



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. 6189-22
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 9 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 4 October 2010. During your service, you were referred to the Physical Evaluation Board (PEB) for review of a potential unfitting condition. On 21 April 2015, the PEB found that you were unfit to perform your duties due to a physical disability, rated at 80%, based on Narcolepsy with Cataplexy. As a result of this finding, on 28 July 2015 you were transferred to the Temporary Disabled Retired List (TDRL) for a period not to exceed five years, as prescribed in 10 U.S. Code.

On 17 September 2020, the President, PEB made the determination that you would be removed from the TDRL due to the expiration of five years. In making his finding, the PEB stated that one or more of the following factors applied: (1) no notification of death was received by the PEB, (2) you failed to report for a regularly scheduled periodic physical examination and failed to contact the examining facility or to the PEB regarding rescheduling, (3) appropriate reasonable efforts were made to locate you and obtain compliance with examination orders, (4) entitlement to receive disability retirement pay has been, and continues to be, terminated, (5) subsequent to the termination of retirement pay, you had not arranged for an acceptable current

medical examination to be submitted, or (6) you failed to show just cause for not complying with examination orders.

In your petition, you request that you be granted “permanent TDRL” status. In support of your request, you contend that you were improperly removed from the TDRL, and that your removal was improperly documented in your records.

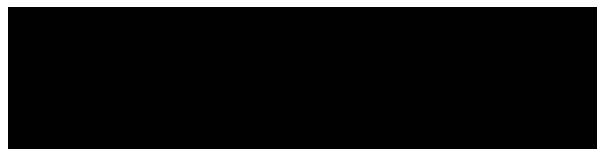
The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, pursuant to DoD Directive 1332.18, service members placed on the TDRL prior to 1 January 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 July 2015, and you were removed after five years of your transfer to the TDRL. The Board applies a presumption of regularity to the administration of such matters in the Navy. In your case, the President of the PEB certified that one or more of the six factors set forth above applied in your situation. In your petition, you did not provide any evidentiary support that these factors did not apply. By way of example, you did not provide any medical documentation from periodic physical examinations over the course of the five years you were on the TDRL describing your evaluations from military treatment facilities. Nor did you provide any documentation that extraordinary factors should apply in your situation. In light of the certification from the President of the PEB and the fact that you provided no evidence to the contrary, the Board presumed that you were properly removed from the TDRL after five years, as is required.

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,

3/31/2023

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Deputy Director

Signed by: 