



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

█  
Docket No. 1571-22  
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 you did not file your application in a timely manner, the Board found that it was in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 June 2023. The names and votes of the panel members 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 your 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 Navy and commenced a period of active duty on 12 December 1994. On 11 June 2014, an Informal Physical Evaluation Board (IPEB) found you to be unfit with a rating of 40% due to back-related conditions. Thereafter, on 31 December 2014, you were placed on the Permanent Disability Retired List (PDRL) and your service disability rating was set at 40% per the finding of the IPEB.

In 2017, you requested your disability retirement be corrected to 60% due to two combined ratings of 40% and 20%. You based your request on a 1 January 2015 decision by the Department of Veterans Affairs (VA), which found you to have service connected disability conditions based on, among other conditions, two different back-related conditions with VA

assigned ratings of 40% and 20%. In its 28 May 2018 letter to you denying your request, this Board explained the method by which combined rating percentages are calculated.

This Board based its decision on your assertion that you had a 50% service disability retirement, and that the IPEB had found you to have the 40% and 20% rated unfitting conditions. In fact, as described in more detail below, upon closer review, it is obvious that this Board based its prior decision on the VA findings that you provided, and did not base its decision on the actual findings of the IPEB.

In your current petition, you request that your disability retirement be increased to 50% from 40%. In support of your request you contend that this Board previously found your disability retirement should be 50%. You also contend you had three unfitting conditions for your back, and not two.

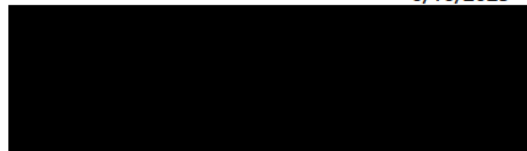
The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that according to the 11 June 2014 decision of the IPEB, you were found to have the unfitting condition of Chronic Back Pain with a 40% disability rating. And it is this finding for which you received a service disability retirement. There is no documentation in any of your records, and you did not provide any, that you were found to have any other unfitting conditions or that you had any other disability rating from the Navy other than 40%.

Upon review of your prior petition before this Board, as noted, it is clear that the Board relied upon your representation that you had disability conditions with 40% and 20% disability ratings. These conditions, however, were obviously based on findings by the VA and were not, in fact, based on the 11 June 2014 decision of the IPEB, which found you to have a 40% disability rating for your service disability retirement. To reiterate, any findings or compensation that you receive from the VA are separate from the finding of the IPEB. Accordingly, based on all of the foregoing, the Board denied your petition.

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,

6/16/2023



Deputy Director

Signed by: 