



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

█  
Docket No. 2567-22  
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 12 September 2022. 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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 22 June 2010. During your service, you were referred into the Integrated Disability Evaluation System (IDES). In connection with your evaluation within IDES, the U.S. Department of Veterans' Affairs (VA) proposed certain disability ratings. One such proposed disability evaluation included review of your mental health, and the VA proposed a rating for a mental health related condition, though the condition was referred to the Physical Evaluation Board (PEB) as a proposed unfitting condition. On 5 June 2012, the PEB found you to have a 40% disability for left and right knee patellafemoral pain syndrome and cartilage deterioration (10% each condition, each knee), and that such conditions were considered unfitting for service. On 28 July 2012, you were transferred to the Temporary Disability Retired List (TDRL).

On 29 April 2015, the President of the PEB provided you a notification of decision it made, that, upon further evaluation, your unfitting condition was rated at 20% for left and right knee patellafemoral pain syndrome (10% each knee), and 0% for each knee's subluxation. As a result of this finding, you were removed from the TDRL on 9 June 2015, and you were paid severance pay. You provided information in your petition that, on 26 July 2017, the VA found that you had

a 70% service connected disability for post-traumatic stress disorder (PTSD) effective 26 July 2017.

In your petition, you seek to be reconsidered for placement on the permanent disability retired list (PDRL). In support of your request, you contend you were taken off of the TDRL and separated with severance pay, but that you had a mental health diagnosis that was diagnosed while you were on active duty, which was not reviewed by the PDRL.

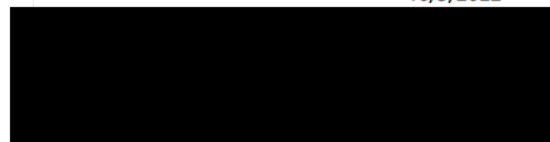
In review of the entirety of your naval service record, and your petition and its enclosures, the Board disagreed with your rationale for relief. In considering your current petition, the Board observed that in order to qualify for military disability benefits through the Disability Evaluation System 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 or 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.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness for a mental health condition at the time of your discharge from the Navy. To the contrary, the record evidence demonstrates that the IDES evaluation that you received while on active duty was comprehensive and addressed your overall mental health condition, and your mental health condition was not referred to the PEB as a potentially unfitting condition, though it was proposed as a service connected disability through the VA. Finally, the fact the VA rated your PTSD as a service connected disability effective in 2017 did not persuade the Board this conditions were unfitting at the time of your discharge from the Navy since 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, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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,

10/3/2022

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Executive Director

Signed by: 