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

[redacted]
Docket No. 7704-22
Ref: Signature Date

[redacted]

Dear [redacted]:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code, submitted pursuant to the Order of the U.S. District Court for the [redacted] (Civil Action No. [redacted]), dated 22 September 2022, remanding your case to the Board for Correction of Naval Records [hereinafter referred to as the Board] to re-adjudicate your request for permanent medical retirement. After careful review and consideration of your application and all of the relevant evidence of record, the Board continued to find insufficient evidence of any material error or injustice warranting relief. Accordingly, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 12 December 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error or injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board and the Order of the D.D.C. Documentary material considered by the Board included your application, together with all material submitted in support thereof; your complaint to the D.D.C., filed on 19 June 2022; the case file for your previous application to the Board in Docket No. 7600-15; relevant portions of your naval record; and applicable statutes, regulations, and policies.

The Board adopts and incorporates by reference the factual background of your case discussed in the decision letter for Docket No. 7600-15. On 29 April 2016, the Board denied your previous application requesting that your naval record be changed to reflect that you were medically retired due to your Major Depressive Disorder (MDD) condition in Docket No. 7600-15. In finding insufficient evidence of your unfitness of duty in 2008, the Board noted that your strong performance and commendations while assigned to [redacted] convinced it that you were performing exceptionally well despite your condition. In June 2022, you filed suit in the D.D.C., alleging that the Board's decision in Docket No. 7600-15 was arbitrary, capricious, and otherwise not in accordance with the law because it relied upon an evaluation of your performance of these administrative tasks while on a Limited Duty status, rather than determining whether you could reasonably perform the actual duties of your office, grade, rank,

or rating, and that it was unsupported by substantial evidence since it provided no legal or factual basis for affirming the Physical Evaluation Board's (PEB) fitness determination.

As a preliminary matter, the Board notes that your complaint to the D.D.C. and your subsequent application misstates and reflects a fundamental misunderstanding of the function and composition of this Board. The statutory and regulatory function of this Board is to correct errors in, and remove injustices from, naval records. This Board is not the PEB and does not make medical fitness determinations. That is a function for the medical and line officers specifically appointed to the PEB for that purpose; the civilian employees of the Department of the Navy who constitute this Board, none of whom have medical experience and only a few of whom incidentally have line officer experience in their past, are neither qualified nor mandated to make this determination. Further, the burden is on you, the applicant, to prove the existence of an error or injustice in your naval record to this Board. Accordingly, the question before this Board is not, as you claim, whether you were unable to reasonably perform the duties of your office, grade, rank, or rating because of your MDD condition. Instead, the questions before this Board are whether the PEB erred in finding that you were medically fit in 2008, or whether your continuing absence from the Permanent Disability Retired List (PDRL) constitutes an injustice warranting relief. The burden to prove either of these bases for relief is on you, presumably by establishing that you were incapable of reasonably performing the duties of your office, grade, rank, or rating despite the fact that you accepted the determination of the PEB in 2008 that you were medically fit, and not upon the Board to justify the decisions made by naval officials in your PEB 15 years ago which are presumed to be correct. The Board continues to find that you did not meet your burden in this regard.

The Board also notes that the evidence regarding your fitness during the time period in question is sparse, as you had not developed much of a service record as of the moment that you were removed from the [redacted]. The documentation available to the Board regarding the PEB process is also sparse, as you immediately accepted its findings and did not exercise your right to appeal. As a result of your decision in this regard, there is a minimal record available for the Board to assess the decision making process of the PEB in your case 15 years ago. Further, the passage of time since your PEB in 2008 has made it impracticable to locate additional information which may have informed the PEB's decision. Finally, the evidence that you provided in support of your application was not nearly as probative of your claimed unfitness as you described it. As stated above, the burden is on you to prove to the Board the existence of an error or injustice, and you did not do so.

