



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. 6629-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 20 January 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.

A review of your record shows that you entered active duty with the Marine Corps in May 2019 after previous service in the Air Force. In September 2019, you experienced low back pain which a Magnetic Resonance Imaging report showed was spondylosis and small posterior annular tear of the L5-S1. After a period of relatively unsuccessful physical therapy and treatment, a medical board referred you to the Physical Evaluation Board (PEB) for your low back pain, erectile dysfunction, and Paresthesia of the skin condition. On 12 June 2020, the PEB found you unfit for continued naval service due to your low back pain and assigned you a 10% rating based on your symptoms. Your other referred disability conditions were deemed not to be separately unfitting. After you accepted the PEB findings, you were discharged with severance pay on 15 August 2020. Post-discharge, the Department of Veterans Affairs (VA) rated you a combined 100% effective 16 August 2020.

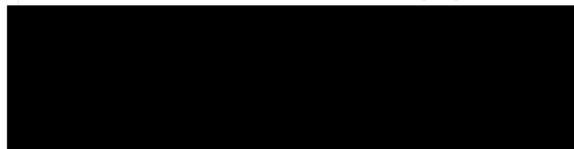
The Board carefully considered your arguments that you deserve to be placed on the disability retirement list. You rely on your combined VA rating as substantiation that you should have been rated a combined 30% or greater by the PEB for your unfitting conditions. Unfortunately, the Board disagreed with your rationale for relief.

In reviewing your case, the Board found no basis to overturn the PEB findings in your case. Based on the medical board report and non-medical assessment in your case, your low back condition was the only condition that created a substantial enough occupational impairment to prevent you from performing the duties of your office, grade, rank or rating at the time of your discharge. The 10% rating assigned by the PEB for your back condition was based on the symptoms you exhibited at the time. Therefore, absent evidence that your other VA rated disability conditions also met the criteria for a finding of unfitness and/or your back condition was rated differently by the VA, the Board determined the preponderance of the evidence does not support a finding that your PEB findings were erroneous. 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,

1/22/2022



Deputy Director

