



Commanding Officer's comments: [Petitioner's] current medical condition has not resulted in removal from his primary duties as a Naval Air Technical Training Center Instructor. Member is not in a 'Limited Duty' status. Currently, he is performing all assigned tasks within the department. [Petitioner] current medical condition does not prohibit him from worldwide assignment and the performance of his duties within any of his deployable NECs. I personally endorse [Petitioner] for the Chief Warrant Officer Program.

You were diagnosed with achalasia and you were reviewed by the Physical Evaluation Board (PEB) for a determination of fitness. In December 2021, the PEB found that you were unable to perform the duties of your rating as a result of your disability. The PEB, in its formal rationale, described the history of your gastro-intestinal medical conditions, explaining that, in 2015, you were

restarted on a twice daily proton pump inhibitor and sulcrafate. He has been under the care of civilian gastroenterologist, Dr. [], and on 2 July 2020, he underwent another EDG due to dysphagia (i.e., painful swallowing) and chest pain. The EDG demonstrated a moderately dilated esophagus with retained food and saliva. [Petitioner] was advised to follow up with Dr. [] by telemedicine, but as of the Formal Board, had not followed up with Dr. []. He underwent an overseas screening in August 2020 and was found unsuitable by the gaining command as well as PERS 454, the Deployability Assessment and Assignment Branch at Navy Personnel Command. Additionally, an appeal to PERS 454 was denied.

Next, the PEB described that, a physician "annotated on the Service member's Narrative Summary dated 25 May 2021 that 'due to specialty recommendations, member is unsuitable for overseas or shipboard duty at this time'" The PEB further explained that you did not adhere to medical recommendations, which put you at risk, "[a]lthough his proton pump inhibitor is prescribed to be taken daily, Chief [] testified during the Formal Board that he is not adherent with this regimen, putting him at higher risk for another complication." The record demonstrates a significant impact on the Service member's ability to perform his duties, including deployment and shipboard duty."

The PEB concluded that "Achalasia significantly interferes with the member's ability to carry out the duties of his office, grade, rank, MOS, or rating and is an unfitting condition." The PEB explained that:

The [Formal PEB] considered the combined effect of all conditions and individually considered each condition to determine if the medical condition: (1) individually or collectively, prevents the Service member from reasonably performing the duties of their office, grade, rank, MOS, or rating including those duties remaining on a Reserve obligation for more than 1 year after diagnosis, (2) represents an obvious medical risk to the health of the member or to the health or safety of other members, or (3) the medical condition imposes unreasonable requirements on the military to maintain or protect the Service member when

making its fitness determination and applied these considerations to the final adjudication.

The PEB published its findings on 10 January 2022, in which it determined that you were unfit for continued service with 30% rating.

You obtained a letter from your civilian treating physician, dated 14 January 2022, which stated that you were “fit to complete military duties and job without any surgical or health risk. He is fit to transfer overseas with no limitation. He is fine to transfer immediately.” You provided the letter as part of a petition for review (PFR) of the PEB decision, which you filed with the Council of Review Boards (CORB). The CORB reviewed your PFR, and issued a decision on 22 February 2022, denying your PFR as follows:

After review of your case and the new evidence included with reference (a), I have determined the decision of the PPEB is valid and in compliance with the requirements set forth in references (b) and (c). Reference (a) included a letter from your Commanding Officer noting that you are worldwide assignable. You also provided two letters by Dr. █ noting that you are fit for overseas transfer with no limitations so long as you take Zegerid 40 mg twice a day indefinitely. In your Formal PEB hearing, you reported that you are not adherent with your medical regimen, which puts you at a higher risk for another complication. As such, I have determined that your continuation on active duty poses a risk to your personal safety and health as well as an unreasonable burden upon others tasked with ensuring your well-being. Therefore, your petition will not be granted. However, I would encourage you to consider petitioning the Chief of Naval Personnel for placement on Permanent Limited Duty (PLD). The procedures for submitting an application for PLD are set forth in reference {c}.

This Board does not have evidence demonstrating that you submitted an application to remain on PLD as suggested by the CORB. Thereafter, you filed your petition with this Board.

In your petition, you have requested this Board make a finding that you are fit for full duty. In support of your petition, you contend that your NMA and performance evaluations demonstrate that you are able to perform the functions of your rating of Aviation Ordnanceman. You provided letters from medical providers stating that you are fit, as well providing your physical fitness test results. You also provided evidence from your chain of command demonstrating their strong support, including a 4 March 2022 letter from a commanding officer, explaining that you have “proven to execute in the most complex and demanding billets within the ordnance community and United States Navy.” The letter continues that you demonstrated your “ability to continue filling positions of greater responsibility and accountability.” The letter concludes that denying your request “would be a failure for the Navy and a case of injustice due to an error on the medical board's recommendation.”

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation and supporting materials that you provided, and disagreed with your rationale for relief. The Board was impressed with your

commitment to duty and the skills you have developed in your rating, as exemplified by the remarks by your leadership, your evaluations, and your physical fitness test results. In reaching its decision, the Board observed that a service member may be found unfit based on several reasons, including that if their disability represents a decided medical risk to the health of the member or to the welfare or safety of other members. The Board initially observed that you had been advised by at least one medical provider that you needed to maintain a regimen that involved daily use of a proton pump inhibitor. In your case, the PEB and the CORB each found that you failed to comply with this medical advice, and it thus rendered you unfit. You did not provide any evidence or argument to explain why you did not comply with this advice or whether you were not able to comply with this advice. Nor did you provide medical evidence or argument addressing this factor. Thus, after careful review, the Board believed that there was no error or injustice in the finding of the PEB, as well as the CORB, that your current condition, along with your inability to maintain your medical regimen, represents a decided medical risk to your health.

In addition, the Board observed that the CORB encouraged you to apply for PLD, which, if granted, would allow you to continue to work in some capacity in the Navy. Thus, the Board determined that you have another potential remedy to pursue. In other words, the Board believed that you did not exhaust your remedies in efforts to remain in the Navy. Thus, in light of all of the foregoing, the Board determined there was no error or injustice in your naval record and 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,

11/7/2022

