



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. 4603-21
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 28 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 September 2018 and served as a Surface Warfare Officer. In 2019, you were diagnosed with Multiple Sclerosis (MS), which resulted in a medical board in July 2020. The medical board diagnosed you with MS and referred you to the Physical Evaluation Board (PEB). The medical board opined that your prognosis was unclear and that you should not be assigned to sea duty or any other situation that may compromise mission readiness. However, the report also noted that you were able to perform your duties including the Physical Readiness Test. The PEB found you unfit for continued naval service in September 2020 and assigned you a 30% disability rating. After you requested a formal hearing, the formal PEB also found you unfit in February 2021 based on a finding that your condition created a significant occupational impairment and represented a decided medical risk to you or other service members if you were allowed to remain on active duty. You subsequently filed a Petition for Relief that was denied by Director, Secretary of the Navy Council of Review Boards in March 2021. A request to be placed on permanent limited duty in order to have this Board reconsider the PEB findings was not approved by Commander, Navy Personnel Command and you were released from active duty on 31 August 2021 and transferred to the Permanent Disability Retirement List.

The Board carefully considered your arguments that the PEB erroneously found you unfit. You argue that the preponderance of the evidence from your neurologist and chain of command supports a finding that you were capable of performing the duties of your office, grade, rank, or rating despite your MS. In addition, you assert the PEB failed to consider that you would be able to perform duties in another designator that would allow for the medical accommodations required for your condition. Unfortunately, the Board disagreed with your rationale for relief.

In considering your case, the Board empathized with your current medical condition and expressed admiration for your desire to continue your Navy career. However, the Board agreed with the PEB in their reasoning to find you unfit for continued naval service. Despite medical evidence that stated you were asymptomatic at the time of the PEB findings and witness testimony that concluded you were fully capable of performing your military duties, the Board considered the seriousness of your condition and potential harm that may occur should be allowed to remain in an active duty status. So while the Board agreed with the assessment that you, more likely than not, could have continued to perform your assigned duties as a Surface Warfare Officer while asymptomatic, they concluded that allowing you to remain on active duty with your MS condition represents an obvious medical risk to your health or the safety of other service members based on the potential your condition could become symptomatic while performing your military duties. The Board found no evidence that would suggest your condition could be controlled with medication to the point that it could be conclusively predicted that you would remain asymptomatic while performing your duties. As a result, the Board felt strongly that as long as there was a chance you could suddenly become symptomatic while performing your military duties; a very real danger exists to you and other service members. Therefore, the Board determined that the PEB findings were supported by the medical evidence in your case and remain appropriate. 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,

11/2/2021

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Deputy Director

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