Also sparse are any records pertaining to your discharge from the Navy. As such, the Board cannot definitively determine the reason for or process by which you were discharged. According to your separation orders and the DD Form 214 in your record, you were honorably discharged "by direction of the Secretary of the Navy and pursuant to the provisions of 10 U.S.C. Sec. 1184/1186." Section 1184 of Title 10, U.S. Code, provides that the Secretary may remove an officer from active duty if the removal of such officer is recommended by a board of inquiry (BOI), while Section 1186 authorizes the Secretary to grant a voluntary request for discharge by an officer. As there is no evidence in the record that a BOI was ever convened in your case, the Board must assume based upon the limited evidence available that you were discharged pursuant

to your own request.[1] This assumption negates your contention that "[i]t is contradictory to discharge [you] from the military before the end of [your] commitment … due to a service caused medical issue, but not grant [you] … PDRL."

In reviewing your application, the Board did not question the existence of your MDD condition during the time period in question. The existence of this condition was apparent from your medical records, and your receipt of disability compensation from the Department of Veterans Affairs (VA) for this condition provides further confirmation of this fact. Further, the referral of your case to the PEB by the Medical Evaluation Board (MEB) for this condition reflects that your provider(s) believed there to be some question regarding your medical fitness at the time, which the Board also did not question. The mere existence of such a condition and your referral to the PEB as a result of that condition, however, does not imply that you were medically unfit. Finally, the fact that you were not subsequently medically cleared to return to sea duty or for worldwide assignment before your discharge was not conclusive evidence that you were unable to perform the duties of your office, grade, rank or rating due to your MDD condition.

The Board found no relevance in the development of your condition since your discharge or in your disability rating from the MDD. The Board acknowledges that your condition has likely worsened since your discharge from the Navy and sympathizes with your situation. However, the progression of your condition since your discharge has no bearing upon your fitness for duty while you were serving. If anything, the worsening of your condition suggests that its symptoms were less debilitating 14 years ago, which would weigh in favor of a finding of fitness at the time. Likewise, the fact that the VA awarded you disability compensation for your MDD condition is also of little relevance, because 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.

While the Board did not question the existence of your MDD condition or its debilitating effects upon you, it was not convinced that such a condition rendered you incapable of performing the duties of your office, grade, rank, or rating. The Board acknowledges that MDD can be a debilitating condition and that it affects different people in different ways. It also does not intend to diminish the seriousness of this condition, either in general or as it affected you in particular. However, the existence of such a condition does not necessarily render service members unfit. In fact, the symptoms of this condition, including those that you describe experiencing, are found throughout the Navy and not to be unexpected in an environment which requires individuals to be at sea and in uncomfortably close quarters for months at a time. However, depressed Sailors continue to perform their duties under these conditions every day.[2] The evidence reflects that your condition, which was diagnosed as "moderate" in severity at the time, was not so debilitating as to render you incapable of performing your duties. The circumstances at the time prevented you from completing Surface Warfare Officer (SWO) certification, but that outcome does not prove that you were not reasonably able to perform the duties of your office, grade,

[1] The alternative would be that you were subjected to a BOI, which would imply some misconduct or substandard performance of duty, of which there is no evidence in your record.

[2] This is not to say that the Board believes that MDD can never be a disabling condition. Certainly, its manifestation may be such as to render an individual incapable of performing the duties of his or her office, grade, rank, or rating. That was not the case in your situation, however.

rank, or rating. You proved yourself capable of performing similar duties despite your condition when you excelled and were praised for your performance while in a Limited Duty status while on shore after being returned to the United States. These duties did not require substantively different mental or physical capabilities than those required to perform the duties of a SWO on board a ship at sea. Further, your actions following the decision of the PEB in March 2008 indicated that you desired to continue to serve in the Navy and believed you were fully capable of continuing in service, only not within the close confines of a ship at sea. While the Board sympathized with this feeling, it did not believe that this preference rose to an inability to do so.

In accordance with SECNAVINST 5420.193, the Board applied the presumption of regularity to the action taken by the PEB in March 2008. In the absence of evidence to the contrary, the Board relies upon this presumption to support the official actions of public officers and must presume that they properly discharged their official duties. Your medical fitness was reviewed by three senior officers constituting the PEB on 5 March 2008, including a medical officer who presumably possessed a wide cross-section of clinical experience and was therefore qualified to assess the effect of your medical condition upon your capabilities, and two line officers who were presumably selected on the basis of their wide military experience, proven performance and education, and who were therefore qualified to assess the requirements of your duties in light of your medical condition. These individuals presumably reviewed and based their findings upon the documents listed in SECNAVINST 1840.4E, which included the medical board report and associated documents; a non-medical assessment; and any input that you may have provided. They also presumably found that you were able to reasonably perform the duties of your office, grade, rank, or rating based upon the preponderance of this evidence. The officers who constituted the PEB were more qualified than the members of this Board to make that determination, as that was their primary function and they had the benefit of the contemporary evidence and your input at the time which is not available to this Board in making that determination. This Board had no reason to question that the PEB reached an appropriate finding of your fitness at the time, and you provided nothing to the contrary. Rather, other than stating your current belief that the PEB made a mistake 15 years ago, you offered no evidence or argument explaining how these officers failed to properly perform their duties. Accordingly, you did not overcome the presumption of regularity attached to that decision.

