



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

█  
Docket No. 5776-21  
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 17 October 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 25 July 2022 advisory opinion (AO) from a qualified medical professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that a 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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 28 August 2002. You were released early from active duty to the Navy Reserve due to your request to attend further education. From 16 March 2012 to 17 November 2012, you were recalled to active duty to serve in █. In January 2019, you applied for Line of Duty benefits contending that you had conditions including ongoing post-traumatic stress disorder (PTSD), back pain, opioid withdraw disorder, anxiety disorder, depression, and chronic pain, which "significantly affect [your] ability to work full time and maintain relationships." A more detailed recitation of your conditions and course of treatment is set forth in the AO.

On 25 January 2019, you were referred to the Physical Evaluation Board (PEB) for a determination of your physical qualification to remain in the Navy Reserve. In connection with your PEB, your command prepared a non-medical assessment (NMA), dated 17 February 2019. According to the NMA, you were not worldwide deployable, could only be assigned in the Continental United States without medical and small arms waivers, and recommended a finding of Not Physically Qualified (NPQ) for the Navy Reserve. On the other hand, the NMA stated you were compliant with treatment, within body fat standards, working within your specialty, could serve in a Continental United States, desired to continue your service until retirement, and that you could complete your duties as a drilling reservist on drill weekend.

On 1 July 2019, an Informal PEB (IPEB) convened and found that you were unfit and recommended a disposition of Not Physically Qualified to Continue Reserve Status due to your conditions of Anxiety Disorder, History of Opioid Dependence, Chronic Low Back Pain Status Post L5-S1 Laminectomy and Spinal Fusion with Inter-Body Spacer, Sciatica, Hypertension, Attention Deficit Hyperactivity disorder, and PTSD. Thereafter, you requested a Formal PEB (FPEB). On 26 September 2019, the FPEB convened and found you “Physically Qualified to Continue Reserve Status.” You and the FPEB came to an agreement where you stipulated that: (1) you were physically qualified for continued naval service for Anxiety Disorder, Chronic Low Back Pain Status Post L5-S1 Laminectomy and Spinal Fusion with Inter-Body Spacer, Sciatica, Hypertension, and PTSD; (2) inability to perform fitness testing is not, in and of itself, a reasonable basis for a finding of unfit; (3) your confirmed diagnoses of history of opioid dependence and Attention Deficit Hyperactivity Disorder were determined to be Category IV Conditions, which are not ratable or compensable as a medically unfitting condition and the PEB does not make fitness decisions for Category IV Conditions; and (4) that you are to be retained in the United States Navy Reserve.

In your petition, you have requested to have your Line of Duty request reopened and that you be awarded a disability retirement, or that you have your PEB results reconsidered so that you can be medically retired. In support of your request, you contend that you were unfit for continued naval service at the time the PEB found you fit for active duty. You included medical documentation, which included medical records from the U.S. Department of Veterans’ Affairs (VA), in support of your petition.

In order to assist it in reviewing your petition, the Board obtained the 25 July 2022 AO. According to the AO:

The available administrative and clinical records did not support Petitioner’s contention of unfitness for military service or participation in the Navy Reserve. Petitioner’s medical conditions have been well documented as arising from active military service and have been appropriately treated. He has received periods of light or limited duty and been referred to the Navy Bureau of Medicine and Surgery for determination of physical qualifications for continued service, as well as the Physical Evaluation Board for determinations of Fitness for Duty. His most recent NMA indicated he was compliant with treatment, was within body fat standards, was working within his specialty, could serve in a CONUS assignment, desired to continue his service until retirement, and could complete his duties as a

drilling reservist on drill weekend. Though the NMA stated he was not worldwide deployable and could only be assigned CONUS without medical and small arms waivers, a finding of Fit to continue naval service does not preclude such limitations to continued service. Petitioner was found Fit to continue active military service and affiliation with the Navy Reserve in 2015 and 2019 by the Physical Evaluation Board after deliberation of the effects of the above-cited conditions on his fitness for continued military service.

The AO concluded, “the preponderance of objective clinical evidence provides insufficient support for Petitioner’s contention that he was unfit for continued naval service at the time the Physical Evaluation Board (PEB) found him fit for active duty, nor that he is currently unfit for military service and should be placed on the Permanent Disability Retirement List.”

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation and supporting materials that you provided, and the Board disagreed with your rationale for relief. The Board concurred with the findings of the AO. Notably, the Board observed that your most recent finding by the FPEB that you were fit to continue service, in September 2019, was a result of a stipulation that you willingly entered into with the FPEB, which specifically found that you were fit for continued naval service despite several medical conditions. The Board reviewed the materials you provided by the VA, but it concurred with the explanation by the AO, that “[t]he 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.” In your case, the most recent FPEB found you to be fit for continued naval service. Therefore, the presence of a VA assigned disability rating does not establish unfitness for continued service. Accordingly, in light of all of the foregoing, the Board did not discern an 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,

11/7/2022

