



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. 7049-21
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 16 December 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 Navy Reserve in November 1979. On 28 July 1982, a medical board diagnosed you with Epilepsy and referred you to the Physical Evaluation Board (PEB). The PEB found you unfit for continued naval service due to your Epilepsy and assigned you a 40% disability rating on 17 August 1982. As a result, you were released from active duty and transferred to the Temporary Disability Retirement List (TDRL) on 16 September 1982. In September 1983, you were ordered to appear for a periodic TDRL examination. The PEB found you unfit for Epilepsy on 2 March 1984 but reduced your disability rating to 10%. You were discharged from the Navy Reserve on 20 June 1984 pursuant to your PEB findings. Post-discharge, you assert the Department of Veterans Affairs (VA) increased your disability rating for your epilepsy from 40% to 80% and determined you were unemployable.

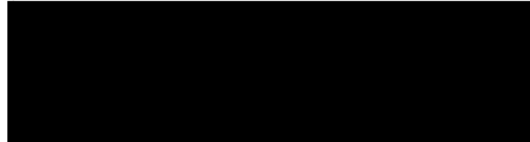
The Board carefully considered your arguments that you deserve to be placed on the disability retirement list. You argue that you never received the TDRL examination orders and continued to suffer from symptoms of Epilepsy after your discharge from the Navy. Unfortunately, the Board disagreed with your rationale for relief. In reviewing the evidence in your record, the Board concluded the preponderance of the evidence supports the 1984 PEB findings in your

case. Absent evidence that your Epilepsy condition had remained static through 1984, the Board felt insufficient evidence exists to overturn the PEB findings. While the Board considered your arguments regarding your post-discharge VA ratings, they did not find them persuasive. They noted that you did not provide your VA ratings or any evidence that would contradict the 1984 PEB findings. Finally, the Board did not find an injustice in your case based on your assertion that you did not receive your TDRL examination orders. The Board felt that it was your responsibility to maintain an accurate mailing address with the PEB to ensure you were appropriately notified of any periodic examinations while assigned to the TDRL. Therefore, while the Board empathizes with your current medical condition, they felt compensation and treatment for your disability conditions fall outside the scope of the Department of Defense disability system and under the purview of the VA. 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,

12/17/2021



Deputy Director

