



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. 6120-21
Ref: Signature Date

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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.

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 24 November 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 Marine Corps in November 2002. In 2012, you sustained a right forearm fracture that was repaired with surgery but continued to cause pain symptoms. As a result, you were referred by a medical board to the Physical Evaluation Board (PEB) for Right Forearm Pain Status Post Open Reduction Internal Fixation (ORIF). The PEB found you unfit in November 2013 and assigned you a 20% disability rating based on a 28 February 2014 proposed rating by the Department of Veterans Affairs (VA). You were discharged from the Marine Corps on 29 June 2014 with severance pay pursuant to your PEB findings. In 2015, you filed a notice of disagreement with the VA rating. At this time, you were diagnosed with Complex Regional Pain Syndrome, Myofascial Pain Syndrome Upper Trapezius, and Right hand Carpal Tunnel Syndrome. After the Board of Veterans Appeals remanded your case back to the VA, your rating of 20% for your status post right mid radius and ulna fractures with ORIF was increased to 50% in 2021 when it was combined with the additional conditions of Complex Regional Pain Syndrome, Myofascial Pain Syndrome Upper Trapezius, and Right hand Carpal Tunnel Syndrome to avoid pyramiding prohibitions.

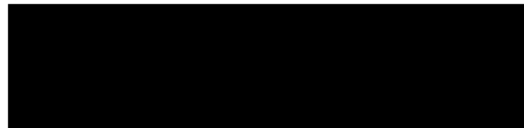
The Board carefully considered your arguments that the PEB assigned rating of 20% should be increased to 50% consistent with the 2021 rating. You argue as a matter of injustice that the PEB would have placed you on the disability retirement list had they had access to the 2021 VA rating. Unfortunately, the Board disagreed with your rationale for relief.

In reviewing the evidence in your case, the Board concluded the preponderance of the evidence does not support changing your PEB record. The Board determined that the PEB assigned disability rating of 20% remains supported by the evidence in your case since it was based on a proposed rating provided by the VA for your unfitting condition of right forearm pain status post ORIF. The Board concluded your 2021 increase in disability rating was the result of a decision by the VA to combine several additional conditions with your unfitting condition. As a result, the Board concluded the preponderance of the evidence does not show that your unfitting condition was erroneously rated by the VA or PEB in 2014. Absent evidence that your Right Forearm Pain Status Post ORIF, by itself, was erroneously rated by the VA in 2014, the Board felt no change to your PEB record was merited. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your 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,

11/27/2021

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Deputy Director

Signed by:

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