



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



Docket No. 6081-21
Ref: Signature Date



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 reviewed the 5 September 2022 advisory opinion (AO) of a qualified medical professional. Although you were provided an opportunity to comment on the AO, you chose not to do so.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 27 December 1994. On 22 October 1996, while on leave, you were sexually assaulted by a family member. As a result of the assault, you manifested symptoms that were diagnosed as post-traumatic stress disorder (PTSD). You were referred to the disability evaluation system for a determination of your medical fitness to continue in service. On 1 July 1997, an Informal Physical Evaluation Board (IPEB) found you to be unfit due to post-traumatic stress disorder at 10% disability rating, and recommended that you be discharged due to this disability. Thereafter, you specifically requested to remain on active duty in permanent limited duty, which was denied on 29 August 1997. Thereafter, you requested to be reviewed by a formal PEB. The formal PEB (FPEB) met on 16 December 1997, and you argued to the FPEB that you should be retained in service. On 23 January 1998, pursuant to your request, the FPEB issued its decision finding you fit for service and you may remained in service. On 28 December 1998, you completed your required active service, received an Honorable characterization of service, were recommended for reenlistment, and transferred to the Navy Reserve. On 14 December 2002,

you completed your reserve status obligation, were discharged, and recommended for reenlistment.

In your petition, you request that you be awarded a medical retirement with at least 50% disability. In support of your request, you contend that you were enlisted at a time that was well known for not appropriately dealing with service members that dealt with sexual assaults on active duty. You explained that you believe that your discharge was mishandled and you should have been medically discharged with a minimum of 50% disability, and that you should have received all benefits associated with that type of discharge.

In order to assist it in reviewing your petition, the Board obtained the 5 September 2022 AO. You received a copy of the AO, which was considered unfavorable to your request, and you did not provide a response. According to the AO:

the PEB's decision of Unfitness for Service and recommendation for discharge with severance pay at 10% disability evaluation appears appropriately based on available objective evidence of Petitioner's condition and ability to continue to serve. She effectively utilized her due process options to request Permanent Limited Duty as a condition to accept her initial PEB findings, and then to request a Formal PEB hearing when Chief of Naval Personnel denied her request.

She effectively and successfully presented a case for retention on active duty before the Formal PEB and was found FIT to remain on active duty. Command evaluations during the period of her diagnosis, treatment, and post-PEB finding of Fit for duty up to discharge indicated Petitioner successfully executed her duties for the remainder of her enlistment and transition to the Naval Reserves.

The AO concluded, "in my clinical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that at the time of her discharge she was unfit for continued military service and should have been medically retired."

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation that you provided, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness at the time of your discharge. At the outset, the Board substantially concurred with the AO's opinion. The facts of record

demonstrate that the IPEB originally found you to be unfit. However, you sought review of these findings by the FPEB, and successfully argued to the FPEB that you were fit. In accordance with your position, the FPEB found you to be fit. Thereafter, you honorably and capably finished your enlistment, received a favorable reentry code, completed a four year obligation in a reserve status, and received a favorable reentry code upon your discharge from reserve status. As described by the AO, “[c]ommand evaluations during the period of her diagnosis, treatment, and post-PEB finding of Fit for duty up to discharge indicated Petitioner successfully executed her duties for the remainder of her enlistment and transition to the Naval Reserves.” In light of the foregoing, the Board did not discern any facts that would support you being eligible for a medical retirement, which, as noted above, would require findings that you were considered unable to perform the duties of your rating. All factors demonstrate that you were able to perform the duties of your rating, and in fact, you did successfully complete your enlistment. Further, the Board did not discern any deficiencies or irregularities in its review of the process that you were afforded while you were in the disability evaluation system. Thus, in light of all of the foregoing, the Board determined there was no error or injustice in your naval record and it 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,

10/27/2022

█

Executive Director

Signed by: █