

On 24 June 2009, a Medical Evaluation Board (MEB) was convened and recommended that you be referred to the Physical Evaluation Board (PEB) for a determination of fitness for duty and continued military service for the diagnoses of (1) Hodgkin Disease, Inguinal Region and Lower Limbs, Stage 3A; (2) Acne; (3) Hyperlipidemia; and 4) HIV. After an initial review from an Informal PEB, in December 2009, the PEB convened to review the IPEB's findings. The PEB found you unfit for the diagnosis of Hodgkin Disease, Inguinal Region and Lower Limbs, Stage 3a with a disability rating of 100%. The PEB found that your conditions of Acne, Hyperlipidemia, and HIV were considered Category III (conditions that are not separately unfitting and do not contribute to the unfitting condition). As your unfitting condition was still in active treatment and was considered "unstable" for final disposition determination, you were recommended to be medically retired and placed on the temporary disability retired list (TDRL). On 27 February 2010, you were retired to the TDRL.

In July 2014, you underwent a Periodic Physical Examination (PPE) at NMC San Diego. The results were forwarded to the PEB for adjudication. On 25 July 2014, the PEB convened to consider the results of the PPE. Upon review of the PPE, the PEB determined that your condition had stabilized for rating purposes since your initial placement on the TDRL. The PEB found you unfit for return to service due to the unfitting condition of Hodgkin's Disease, Inguinal Region and Lower Limbs, Stage 3a at a disability rating of 30% in accordance with VA Diagnostic Codes 7709-8521 and the VA Schedule of Disability Ratings. You were recommended for transfer to the Permanent Disability Retired List (PDRL) and subsequently medically retired permanently.

In 2021, you wrote to the White House regarding your medical retirement from the U.S. Navy. The White House in turn referred your correspondence to the Secretary of the Navy, Council of Review Boards (CORB). In your letter, you sought restoration of your PEB Disability Rating to 100% to match your disability rating by the U.S. Department of Veterans' Affairs (VA) of 100%. Additionally, you requested Concurrent Retirement and Disability Pay (CRDP) and a determination that your condition was combat-related. On 14 October 2021, Director, CORB responded to your letter. In his letter, the Director explained that Navy PEB and VA disability ratings are unrelated and separate, that your disabling condition was not assigned as combat-related, and that you were not eligible for CRDP as you had not served 20 years. The Director noted that, at the time it was effected, you did not contest the transfer from the TDRL to the PDRL at 30% and you accepted the decision. The Director further stated:

Even though your Navy disability rating dropped to 30%, it had no effect on your VA rating. These two ratings are separate, they have no effect on each other, and the PEB and VA rate disabilities differently. Whereas the VA rates on symptoms, the PEB only rates those conditions found to be unfitting (in your case, Hodgkin's Disease) per the VA Schedule for Rating Disabilities. There is no regulation that says service disability ratings should match VA disability ratings, and they rarely do.

In your petition, you request to be awarded a 100% permanent disability retirement from the Navy, with back pay, and to have your naval records conformed to reflect that you were medically retired. In support of your request, you assert that, while you were on the TDRL, the

Veteran's Health Administration rated your disabilities at rated 100% total and permanent, and that when you were evaluated by the PPE, your disability rating dropped from 100% to 30%. You also contend that you were treated differently and discriminatorily based on your sexual orientation and that it was error to be reviewed for PDRL six years after placement on the TDRL.

To assist it in reviewing your petition, the Board obtained the 9 December 2022 AO, which was considered unfavorable to your request. According to the AO:

Petitioner's current application contends the PEB erroneously lowered his disability rating from 100% to 30% for his unfitting condition of Hodgkin Disease, Inguinal Region and Lower Limbs, Stage 3a, due to the Veterans Health Administration lowering his VHA Disability rating to 30%.

In fact, and as explained in the 10/14/2021 Director, CORB letter to the White House and Petitioner, his Navy PEB disability rating was lowered from 100% to 30% due to the findings of his July 2014 Periodic Physical Examination which informed the PEB's decision that his condition had stabilized for ratings purposes and reflected a clinical picture of disability that more accurately reflected a 30% disability rating in accordance with the VA Schedule of Rating Disabilities. As his condition had stabilized and he remained unfit for return to service, the PEB appropriately recommended transfer from the TDRL to the PDRL.

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Of note, the VA disability rating for his Nodular Sclerosing Hodgkin's disease, stage 3A to include normochromic normocytic anemia (PEB referred as Hodgkin disease, inguinal region, lower limbs) at a 100% disability rating effective 2/28/2010 remained in effect during the period encompassing his Navy PEB decision to reduce his disability rating to 30% and transfer him to the PDRL for his disabling condition that rendered him unfit for military service.

Petitioner did not present any new clinical evidence that would indicate the PEB erred in its decision to reduce his disability rating to 30% at the time of transfer from the TDRL to the PDRL.

The AO concluded, "in my clinical opinion, the preponderance of evidence provides insufficient support for Petitioner's request."

You submitted a response in rebuttal to the AO on 28 December 2022, in which you stated that you, "grossly disagree with the physician's review and decision of my submitted documents," that you would like the identity of the physician-advisor, and that you are "appealing these findings, and your offices should be hearing from other government agencies and my attorney." You did not provide documentation or new medical information to rebut the findings of the PEB or the AO.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you provided sufficient information to support a finding that the PEB made an error in its decision in 2014.

In reaching its conclusion, the Board concurred with the findings of the AO, and determined that it sufficiently considered the relevant factors and reached a reasonable conclusion. With respect to your contention that your physician stated that your development of cancer was a direct result of your HIV infection, which may have been prevented by placing you on anti-retroviral therapy immediately after your HIV diagnosis, the Board concurred with the AOs finding that this statement mischaracterizes the doctor's letter. As explained by the AO, your doctor stated that, "patients with HIV infection (even well controlled infection, like his is) are at a significantly higher risk of acquiring Hodgkin's disease than non-HIV infected patients" and that your malignancy is related to your HIV. This statement does not indicate your cancer arose as a "direct result" of not receiving HIV anti-retroviral therapy earlier than you did. The AO further explained that the doctor's statement is more consistent with indicating that development of Hodgkin's disease in HIV positive patients is not uncommon, regardless of how well the HIV positive infection is controlled.

With respect to your assertion that you were reviewed by the PEB more than five years after your placed on the TDRL, the Board determined this was not correct, because it appears you went on the TDRL in 2010 and you were transferred to the PDRL in 2014, which is four years and not six, as you contend. The Board also found no evidence that your review by the PPE was tainted by any unlawful discrimination. Therefore, absent additional evidence that supports your contention of error or injustice, the Board found that insufficient evidence exists to grant you the relief you request. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

2/15/2023

