



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. 3133-22
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 27 June 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 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 reveals that you enlisted in the Navy and commenced a period of active duty on 27 June 1972. On 16 February 1975, you were accidentally shot by a shotgun in your right back shoulder. Over time you developed muscle weakness, and you were referred to a medical board to determine your fitness for continued service. On 10 December 1975, a medical board reported that you had tenderness in your lower back should and decreased sensation in the lateral arm down to mid arm. You were then referred to the Physical Evaluation Board (PEB) for a determination of fitness to continue naval service. On 16 January 1976, the PEB found that you were unfit for continued naval service and you were placed you on the temporary disabled retired list (TDRL) with a 30% rating for residual muscle weakness to your right upper extremity. On 20 September 1977, you were examined by Navy medical personnel and were found to have good movement in your shoulder. On 1 November 1977, the PEB determined that you were fit to return to active duty, and you were returned to active duty on 29 December 1977.

On 12 Jul 1979, the PEB found that you were unfit to continue service due to neuropathy motor, complete, nerve to rhomboid, with resultant winging of scapula. You were rated at 20% disability and discharged with severance pay on 27 August 1979. The Department of Veterans' Affairs (VA) evaluated your right shoulder condition and assessed it with a 30% disability rating. This rating was later increased to 40%.

In 2016, you filed a petition with this Board seeking to be placed on the permanently disabled retired list (PDRL), asserting that your discharge with severance pay was in error. On 5 October 2017, relying in part on the advisory opinion (AO) from the Director, Department of the Navy, Council of Review Board (CORB), the Board determined that you should be placed on the PDRL effective 28 August 1979, with a disability rating of 30%.

In your current petition, you seek reconsideration of the Board's decision in 2017, asserting that the rating issued failed to include all of the muscle groups affected and it neglected to give any rating on scarring. You also state that due to being shot you were found to have post-traumatic stress disorder (PTSD), which has been recognized by the VA. Your petition for reconsideration did not provide any further support or explanation for your contentions, nor did it include any medical records or other documentation.

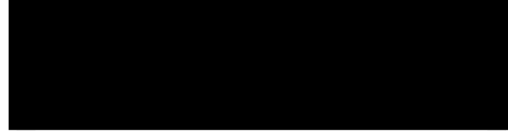
The Board carefully considered your petition and assertions contained therein and disagreed with your rationale for relief. In reaching its decision, the Board concurred with its prior decision in 2017 and the rationale contained therein. In making its finding, the Board considered that you did not provide any evidence to support your assertions. With respect to your assertion that you have been diagnosed with, and assigned a disability rating for, PTSD tied to your service, this did not sway the Board. In reaching this conclusion, the Board noted that 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. In your case, based on your service records and reports of the various medical and physical evaluation boards, there was an absence of any findings of an unfitting condition based on PTSD while you were in service. Thus, the Board determined that a disability finding by the VA, after your service, based on a different standard, did not demonstrate that there was an error in the findings of the PEB. Regarding your contention that all the muscle groups were not included in your PEB rating, absence new evidence to overturn its 2017 findings, the Board determined insufficient evidence of error or injustice exists to change your assigned PEB rating. 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,

7/15/2022



Executive Director

Signed by:

