



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. 5633-21
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.

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 May 2011 after graduating from the U.S. Military Academy. In January 2012, you were seen by mental health after reporting depression symptoms and suicidal thoughts. A medical board diagnosed you with Bipolar 2 Disorder on 6 July 2012 and referred you to the Physical Evaluation Board (PEB). The PEB found you unfit for continued naval service on 4 September 2012 for your Bipolar 2 Disorder and assigned you a 30% disability rating with a recommendation for placement on the Temporary Disability Retirement List (TDRL). You were subsequently released from active duty on 27 November 2012 and transferred to the TDRL pursuant to your PEB findings. In 2018, you were administratively removed from the TDRL for failing to attend your periodic TDRL examination. The Department of Veterans Affairs (VA) has certified that you possess a combined 50% disability rating as of 1 December 2020.

The Board carefully considered your arguments that you deserve to be placed on the Permanent Disability Retirement List (PDRL). You argue that you were never notified of your TDRL examination prior to your administrative removal from the TDRL. Unfortunately, the Board disagreed with your rationale for relief.

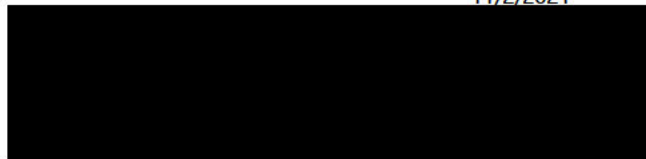
After reviewing the evidence in your case, the Board determined the preponderance of the evidence does not support your placement on the PDRL. First, other than a certification from the VA that you possess a combined rating of 50%, the Board found no evidence that your condition merits placement on the PDRL. The Board determined this evidence was insufficient to support a finding that you were unfit for continued naval service due to Bipolar 2 Disorder effective the date of your administrative removal from the TDRL. Second, and more importantly, the Board determined you were appropriately removed from the TDRL by the PEB based on your failure to attend your periodic examination. Despite your assertions to the contrary, the Board found no evidence find that you were not properly notified of your TDRL examination. This finding was made based on a presumption of regularity. The Board relies on a presumption of regularity to support the official actions of Navy personnel and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Therefore, absent evidence that the Navy failed to properly notify you of your periodic examination, the Board determined you were appropriately removed from the TDRL and do not qualify for placement on the PDRL regardless of the severity of your disability condition at the time of your removal. 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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