



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. 3068-22
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 16 March 2023. 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 active duty on 16 January 2007. During your service, you were evaluated for fitness by an Informal Physical Evaluation Board (IPEB). On 23 December 2008, an IPEB found you to be unfit with a 30% disabling condition. On 15 January 2009, you were notified of the decision to place you on the temporary disabled retired list (TDRL) with a 30% disabling condition, and you accepted the result. On 28 February 2009, you were transferred to the TDRL. On 15 September 2015, you were administratively removed from the TDRL due to the expiration of five years.

In your petition, you request that you receive a final disposition from the PEB and that you be placed on the Permanent Disability Retirement List (PDRL). In support of your request, you contend that you were administratively removed from the TDRL and never contacted about any reason for your removal or to attend any medical appointments. You provided a DD Form 149, Application for Correction of Military Record, but you did not provide any documentation to support your contentions.

The Board carefully reviewed all of your contentions but disagreed with your rationale for relief. In reaching its decision, the Board observed that, pursuant to DOD Directive 1332.18, service members placed on the TDRL prior to January 1, 2017 generally may remain on the TDRL for up to five years, providing their condition does not change during that time. If a service member's disability stabilizes while they are on the TDRL, and the disability is rated at 30 percent or greater, they will be transferred to the Permanent Disability Retired List (PDRL). If the service member's disability stabilizes and is rated at less than 30 percent and they do not have 20 years of service, they are discharged from the TDRL with severance pay.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you were improperly removed from the TDRL. According to the available records, you were placed on the TDRL in January 2009, which is before January 1, 2017. You were removed from the TDRL in September 2015, which is more than five years after your transfer to the TDRL. The Board applies a presumption of regularity to the administration of such matters in the Navy. In your case, there is no evidence that you were erroneously removed from the TDRL. In your petition, which was filed approximately five years after your removal from the TDRL, you did not include any evidentiary support to rebut the presumption of regularity. By way of example, you did not provide evidence that you were not properly notified of your TDRL obligations or that extraordinary factors should apply in your situation. Therefore, in the absence of evidence to the contrary, the Board presumed that you were properly removed from the TDRL. 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,

4/6/2023