Besides the presumption of regularity that the Board is obligated by regulation to apply to the PEB's action, there were several other objective factors which supported that decision. First and foremost, you agreed with the decision at the time. You accepted the PEB's decision on 19 March 20008 and did not exercise your right to appeal it, which strongly suggests that you agreed with the determination that you were medically fit. There were no contemporaneous records or statements from you which suggested otherwise. SECNAVINST 1850.4E provides that when there is doubt regarding a service member's fitness, the PEB shall provide the benefit of any unresolved doubt *in favor of the fitness of the service member* under the rebuttable presumption that the member desires to be found fit.[3] The evidence demonstrates that you did not attempt to rebut that presumption at the time. In fact, you sought redesignation as a Human Resource Officer (HRO) soon after the PEB's decision, which suggests not only that you desired and intended to keep serving in the Navy, but that you believed yourself fully capable of doing so. As there are no physical or mental capabilities required of a SWO which are not also

[3] See paragraph 3306(a) of SECNAVINST 1850.4E

required of a HRO in the Navy, your request for this redesignation suggests that you believed yourself to be fully capable of performing those duties.[4] You were also performing admirably in your Limited Duty capacity, which suggests that you maintained the mental capacity to appeal the PEB findings with the assistance of counsel if you actually disagreed with it. In this regard, the Board did not find credible your claim that you did not appeal the decision because you were "of mental illness limitations and unawareness of [your] right to a lawyer." Based upon the presumption of regularity, you would have been notified of your right to a PEB Liaison Officer and an attorney upon your referral to the DES. You were diagnosed with MDD with moderate impairment, and demonstrated no impairment of your intellectual functions. Accordingly, the Board does not believe that your MDD condition would have prevented you from appealing a PEB decision if you actually disagreed with it. Further, your post-PEB medical records reflect merely a desire not to serve again onboard a ship, and not to end your service altogether.[5] Finally, your mental illness limitations did not prevent you from applying for educational benefits in February 2008, so the Board did not believe your current claim that they inhibited you from exercising your rights in the Disability Evaluation System (DES) process. As the evidence strongly suggests that you desired to be found fit, there was no error in the PEB's decision to resolve any doubt in favor of a finding of fitness.

Besides the evidence that any doubt in your fitness was resolved in favor of both the presumption and the circumstantial evidence that you desired to be found fit, the record includes other circumstantial evidence of your fitness which both supports the decision of the PEB and negates any suggestion of injustice in your absence from the PDRL. First, your favorable fitness report (FITREP) for the reporting period of 21 December 2007 to 31 July 2008, which you erroneously claim to have been irrelevant to your fitness determination, actually provided convincing evidence which reinforced the PEB's decision. Your Reporting Senior described you in this FITREP as a "SUPERB Junior Officer in all respects," who "arrived at [redacted] and hit the deckplates running. Intelligent, dependable, and professional. Takes on all challenges with enthusiasm. A team player that places mission first." He also stated that you were "[a]n outstanding Junior Officer who will make an instant impact to any wardroom." You received above average ratings for every performance trait in this FITREP. This is not the FITREP of an officer who was incapable of performing the duties of a SWO due to the MDD condition that he was suffering at the time. Rather, it is the FITREP of an officer who is fully capable of performing his duties despite his MDD condition. The physical and mental capabilities required to perform the duties you performed admirably in a Limited Duty capacity are not substantively different than those required of a SWO, so your ability to successfully perform those duties was entirely relevant to the assessment of your capabilities at the time. Besides the evidence of your capacity provided by this FITREP, the Commander, [redacted], also described you as "an exceptional Junior Officer who has excelled beyond expectations since reporting to [his command]" in his endorsement of your request for redesignation as a HRO. He further described you as "[b]old, dependable and tenacious," and said that you possess "the qualities we expect and demand of our Junior Officers." These descriptions, based upon his observation of

[4] HROs are expected to be capable of performing their duties on board a ship at sea and fully deployable, just as are SWOs.

