



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. 6500-22
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 30 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.

The Board determined that your 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 July 2002. During your service, you were processed in the Disability Evaluation System and reviewed by the Physical Evaluation Board (PEB). On 22 January 2009, the PEB found you to be unfit at 40% for herniated disk and radiculopathy at 10%. On 30 April 2009, you were placed on the temporary disabled retired list (TDRL). On 5 September 2014, you were released from the TDRL, after having been on the TDRL for over five years and for failing to report for a periodic physical exam.

You filed a petition with this Board on 5 April 2021, more than five years after your release from the TDRL. In your petition, you asserted, among other arguments, that you updated your mailing address with the Department of Veterans' Affairs (VA) and with the Department of

Defense in approximately 2011 or 2012, but you never received any orders for reevaluation. This Board informed you of the denial of your petition by letter dated 12 October 2021. In its letter, the Board explained that it denied your petition. The rationale of this Board's prior decision is set forth in large part, with editing for format, as follows:

The Board carefully considered your arguments that you should be placed on the Permanent Disability Retirement List (PDRL) or reinstated to the TDRL for a reevaluation. You assert that you changed your address with the Department of Veterans Affairs and Department of Defense in 2011-2012 but never received any periodic examination orders. You state that your condition has not improved and you would like to have access to TRICARE benefits. Unfortunately, the Board determined insufficient evidence exists to support relief in your case.

In reviewing the evidence in your case, the Board found no evidence to substantiate your assertions that you informed the proper authorities of your change in address in 2011-2012. The Board concluded it was your responsibility to ensure the Navy was aware of your change in address and lacked evidence that you informed the Navy. In addition, the Board determined you failed to exercise the necessary due diligence to ensure you contacted the Navy to ensure completion of your periodic TDRL examinations before you were administratively removed in 2014.

Based on your TDRL status, the Board concluded you were aware that a periodic examination was required and you failed to inquire of your status until many years after your administrative removal from the TDRL. Due to your lack of diligence and evidence, the Board determined your reinstatement to the TDRL would not be appropriate. The Board also considered that since your condition may have worsened significantly since 2014 and a current reevaluation would not accurately reflect your disability status in 2014.

In making this finding, the Board took into consideration that you have access to Department of Veterans Affairs medical services. Finally, the Board found no evidence to support a finding that you should be placed on the PDRL. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

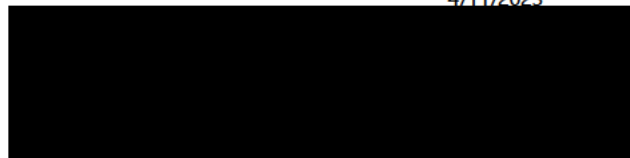
In your current petition, you request this Board reconsider its finding above. In support of your request for reconsideration, provided a written statement in which you assert as new matter the argument that the Government Accountability Office (GAO) has determined that prior to cancellation of retirement benefits, the services should attempt to track down a retiree, and that medical board across the service branches have failed to do so, which amounts to injustice. You further argue that, since you received correspondence after being removed from TDRL, it is reasonable to assume you could have easily been found prior to cancellation. You further explain that you updated all of your other institutions, such as DEERS, VA, and TRICARE, and that the PEB knew how to get in touch with you. You also provided a written email exchange with a representative of PERS-[REDACTED].

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. Upon review of its prior denial letter to you, the Board found it to be robust and well-reasoned, determined that it sufficiently addressed all of your contentions, and found that the new matters you provided was insufficient for the Board to change its decision that it made in 2021. Notably, the Board was not persuaded that the GAO report that you cited was relevant to your situation. The Board also noted that, while you assert you informed several other organizations of your new address, it was clear that you failed to sufficiently maintain contact with the personnel managing your TDRL status. There is no evidence in your records, nor did you provide any, that you could sufficiently maintain contact with the entity managing your TDRL status simply by informing other organizations of your new address. 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,

4/11/2023

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Executive Director

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