



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. 7615-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 4 January 2023. The names and votes of the panel members 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 also considered the 19 December 2023 advisory opinion (AO) from a qualified medical professional and your response to the AO.

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 were commissioned in the Navy Reserve as a member of the Medical Service Corps on 27 September 2012. According to the AO, which contained a review of your medical records, on 12 August 2016, you received an approved Line of Duty Healthcare Benefits (LODB) letter for Right Leg Deep Venous Thrombosis (DVT), which was effective 30 April 2016 to 10 February 2017. The LODB also directed that a Medical Evaluation Board must be initiated not later than 10 November 2016 unless a military physician found you to be fit for duty with no further follow-up care required prior to that date.

In preparation for an upcoming deployment, on 3 October 2017, you underwent a Deployment Screening Examination at █ Air Force Base. The Deployment Screening Examination noted that you had a past medical history that included blood clots, and it listed the medication that you were taking as "OTC [Over-The-Counter] Benadryl." Thereafter, you were returned to duty without limitations after receiving vaccinations for your deployment. On

10 October 2017, you prepared a Pre-Deployment Health Assessment in preparation for a deployment to [REDACTED] and [REDACTED] in December 2017. In your Pre-Deployment Health Assessment, you reported your health as “Very Good” and you denied any questions or concerns relating to your medical, dental, or mental health conditions. The medical professional noted that “There is no evidence of deployment limiting conditions or medications (was only taking Claritin for seasonal allergies).” You were released without limitations to proceed with deployment. On 24 October 2017, you underwent a Pre-Deployment Military Physical Examination, which revealed that you were “feeling fine,” had no medical complaints, that you were taking Claritin for allergies, and that you were taking no other medications and you cited other medical conditions. You were released without limitations and cleared for your deployment to Iraq.

You commenced a period of active duty on 20 October 2017, which included a deployment to Iraq from 28 December 2017 to 17 June 2018. Toward the end of this active duty period, and in preparation for your release from active duty, you underwent a Separation Physical Examination. During that examination, you described yourself as in “good health.” You reported deployment related medical issues of left shoulder, lower back, foot/ankle, left eye, and eczema flare-up. You also reported a history of:

Deep Venous Thrombosis in left lower leg. Line of Duty resolved with no [illegible], take Xeralta [to prevent blood clots] for long flights. [Illegible] -2010 [?] Resolved with no [illegible]. Cleared by Cardiologist x3 in record.

The examining physician noted your history of “DVT” and directed you to follow up with your primary care manager. You were ultimately assessed as “Qualified for Service.”

Although your official military personnel file (OMPF) does not appear to contain the entirety of the documentation, in approximately 2020 you were placed into medical readiness review (MRR) by your reserve command. In connection therewith, on 8 July 2020, your commanding officer prepared a non-medical assessment (NMA), which stated his opinion that you were an asset and should be retained in the Navy Reserve. The Bureau of Medicine and Surgery (BUMED) reviewed your MRR package and, on 26 October 2020, found that you were not physically qualified for retention in the Navy Reserve, as follows:

1. Based on a review of the available medical information, the subject member DOES NOT meet established physical standards due to recurrent deep venous thrombosis with factor V Leiden mutation.
2. Member is not recommended for retention in the Naval Reserve.
3. Service member may appeal the current retention recommendation to the Physical Evaluation Board (PEB).
4. Note: Please advise member to continue follow-up surveillance for this condition as is medically appropriate.
5. This recommendation is provided to the commander charged with retention of this member for final adjudication.

There is no indication in your OMPF or in the materials that you provided that you appealed the finding of BUMEB to the PEB. On 26 May 2022, Navy Personnel Command transmitted a message to your reserve command stating that you were found to be not physically qualified (NPQ) to remain in the Navy Reserve. Thereafter, on 2 June 2022, you were separated from the Navy Reserve. In your petition, you have asserted that you received a letter on 29 September 2022 from the Department of Veterans' Affairs (VA), which awarded you a 70% service connected disability for blood clots.

