



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. 5367-22
Ref: Signature Date

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Dear █

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 23 February 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.

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 revealed that you enlisted in the Navy and commenced a period of active duty on 1 July 2013. You were eventually referred to the Physical Evaluation Board (PEB). You were initially reviewed by an Informal PEB (IPEB) and, on 17 November 2017, the IPEB found you unfit with a 30% temporary disability. Thereafter, on 28 January 2018, you were transferred to the temporary disability retired list (TDRL). While you were on the TDRL, you underwent a periodic physical examination and were reviewed by a formal PEB (FPEB). On 22 February 2021, the FPEB issued its findings, including its Formal Rationale, stating that your disability level was 10% based on adjustment disorder with mixed anxiety and depressed mood. According to the Formal Rationale of the FPEB:

During the Formal PEB, the member testified that she continues with ongoing symptoms impacting her occupational and social functioning, specifically, two

panic attacks per month lasting several seconds, not often leaving her house, and poor sleep as well as memory and concentration issues.

No new medical evidence was provided to the Formal PEB. The petition included medical evidence already in the record that was the member's Temporary Disability Retired List Periodic Physical Examination dated 25 Jun 2020 (C1-C5). This evaluation documents a "Euthymic" mood, no anhedonia, no suicidal or homicidal ideations, "NO crying spells," no panic attacks, no manic symptoms, no delusions or paranoia, no "trauma concerns," sleeping 6 hours per night, and further states that the "Veteran does not feel therapy is needed but knows it is available." This medical note also documents continuing her treatment with escitalopram and provided a prescription with one refill. The board considered the evidence in the record/petition and the member's testimony and determined that the probative value of the TDRL examination combined with the paucity of medical evidence of treatment/symptoms while on the TDRL and lack of new medical evidence outweigh the member's testimony. The objective evidence clearly substantiates a rating of 10% under VA Code 9440.

On 11 March 2021, the FPEB issued to you its Notification of Decision. The notification explained that your disability percentage was lowered to 10%, and, as a result you were removed from the TDRL and separated with severance pay.

In your petition, you request review of the reduction of your service disability rating from 30% to 10% by the FPEB. In support of your request, you contend that when the decision was made to reduce your disability percentage, you immediately appealed it and did not hear back from your lawyer. You assert that you wrote to him for weeks after and did not hear from him. Further, you argue that you still struggle with the same issues for which you were discharged, and that you had not been able to be treated as a result of Covid-19 restrictions, but you completed your therapy.

The Board carefully reviewed your petition and the material that you provided in support of your petition and it disagreed with your rationale for relief. In its review of your materials, the Board did not observe any evidence that you there was any error or injustice apparent in the findings of the PEB or of the medical professionals during your evaluations in the FPEB and your eventual removal from the TDRL with a 10% rating. To the contrary, the Board observed that you were appropriately evaluated by professionals during your evaluation by the FPEB, and those professionals made findings and recommendations that were supported by medical evidence. The Board observed that the FPEB Formal Rationale appeared to be supported by a rational medical basis, and you did not provide any clinical or other medical evidence to the contrary. Further, the Board considered your argument that your attorney failed to assist you, but determined that you provided insufficient evidence of the relevant factual circumstances. In sum, in its review of all the materials, the Board did not observe any error or injustice in your naval records. 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,

3/10/2023

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Executive Director

Signed by: █