



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. 4967-21
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 25 July 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. The Board also considered the 24 May 2022 advisory opinion (AO) of a medical professional. Even though you were provided a copy of the AO for comment, you chose not to do so.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 22 April 2013. On 11 March 2020, in connection with processing through the Disability Evaluation System (DES), the U.S. Department Veterans' Affairs (VA) proposed for you a combined 100% service connected disability rating for a several different conditions. However, the VA's rating decision did not relate to your PEB referred unfitting condition of Other Intervertebral Disc Degeneration, Lumbar Region (Stable). On 31 March 2020, your medical condition was evaluated by an Informal Physical Evaluation Board (IPEB), to determine your fitness for continued naval service. You were found unfit for continued naval service due to Other Intervertebral Disc Degeneration, Lumbar Region (Stable) and assigned a disability rating of 20% (VA Diagnostic Code 5242), consistent with the proposed VA rating, with a recommendation for Separation from Active Duty with Severance pay. Accordingly, on 15 October 2020, you were discharged based on your disability, non-combat related, with separation pay.

In your petition, you requested a review of all medical evidence by a Medical Board for the purpose of medical retirement, contending your in-service medical evaluation board (MEB) did not have all available evidence due to delayed appointments and in-person visits due to COVID-19 Pandemic restrictions. You contended conditions such as your Traumatic Brain Injury (TBI) and “back issues” were not taken into consideration by the MEB. In support of your request, you contended that you were accident aboard an Osprey transport aircraft that led to “ongoing and worsening back issues” to include “loss of range of motion and inability to carry required load and maneuver as required.” You further stated that you “developed sciatic nerve pain in both legs and lost feeling in my feet.” You also reported PTSD symptoms from the Osprey accident and fear of heights and flying, inability to tolerate being in a crowd, general anxiety symptoms, loss of focus when exposed to loud noises, which adversely affected your duties, such as your role as a training instructor on the live fire range.

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures. To assist it in review medical information, the Board obtained the AO, which was considered unfavorable to your contentions. According to the AO, in part:

Regarding Petitioner’s contention of unfitness due to bilateral leg sciatic nerve pain and loss of sensation in both feet. During his period of treatment for his Intervertebral Disc Degeneration, Petitioner’s episodic complaints of radiating/radicular pain were evaluated with serial physical and neurological examinations, radiologic examinations, and most definitively with Electromyography (EMG) Studies, which were negative for diagnosable nerve dysfunction suggestive of radiculopathy. Petitioner’s in-service medical records documented many clinical encounters, which cited a lack of radicular pain history or complaints, or associated physical examination findings indicative of radicular pathology. [Your medical record contained complaints of sciatic pain and loss of sensation in both feet], though his treating physician at the time did not consider these complaints to rise to the level of a separately or collectively unfitting condition

Regarding the contention of unfitness due to TBI or PTSD. The Petitioner was evaluated for both conditions by competent medical providers. * * * * Throughout his documented treatment for his Anxiety Disorder and ADHD diagnoses, multiple clinic notes specifically stated the clinical history or symptoms that would be indicative for TBI or PTSD were denied or not evident during multiple mental health evaluations. * * * * His contention of unfitness from TBI or PTSD is not supported by the objective evidence as his in-service record did not contain a clinical diagnosis for either TBI or PTSD, nor psychological symptoms or behavioral changes indicative of TBI or PTSD. Petitioner demonstrated successful performance of his duties and successful completion of in-service training, after the contended incidents of 2014 MVA and 2015 V-22 Osprey “hard landing.”

The AO concluded, “the preponderance of evidence provides insufficient support for Petitioner’s request for medical retirement for unfitness due to bilateral sciatic pain, loss of sensation to both

feet, Posttraumatic Stress Disorder, and Traumatic Brain Injury. This is due to the absence of objective evidence that the applicant's duty performance was judged to have been impaired or inadequate at the time of separation due to these contended conditions.”

In review of the entirety of your naval service and medical records, your petition and its enclosure, as well as the AO, the Board disagreed with your rationale for relief. At the outset, the Board concurred with the AO. In reaching its decision with respect to your contention concerning sciatic nerve pain, the Board observed that there was a lack of contemporaneous medical evidence in your medical record supporting your claim. The Board further observed that, as noted by the AO, despite your several contacts during your service with medical providers, there were no findings suggesting you were unfit due to a diagnosed nerve dysfunction suggestive of radiculopathy. With respect to your contention relating to TBI/PTSD, the Board determined that your claim is not supported by the objective evidence. As noted by the AO, your in-service record did not contain a clinical diagnosis for either TBI or PTSD, nor psychological symptoms or behavioral changes indicative of TBI or PTSD. Ultimately, the Board concluded that there was no error or injustice apparent in your processing of your case through the Disability Evaluation System, nor did it find any errors or injustices in the determination of the PEB in your case. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

8/19/2022

