



**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. 4232-22  
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 28 November 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 14 November 1972. During your service, you were referred to the physical evaluation board (PEB) for evaluation of a medical condition. On 31 August 1981, the PEB found that you were unfit for continued naval service due to your medical condition. On 2 April 1982, you were separated with severance pay due to physical disability with a 10% disabling condition. After your discharge, the Department of Veterans Affairs (VA) rated your condition 30% disabling, effective 3 April 1982, and later increased the rating to 100% in September of the same year.

You filed two previous petitions with this Board, which were each denied. In 1990, you filed a petition with this Board requesting reconsideration of the PEB's decision. On 10 October 1990, the Director, Secretary of the Navy Council of Review Boards (CORB) provided an advisory opinion (AO) to this Board recommending denial of your petition opining that the PEB properly rated your condition at the time of your discharge. This Board agreed with the CORB advisory opinion and denied your petition on 4 February 1991. In 2015, you filed another petition with this Board seeking similar relief. By letter dated 19 March 2016, this Board denied your petition, explaining as follows:

The Board carefully considered your arguments that you deserve a higher disability rating. You make the same arguments previously considered by this Board in 1991 but now claim that you were not at the medical center when your medical board was conducted and that you were not evaluated for a proper length of time to issue a valid disability rating. Unfortunately, the Board disagreed with your rationale for relief.

First, this Board also concurs with the CORB advisory opinion from 1990. Other than the VA ratings from April and September 1982, you provided no evidence the PEB improperly evaluated your condition at the time of your discharge. The Board felt that too many potential intervening factors could have impacted your condition from the time of your discharge until you were examined by the VA months later. Second, the Board did not find persuasive your argument that you were not present for your medical board. Your record contains an acknowledgment of the medical board report dated 25 August 1991 indicating you were informed of its results. Finally, the Board was able to determine from your record that you were observed for approximately one month prior to the medical board decision. In the Board's opinion this was sufficient time for medical professionals to observe you, formulate a proper diagnosis, and apply the Veteran Affairs Schedule for Rating Disabilities.

In your current petition, you request that the 10% rating that you received from the PEB be upgraded to 100% as found by the VA after your discharge. In support of your request, you contend that VA rated you at 100% service connected disability within one year of your medical discharge from the Navy. You did not appear to include in your current petition anything new that had not previously been reviewed by this Board.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation and statements that you provided, and the Board disagreed with your rationale for relief. In reaching its decision, the Board concurred with its prior two decisions denying your prior two petitions. As noted, it was not immediately apparent that you provided anything new that had not previously been reviewed by this Board. Thus, the Board also concurred with the AO from 1990 by the CORB. The Board reiterated that findings of unfitness by the PEB relate to fitness for military duty while serving on active duty. By contrast, 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, 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

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Executive Director

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