



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 6642-22  
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 2 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 active duty on 7 August 2000. In November 2004, you started experiencing persistent back pain and ultimately underwent three spine surgeries to correct the back and leg pain, with the last surgery occurring in January 2007. Records also show you were treated for Obsessive Compulsive Disorder starting in February 2006. You were eventually referred to the Physical Evaluation Board (PEB) and, on 31 March 2008, the PEB found that you were unfit for lumbar degenerative disk disease at a rating of 40%. You were placed on the Temporary Disability Retirement List (TDRL) on 4 June 2008.

In June 2009, you underwent your TDRL periodic physical examination, those records state that at the time you were running two miles with no problems, you had no limitation in movement or

pain. In addition, you wrote a letter to the PEB dated 30 June 2009 stating that you wanted to be found fit for duty so that you could re-enter the Navy. On 29 July 2009, you signed an informal PEB Findings of 'FIT' for continued duty, waiving your right to submit new or additional information or to request a hearing. Consequently, the PEB found you fit to return to active duty in July 2009. Subsequently, you were removed from TDRL and discharged from the Navy, effective 22 April 2013, due to being found physically fit and not consenting to reenlist in the U.S. Navy or Navy Reserve.

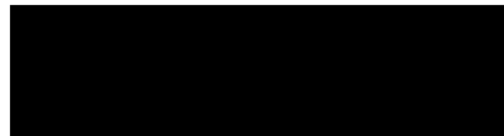
In your application, you request to be placed on the Permanent Disability Retirement List (PDRL). You argue that you were not fit for duty and should have been transferred from the TDRL to the PDRL.

The Board carefully reviewed your petition and the material that you provided and disagreed with your rationale for relief. First, the Board found your contention disingenuous in light of your personal letter to the PEB on 30 June 2009 in which you state, "I have to agree my back is in excellent shape because I have never felt in better shape since 2004 when I first sustained my injury. I am ready to be determined to fit for full duty so that I can continue serving my country..." Second, the Board noted in the TDRL periodic examination of 17 June 2009 that you informed the treating physician that you felt your back was no longer a problem, that you were able to perform all your daily activities, and suffered from no impairments. Third, the Board considered that you provided no evidence to substantiate your contention that you were erroneously found fit for active duty and removed from the TDRL. Based on these factors, the Board determined you were appropriately found fit for active duty by the PEB. The Board found no evidence of error or injustice to support your request for relief. 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,

3/21/2023

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Executive Director

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