board observed that, in order for you to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; or the member's disability imposes unreasonable requirements on the military to maintain or protect the member. Here, the Board carefully reviewed the medical evaluations conducted relating to your mental health and determined that your mental health symptoms did not meet the criteria for a finding of unfitness. While the Board does not dispute that you suffered from mental health symptoms, they were not persuaded that these symptoms prevented you from performing the duties of your office, grade, rank, or rating. In review of your rebuttal, the Board observed that the information that you provided is not inconsistent with the findings of the 13 January 2022 AO, which, among other things, noted the distinction between findings of the Department of the Navy PEB and the VA Compensation and Pension disability ratings. Accordingly, the Board observed no error or injustice in your naval records 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,

2/23/2022

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Deputy Director

Signed by: █