[5] During a therapy session on 17 July 2008, you stated that you could not see yourself on a ship, but when asked what you would like to do you responded after some thought with the idea of being a "U.N. Peacekeeper."

your performance and abilities over a period of seven to eight months, describe a fully capable officer, and not one incapable of performing the duties of a SWO due to his MDD condition.

Second, as part of your aforementioned application for educational benefits, you took the Differential Aptitude Test, which is a battery of tests designed to measure your ability to learn or succeed in a number of different areas, in February 2008 just before the PEB convened in your case. You scored exceptionally high in all of these tests, indicating that you maintained the mental capacity to perform the duties of a SWO despite your MDD condition.[6] You also were commended for your performance following the PEB decision. Specifically, you received a Navy and Marine Corps Achievement Medal for the "superior performance of [your] duties" from March 2008 to February 2009, which suggests that you continued to be fully capable of performing your duties throughout the duration of your relatively short military career. Finally, after your discharge from the Navy in February 2009, you completed a Masters degree in Foreign Service from [redacted] and took architecture classes at [redacted], which suggests that your condition did not adversely affect your mental acuity. These accomplishments further demonstrate that you maintained the ability to perform the duties of your office, grade, rank, or rating.

The evidence that you provided failed to overcome either the presumption of regularity applied to the decision of the PEB or the record evidence that you remained medically fit for duty. Your argument for unfitness is essentially that you were never medically cleared to return to sea duty or for worldwide assignment before you were discharged from the Navy, and therefore were unable to compete the "primary duty" of a SWO trainee to qualify for SWO designation. Based upon this factor, along with the removal of your qualification for submarine and nuclear field duty, you assert that you met three out of the four criteria for a finding of unfitness.[7] The Board disagreed with this contention for several reasons. First, what you characterized as criteria for a finding of unfitness were actually considerations for the determination of your ability to reasonably perform your duties. The Board considered each of these factors, and found that, in fact, only the deployability factor weighed in favor of a finding of that you were not reasonably able to perform your duties due to your MDD condition, and SECNAVINST 1850.4E specifically provides that that factor alone may not serve as the basis for a finding of unfitness.[8]

The Board disagreed with your contention that your failure to be medically cleared for sea duty or overseas assignment demonstrated your inability to perform the common military tasks associated with your duties. First, you mischaracterized your common military tasks. While it is true that a SWO Trainee must qualify as a SWO, that is not what is meant by a "common military task" in the context of SECNAVINST 1850.4E, paragraph 3304a. This paragraph provides examples of common military tasks in this context (e.g., the need to fire a weapon,

[6] Your score ranked in the 92nd percentile in verbal reasoning; the 98th percentile for numerical reasoning; the 88th percentile in abstract reasoning; the 77th percentile in spelling; the 95th percentile in language usage; and the 97th percentile in scholastic aptitude.

[7] The four "criteria" for a finding of unfitness that you referenced come from paragraph 3304a of SECNAVINST 1850.4E, which are: (1) the inability, due to your physical disability, to reasonably perform the duties of your office, grade, rank, or rating (i.e., "common military tasks"); (2) whether your medical condition prohibited you from taking a physical fitness test; (3) your deployability; and (4) the loss of qualification for specialized duties due to your medical condition. You claimed that (1), (2), and (4) all weighed in favor of your unfitness.

[8] See paragraph 3307a of SECNAVINST 1850.4E.

perform field duty, or wear load bearing equipment or protective gear), none of which resemble the achievement of a certain qualification. You described an end goal or mission – not a common military task. Your actually "common military tasks" included training and leading Sailors; learning and becoming proficient in the wide variety of technical tasks associated with service onboard service ships; thinking; planning; organizing; coordinating; and performing administrative functions – the same common military tasks expected of all newly-commissioned Unrestricted Line (URL) officers. Your demonstrated ability to perform the administrative tasks associated with your Limited Duty strongly suggests that you were capable of performing all of these functions.

