



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

█  
Docket No. 5570-21  
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 8 August 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 29 June 2022 advisory opinion (AO) of a medical professional, a copy of which was provided to you, and to which you did not provide a response.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty in May 2018. You incurred left hip and right shoulder injuries during initial recruit training. Despite treatment, your left hip (and later associated lower back pain) and right shoulder pain continued to persist, resulting in the convening of a Medical Evaluation Board (MEB). In November 2020, a MEB diagnosed you with Left Hip Pain, Chronic Pain Syndrome, and Meralgia Paresthetica (numbness to the lateral femoral cutaneous nerve) and recommended that you be referred to a Physical Evaluation Board (PEB) for a fitness for duty determination.

On 30 October 2020, your command provided the PEB a non-medical assessment (NMA) of your fitness for continued service. According to the NMA, your command related that you were not medically qualified to complete your original assignment as Air Traffic Controller, and recommended that you not be retained in service.

On 7 January 2021, an Informal PEB (IPEB) found you unfit and recommended that you be separated with severance pay for: (1) Left Hip Pain, Impairment of Thigh, Stable (10% disability rating); (2) Left Hip Pain, Flexion, Stable (0% Disability Rating); and (3) Left Hip Pain, Extension, Stable (0% Disability Rating). The PEB also listed as not separately unfitting and does not contribute to the unfitting condition(s): Meralgia Paresthetica.

You disagreed with the IPEB findings, and on 15 April 2021, a Formal PEB (FPEB) was convened. During the FPEB, you requested consideration of right hip pain, low back pain, and right shoulder pain (secondary to Labrum tear) be considered as unfitting conditions. The FPEB returned a finding of unfit for duty and recommended separation with severance pay for: (1) Left Hip Trochanteris Pain Syndrome and Femoral Head Stress Fracture with Meralgia Paresthetica and Impairment of the Thigh, stable (10% rating); (2) Left Hip Trochanteris Pain Syndrome and Femoral Head Stress Fracture with Meralgia Paresthetica and Limit of Flexion, Stable (0% rating); and (3) Left Hip Trochanteris Pain Syndrome and Femoral Head Stress Fracture with Meralgia Paresthetica and limit of extension, stable (0% rating).

The FPEB also determined that conditions not separately unfitting and did not contribute to the unfitting conditions included: Right Shoulder Labrum Tear, Right Hip Pain secondary to Left Hip Condition W/ Change in Gait, Lumbosacral Strain, and Meralgia Paresthetica Paralysis of Quadriceps Extensor Muscles. The FPEB recommended that you be discharged with severance pay. On 15 August 2021, you were honorably discharged due to Disability, Disability, Severance Pay, Not Combat Related, IDES.

In your petition, you request that the Board find that you were unfit for both (1) the conditions described above that were considered not separately unfitting and did not contribute to the unfitting conditions, as well as (2) the conditions for which you were already found unfit, and, as a result of these findings of unfitness, you request to be placed on the temporary disabled retired list (TDRL). You also request, alternatively, that if this petition is not granted, that the results of your PEB be vacated, and that you be evaluated by another PEB to demonstrate the impact of the combined effect of your injuries. In support of your petition, you provided a written statement, which included its thirteen enclosures, including medical documentation, as well as personal statements in support.

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures. To assist it in reviewing applicable medical information, the Board obtained the AO, which was considered unfavorable to your contentions. As noted, you were provided a copy of the AO, and you did not provide a response in rebuttal to its findings. According to the AO, in part, the occupational limitations set forth in the NMA, “were appropriately evaluated and referred for fitness for duty determination to the PEB and found unfitting with a commensurate 10% disability rating for severance pay and medical discharge.” With respect to the conditions that were considered not separately unfitting, the AO explained (formatted by discussion point) as follows:

### Right Shoulder Labrum Tear

“Petitioner’s contended unfitting condition of right shoulder labrum tear was properly evaluated and recommended for treatment. However, the clinician recommended treatment after separation from the Marine Corps and did not evaluate the condition as needing referral to the PEB for consideration for unfitness.”

### Right Hip Pain Secondary to Left Hip Condition

“Petitioner’s contended unfitting conditions of right hip pain secondary to left hip condition with change in gait and lumbosacral strain were documented throughout the available clinical records as properly evaluated and treated with appropriate treatment modalities. Both conditions were noted as likely arising as sequelae from the ongoing unfitting condition of right hip pain. The PEB evaluated the range of contended conditions and did not consider these conditions separately unfitting or contributing to the unfitting condition.”

### Meralgia Paresthetica

“Petitioner requested a finding of unfit for Meralgia Paresthetica paralysis of quadriceps extensor muscles. Clinical records showed this condition was evaluated throughout the treatment record and was included as a component of the PEB’s finding of an unfitting condition with a disability award of 10%. It was not referred or determined to be a separately unfitting condition in the MEB, as well as in the determinations of the Informal and Formal PEB’s.”

Finally, the AO concluded as follows:

there exists objective clinical evidence that the applicant’s unfitting conditions of Left Hip Trochanteris Pain Syndrome and Femoral Head Stress Fracture with Meralgia Paresthetica and Impairment of the Thigh, Left Hip Trochanteris Pain Syndrome and Femoral Head Stress Fracture with Meralgia Paresthetica and Limit of Flexion, and Left Hip Trochanteris Pain Syndrome and Femoral Head Stress Fracture with Meralgia Paresthetica and limit of extension were appropriately evaluated 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.

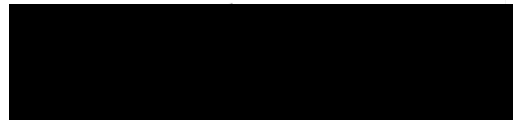
In review of the entirety of your naval service and medical records, your petition and its enclosures, as well as the AO, the Board disagreed with your rationale for relief. At the outset, the Board substantially concurred with the AO, including its findings relating to the conditions for which you were found unfit. The Board determined that the AO provided a cogent medical analysis that was supported by the preponderance of the medical evidence. In addition, the Board concurred with the AO’s finding that certain conditions were found to be not separately unfitting or contributing to the unfitting conditions. 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



Executive Director

