



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

█  
Docket No. 763-22  
Ref: Signature Date

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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 6 April 2023. 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 15 March 2023 advisory opinion (AO) from a qualified medical professional, as well as your 20 March 2023 response to the AO.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 6 July 1971. Due to a medical condition, you were referred to be reviewed by the Physical Evaluation Board (PEB). On 13 February 1973, the Informal PEB found you to be unfit due to Schizophrenia at 100%. Your case was then reviewed by the Formal PEB (FPEB). On 24 April 1973, the Formal PEB also found you to be unfit due to Schizophrenia at 100%. Subsequently, you were transferred to the temporary disabled disability list (TDRL). While on the TDRL, you underwent periodic physical examinations to determine your disability status. During a periodic physical examination on 18 May 1978, the examining physician reported that, since your "last Periodic Physical Examination he has not been re-hospitalized, nor has he taken any psychotropic medications. He does not receive psychotherapeutic care." Thereafter, your case was reviewed by the Central PEB, which determined that your disability rating was 30%. As a result, you were transferred to the permanent disability retired list (PDRL).

You filed a petition with this Board in 2011 in which you contended that your post-service rating from the Department of Veterans Affairs (VA) supported an increase in your disability

retirement rating. On 14 June 2012, the Board denied your petition, explaining that the VA's decision is not determinative, explaining that because "you have not demonstrated that your condition was ratable at 100% disabling on 1 October 1978 [the date you were transferred to the PDRL] the Board was unable to recommend favorable action on your request."

In your petition, you request this Board reconsider its finding above. In support of your request for reconsideration, you argue that you were previously rated at 100% and the Navy made their evaluation lowering your rating based on false information, and that a Navy lieutenant told you that the change in your disability rating was not legal. You also assert that the VA rated you at 100% and that your diagnosis of Schizophrenia "was never a preexisting condition before entering the service."

In order to assist it in reviewing your petition, the Board obtained the 15 March 2023 AO, which was considered unfavorable to your position. According to the AO, your condition of Schizophrenia was properly diagnosed in service and found unfitting for continued military service. The AO further found that the reduction in your disability rating to 30% represented your improvement in psychiatric condition across time and after regular physical evaluations. The AO ultimately concluded that "the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that his disability rating was wrongfully derived from false information and he was entitled to retroactive compensation for the difference in his recommended and actual disability ratings."

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. Upon review of its prior denial letter to you, the Board found it to be well-reasoned, determined that it sufficiently addressed all of your contentions, and found that the arguments you make in your current petition were insufficient for the Board to change its decision that it made in 2012. Notably, the Board observed that you did not provide any new documentation that demonstrated that your service disability rating was improperly assigned in 1978. In addition, the Board concurred with the findings of the AO, which provided a fulsome review of the available medical evidence. Accordingly, the Board denied your request for reconsideration.

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,

4/24/2023

A large black rectangular redaction box covering the signature and name of the Deputy Director.

Deputy Director

Signed by: 