



In your petition, you requested to receive a medical disability retirement from the Navy. In support of your request, you contend that the medical board that reviewed your condition while you were in service made an error in finding that you had a preexisting condition. In support of your request, you have provided documents relating to the findings from the VA, mentioned above.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the documentation from the VA that you provided, and disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

At the outset, the Board observed that you would not qualify for a medical retirement even if the Board found an error in the medical board that was contemporaneous to your naval service, and even if it agreed that your recent VA rating would apply. This is because the materials you provided demonstrate your current VA disability rating to be 10%, and a medical retirement would only be applicable where there is an unfitting condition rated at 30% or more. This observation is theoretical, however, because the Board did not observe, nor did you provide, any medical documentation contemporaneous to your service that tended to show that the finding of the medical board while you were in-service was in error. Specifically, the Board noted the medical board report documented your pre-service history of seizures started in 10th grade and found insufficient evidence to conclude your medical history, recorded in 1965, was erroneous. Further, the Board found insufficient evidence that your seizures progressed beyond its natural progression. Based on these factors, the Board determined that your condition was not a qualifying disability condition for placement on the disability retirement list since it was neither incurred or aggravated by your active duty service. With respect to the material that you provided relating to findings by the VA, the Board was not persuaded this evidence and concluded the medical evidence documented contemporaneously with your active duty service was, more likely than not, a more accurate record of your medical condition at the time. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

12/19/2022

