



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

■
Docket No. 6478-21
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 8 September 2022 advisory opinion (AO) of a qualified medical professional and the materials you provided in rebuttal to the AO on 7 October 2022. You forwarded additional materials in rebuttal to the AO, on 21 October 2022, which were similar to the materials you forwarded earlier but also considered.

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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 27 August 2008. On 3 December 2008, you sought medical treatment for testicular pain. Thereafter, you were medically evaluated over a period of time. Ultimately, a medical evaluation board convened on 1 April 2010, diagnosed you with "Unspecified Disorder of Male Genital Organs" and referred you to the physical evaluation board (PEB) for a fitness for duty determination. On 5 April 2010, your commanding officer prepared a Non-Medical Assessment, stating that you were deemed not worldwide assignable, that you were working within your

naval military specialty, but you did not have good potential for continued service in your present physical and mental condition. The commanding officer further stated that you had been “diagnosed with chronic testicular pain. He has received long term Light Limited Duty and a Limited Duty Board with no results. Surgery is not favorable for his condition.”

An Informal PEB convened on 14 July 2010, and after review of all evidence, it found you were Unfit to Continue on Active Duty due to your Unfitting Condition of Chronic bilateral Intermittent Testicular Pain (VA Diagnostic Code 8630) and recommended that you be separated with severance pay at a 0% combined disability rating. You accepted the Informal PEB’s findings, on 29 July 2010, and did not request a Formal PEB hearing. On 16 September 2010, you were discharged due to disability with severance pay.

In your petition, you request a medical retirement. In support of your request, you assert that you were unfit for continued naval service due to gastrointestinal and testicular conditions. You argue that you were denied due process during the PEB process and that you were discharged due to erroneous findings by the PEB.

In order to assist it in evaluating your petition, the Board obtained the 8 September 2022 AO, which was considered unfavorable to your request. According to the AO, in part:

Petitioner received several periods of light duty and a period of limited duty for his testicular pain, but there were no light duty periods associated with his GERD, erectile dysfunction, or lumbar back pain. The NMA did not cite GERD, erectile dysfunction, or lumbar back pain as interfering with his ability to perform his required duties a prerequisite to findings of unfitness.

These conditions were not deemed unfitting by the MEB for referral to the PEB. Petitioner’s performance evaluations did not reflect any occupational impairment due to any specific medical conditions as well.

The AO concluded that, in his medical opinion, “the preponderance of objective clinical evidence provides sufficient support for his unfit ng condition of Chronic Testicular Pain to be classified under VASRD Diagnostic Category 7525 (Chronic Epididymitis and Orchitis) with a disability rating of 10%. However, there is insufficient support for Petitioner’s contention that at the time of his discharge he was unfit for continued military service due to GERD, lumbar back pain, or erectile dysfunction and should have been medically retired.”

You were provided a copy of the AO, and you provided a rebuttal dated 7 October 2022. In your rebuttal, you provided a written statement, as well as one from your wife. Those statements each detailed your daily struggles with your medical condition. You also provided background and context to your claimed conditions. You also provided legal argument, which urged the Board to reject the AO, asserting that the AO was conducted at a distance and involved only a record review, and further challenged the preparer of the AOs credentials. After the Board convened, on 21 October 2022, you forwarded additional materials in rebuttal to the AO. These materials were similar to the materials that you provided to the Board on 7 October 2022.

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 substantially concurred with the AO. The Board was sympathetic to the difficulties that you and your wife described in your submissions. However, the Board was not swayed by your assertions that the AO was unworthy of credence based on the various arguments that you made in your rebuttal. Rather, the Board observed that the AO carefully reviewed the available medical evidence and reached the reasonable conclusion that your GERD condition was not referred to the PEB as a potentially unfitting condition. Similarly, the Board acknowledged the AO's finding that a disability rating of 10% was appropriate based on the contemporary medical evidence. The Board further observed that the AO correctly explained that you received "several periods of light duty and a period of limited duty for his testicular pain, but there were no light duty periods associated with his GERD, erectile dysfunction, or lumbar back pain." In addition, the Board found persuasive the AO's explanation that, the "NMA did not cite GERD, erectile dysfunction, or lumbar back pain as interfering with his ability to perform his required duties a prerequisite to findings of unfitness. These conditions were not deemed unfitting by the MEB for referral to the PEB." 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

