



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

■  
Docket No. 555-22  
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 26 May 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 determined that a 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 Marine Corps and commenced a period of active duty on 29 August 1974. You served without incident until 8 October 1976 when you developed acute onset of abdominal pain while flying at 10,000 feet. On 23 June 1977, you were seen for a psychiatric evaluation after your hospitalization for abdominal pain and cramps. You were diagnosed with severe passive aggressive personality disorder with sociopathic traits. On 17 August 1977, you received a Page 11 administrative entry regarding your inattention to duty and poor attitude as a noncommissioned officer. You were considered unqualified for promotion to sergeant at that time. Thereafter, you were evaluated by a medical evaluation board, and on 8 November 1977, it recommended that you be reviewed by the Central Physical Evaluation Board (CPEB). The CPEB determined that you were physically unfit for service and determined that your disability rating was 40%. On 24 January 1978, you explained in writing that you had consulted with your counsel, and you decided to accept the finding of the CPEB. On 1 February

1979, the President of the CPEB wrote to the Commandant of the Marine Corps explaining that you should be permanently retired from the naval service with a 40% disability based on left upper quadrant pain, secondary to fibrosis, splenectomy, and sickle cell trait. On 17 February 1978, you were retired by reason of your disability, and on 2 March 1979, you were informed that you were being transferred to the Permanent Disability Retired List (PDRL).

In your petition, you requested the removal of derogatory information contained in your record, a revision of the “improper evaluation and rating” of your disability upon discharge, and establishment of your right to the permanent regular promotion that you would have obtained had it not been for the physical disability for which you were presumably retired. You contend that there were errors and injustices in connection with the medical determination concerning your retirement to the PDRL and, in your brief, you provide facts and arguments in support thereof. In support of your contentions, you provided a lengthy brief as well as exhibits, which included medical records and documents associated with your files before the U.S. Department of Veterans’ Affairs (VA).

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures, and disagreed with your rationale for relief. After a careful review of the available service record documents and medical records, as well the entirety of your petition, the Board was not able to discern any error or injustice in connection with the documentation set forth in your record.

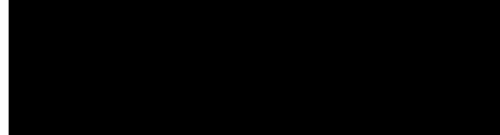
In addition, the Board did not find an error or injustice with respect to your contention that you would have been promoted in the regular course had it not for the physical disability for which you were retired. Rather, the Board did not find any error or injustice in the CPEB’s assignment to you of a 40% disability finding. In making this finding, contrary to your assertion that there was an “improper evaluation and rating,” the Board determined that the presumption of regularity applied to the process employed with respect to your service disability findings. Specifically, it noted that you were properly subject to a medical evaluation board, which referred your case to the CPEB, and you agreed to the findings of the CPEB after consulting with counsel. Accordingly, absent substantial evidence to rebut the presumption of regularity, the Board presumed that these public officers properly discharged their official duties. The Board concluded the evidence you submitted was insufficient to overcome the presumption and, therefore, determined relief was not warranted.

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,

6/17/2022



Executive Director

Signed by:

