



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. 1790-22
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 active duty on 24 February 1999. You entered the Disability Evaluation System to be evaluated for your fitness due to a medical condition, and on 1 December 2005, you were found fit by an Informal Physical Evaluation Board (IPEB). You sought reconsideration of the finding, and on 22 December 2005, you were ultimately found unfit. Accordingly, on 14 March 2006, you were transferred to the Temporary Disability Retired List (TDRL), during which you underwent periodic physical examinations. As a result of such a periodic physical examinations, you were evaluated by an IPEB.

On 11 February 2009, the IPEB found you fit for duty. The President, PEB issued an official notification of the decision to you on 20 February 2009. On 22 April 2013, you were issued a

notice that you were separated from the Navy and removed from the TDRL due to having been found fit and the fact that you did not thereafter consent to reenlistment in the Navy.

In your petition, you request the decision that you be removed from the TDRL be changed and that you be placed on the Permanent Disability Retired List (PDRL). In support of your request, you contend that you have ongoing issues and within months after the “fit for duty” decision, your injuries were still ongoing. You further contend that you have been found to be individually unemployable by the Department of Veterans Affairs (VA).

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 the Board’s review of the available records from your PEB review, the Board did not observe any apparent errors in the findings. In addition, based on the entirety of the available documentation, the Board was unable to find any evidence of injustice in your naval records. In this regard, the Board noted that your records reflect that, after you were found fit by the PEB, you were invited to return to active duty, and you declined. There is no evidence in your record, nor did you provide any, that tended to demonstrate that you were actually unfit at the time of your release from the TDRL.

The Board acknowledged your assertion that, after you were found to be fit by the IPEB, you were found by the VA to have service connected disabilities. On this point, please note that the VA does not make determination as to fitness for service as contemplated within the service disability evaluation system. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. 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