In your petition, you request that you be placed on the Permanent Disability Retired List (PDRL) effective 2 June 2022, or as soon as possible. In support of your request, you contend that you were separated on 2 June 2022 due to your service connected condition for which you received an approved LODB finding. You further explained that your LODB was issued from Pers-9 on 12 August 2016 for a blood clot you developed while on active duty. You stated that you developed related blood clots and now you have to remain on anticoagulant therapy, and that, post-service, the VA determined your blood clots are service connected. In addition, you state that a Navy attorney told you that your command should have completed an LODB for a prior service condition and gone through the Disability Evaluation System (DES) instead of the Medical Retention Review (MRR) process, and that the procedures for the LODB process were not published until after your MRR was submitted. In your petition, you did not describe the nature of the LODB procedures that you contend were not published. You have also asserted you received a letter from the VA, dated 29 September 2022, finding that your blood clots were service connected with a rating of 70%.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. At the outset, the Board observed that reserve service members are entitled to medical treatment for disability conditions that are incurred or aggravated while in a qualifying duty status. Pursuant to Department of Defense Instruction 1241.01 and Secretary of the Navy Instruction 1770.5, in order to qualify for such benefits, reservists are required to obtain a line of duty benefits (LODB) authorization to obtain medical and pay benefits from the military.

If a reserve member obtains an LODB, they may be referred to the DES, which makes a determination as to whether the service member's condition(s) renders the member unfit for continued service due to a qualifying disability condition. In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded that the preponderance of the evidence does not support a finding that you met the criteria for placement into the Disability Evaluation System. At the outset, the Board determined that the available documentation demonstrates that there is no evidence in your record, and you provided none, that you sought an LODB finding after the expiration of your initial LODB, which you obtained in 2016, and by which its terms, expired on

10 February 2017. Further, there is no indication that a Medical Evaluation Board was initiated not later than 10 November 2016 as required by the terms of your 2016 LODB. To the contrary, you were later found to be fit for full duty. In fact, the record evidence established that you were reviewed several times in anticipation and preparation of your active duty orders that commenced 20 October 2017, and that set of orders included you deploying to Iraq, which is inconsistent with you having an unfitting condition for which an LODB should have been issued. Further, upon your return from your deployment, you were again reviewed by medical professionals during a separation physical examination in June 2018, at which you were found Qualified for Service. Thus, in the absence of any evidence of an unfitting condition and corresponding LODB, the Board observed that you failed to provide a basis for the relief that you requested.

Despite your failure to obtain an LODB, the Board nevertheless reviewed whether there was any evidence that you should have been found unfit within the meaning of the Disability Evaluation System during any of your periods of active duty. In order to assist it in reviewing your petition, the Board obtained the 19 December 2023 AO, which was considered unfavorable to your request. According to the AO:

Review of the available objective clinical and non-clinical evidence documented Petitioner successfully executed the full range of responsibilities of his rate and rank up through his final FITREP dated 6/2/2022. His FITREPS were consistently competitive and reflected his ability to adequately perform the range of duties commensurate with his occupational specialty and rank.

I reviewed all available clinical evidence to determine if the medical condition prevented the Service member from reasonably performing the duties of their office, rank, or MOS including those duties remaining on a Reserve obligation for more than 1 year after diagnosis represented an obvious medical risk to the health of the member or to the health or safety of other members; or the medical condition imposed unreasonable requirements on the military to maintain or protect the Service member.

In my medical opinion, Petitioner did incur a serious and chronic medical condition that initially manifested during a period of active service (DVT). However, available evidence indicated he remained fit for continued service, as he was able to carry out his military duties within his military specialty, with appropriate medical treatment.

Though the records are not available for review, it appears Petitioner's ability to remain in the Navy Reserves was determined through the MRR process, with Petitioner evidently found Not Physically Qualified for continued service and separated for a Physical Condition, Not Considered a Disability.

The AO concluded, “[i]n my medical opinion, given the available clinical evidence, had Petitioner been referred to the Disability Evaluation System, it is likely he would have been found fit for continued service.” You were provided a copy of the AO, and you provided a response to the AO. In your response, you provided information relating to your MRR and NPQ

finding that led to your discharge, including your commanding officer's NMA and the administrative remarks documenting your separation.

In its review, the Board concluded that there was insufficient support for your contention that you should have been medically retired. In reaching its decision, the Board substantially concurred with the findings of the AO, which the Board determined to be rational and based on the evidence. The Board also found it significant that you did not provide any evidence that, while you were on active duty, any medical provider determined that you had any conditions that warranted referral to a medical board for a determination of fitness for duty within the Disability Evaluation System, nor did you ever obtain a reissued LODB. In addition, there is no indication that any leader in your chain of command prepared an NMA describing your inability to perform your duties. Rather, as described by the AO, you received favorable fitness reports, which reflected that you were consistently competitive and you were able to perform all of the duties of your occupational specialty and rank. The Board also observed that, despite the opportunity to appeal the finding that you were NPQ to the PEB, you did not request such an appeal.

Further, the Board noted that you submitted findings by the VA in support of your requested relief. However, to the extent you rely upon findings by the VA to support your request for a disability retirement, the Board observed that the VA is a separate organization, and it does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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,

1/31/2024

