



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

█
Docket No. 3113-22
Ref: Signature Date



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 15 August 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. The Board also considered the 14 June 2022 advisory opinion (AO) from Navy Personnel Command (PERS-9). Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that a 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 a period of active duty on 2 October 2006. Thereafter, you continued your service in periods of both active and reserve service. While you were in the Navy Reserve, you were placed into Medical Readiness Review by your Navy Operational Reserve Center. During this process, you were given the option to be retired from the Navy Reserve, and, after selecting that option, you were ultimately retired from the Navy Reserve effective 1 December 2021.

In your petition, you request a correction to your Retired Reserve status and that you be reviewed by the Physical Evaluation Board (PEB). In support of your petition, you contend that the staff at your Navy Operational Support Center did not provide you with appropriate guidance in making your election at the time of your retirement.

To assist it in reviewing your petition, the Board obtained the AO from PERS-9. The AO stated in pertinent part:

An appeal of an NPQ-RNR determination by BUMED goes to the Physical Evaluation Board (PEB) in their role as MRR Appeals Board. A review by the PEB is to uphold or overturn the NPQ-RNR decision, not to issue a determination on benefits. There is no path to disability benefits through the MRR Appeals Board.

BUMED [Bureau of Medicine and Surgery] made the medical determination that [Petitioner] was not fit for further Naval service and recommended a classification of Not Physically Qualified, Retention Not Recommended (NPQ-RNR) to COMNAVPERSCOM (PERS-95). At no time in the process did PERS-95 review [Petitioner's] medical record or MRR package, as COMNAVPERSCOM (PERS-95) is not part of that process. Once COMNAVPERSCOM (PERS-95) issued the NPQRNR decision to the Reserve command, [Petitioner] was correctly processed out of the Naval Reserve, and granted a non-regular (without pay) early retirement of less than 20 years for medical reasons.

All processing of [Petitioner's] MRR [Medical Readiness Review] and subsequent retirement was done correctly and in accordance with policy and law. As [Petitioner] is currently not a member of the Naval Reserve, he is not eligible for Reserve medical processes or benefits determinations. If additional information can be provided by [Petitioner] that establishes a connection between his condition(s) and a qualified period of Reserve service, [Petitioner] would have to submit that to The Board of Correction of Naval Records in order to achieve his request of a "medical rating," by which it is assumed he means a disability rating. The MRR process does not result in disability benefits and NRC Fort Dix clearly did not find a nexus between his claimed condition(s) and qualified Reserve service.

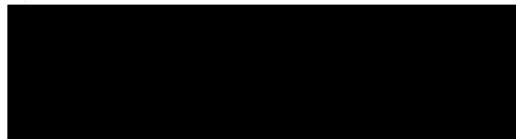
After review of the entirety of your naval service record, and your petition and its enclosures, the Board disagreed with your rationale for relief. At the outset, the Board substantially concurred with the findings of the AO, and you provided no information to rebut those findings. With respect to your request to be reviewed by the Physical Evaluation Board (PEB), the AO explained that, a "PEB is to uphold or overturn the NPQ-RNR decision, not to issue a determination on benefits. There is no path to disability benefits through the MRR Appeals Board." In other words, you were undergoing Medical Readiness Review, and you were provided an option to be reviewed by the PEB with respect to your readiness to remain in the Navy Reserve. Instead, you chose to be retired from the Navy Reserve. Had you been referred to the PEB, the Board concluded the best result may have been that you were found physically qualified to remain in the Navy Reserve. In light of this, the Board determined that you chose a

reasonable approach by selecting to be retired from the Navy Reserve, and you provided no evidence from which a contrary conclusion could be drawn. 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,

9/15/2022

A large black rectangular redaction box covering the signature area.

Executive Director

Signed by:

A black rectangular redaction box covering the name of the Executive Director.