Second, the Board was not convinced that your designator (i.e., URL Officer in training for Surface Warfare designation) equated to your "rating" for purposes of disability determinations. Officers do not technically have "ratings" in the Navy. However, SECNAVINST 1850.4E defined the term to mean "[t]he occupational fields prescribed for Sailors … or Primary Military Occupational Specialties (PMOS) prescribed for Marines." A "URL officer in training for Surface Warfare designation" is not an occupational field, it is just what you happened to be doing at the time. Considering that your designator would have changed once you qualified, and could have been changed by the Navy at any time, your designator could not legitimately be considered your "occupational field." More accurately, your occupational field was that of a URL officer. As such, your common military tasks (i.e., duties) were far more expansive in scope than you defined them. URL officers are, by design and naval tradition, generalists. They are assigned to perform a wide variety of tasks, both at sea and on shore. This is evidenced by the fact that your assignment while on-board the [redacted] was as an Assistant Communications Officer. As such, the Board found that the administrative tasks that you performed in a Limited Duty status, and for which you were praised, provided a solid evidentiary basis for the finding that you were reasonably able to perform the duties of a URL officer. A URL officer on shore duty, or even onboard a ship, could reasonably be expected to perform the type of work that you performed while on Limited Duty, and the physical and mental capacity necessary to perform those tasks were not substantively different than those required to perform any URL officer task.

Finally, the Board did not agree with your argument that the circumstances which prevented you from returning to sea duty or overseas assignment proved your inability to perform the duties of your office, grade, rank, or rating. There is a distinct difference between medical advice not to engage in certain activities and an inability to do so. This distinction reflects the different determinations made by the MEB and the PEB within the DES – the former is condition based, while the latter is capability based. Indeed, SECNAVINST 1850.4E provided that the inability to perform the duties of office, grade, rank, or rating in every geographical location and under every conceivable circumstance may not serve as the sole basis for a finding of unfitness,[9] and that "[t]he inability to meet screening criteria for a specific assignment or administrative requirement; i.e., deployment, overseas or sea duty assignment, or participation in [Physical Fitness Test]," does not even justify referral to the PEB.[10] You proved that the circumstances of your condition prevented you from returning to sea to obtain SWO qualification, but you did not demonstrate or explain how your MDD condition made you unable to perform the common military tasks

[9] See paragraph 3304(a)(3) of SECNAVINST 1850.4E.
[10] See paragraph 3202 of SECNAVINST 1850.4E.

expected of a URL officer. To the contrary, you demonstrated the ability to perform such tasks despite your condition at the time. Accordingly, that consideration did not weigh in favor of a finding of unfitness as you claimed.

The Board also did not find your physical disqualification from submarine and nuclear field duty, or the removal of your nuclear technical qualification, to be persuasive evidence of your medical unfitness. Paragraph 3304 of SECNAVINST 1850.4E provides that for members whose medical condition causes loss of qualification for specialized duties, such consideration includes "whether the specialized duties comprise the member's current duty assignment; the member has an alternate branch or specialty; or whether reclassification or reassignment is feasible." Neither submarine duty nor nuclear field duty comprised your duty assignment at the time, and reclassification or reassignment was clearly feasible as reflected in your favorably endorsed request for redesignation as a HRO. Accordingly, this consideration also did not weigh in favor of a finding of unfitness.

You alleged in your complaint to the D.D.C. that the Board was arbitrary and capricious in relying upon the assessment of your performance in your Limited Duty capacity in Docket No. 7600-15, rather than upon your performance of the duties of your office, grade, rank, or rating. This assertion was wrong for several reasons. First, as stated previously, this Board is not the PEB, and does not make fitness determinations. The statutes and regulations pertaining to disability determinations do not apply to this Board. Rather, they serve as guidelines and references for this Board to assess the propriety of the action asserted to have been an error or injustice, which in your case was the PEB's finding of fitness. The case of *Nyan v. United States* that you cited is not instructive here, as you suggest, because the Court of Federal Claims was commenting upon the rationale relied upon by the PEB in making its finding of fitness and not upon any decision made by this Board in that case.[11]

Second, besides the assessment of your performance in your Limited Duty capacity, there was literally no other evidence in the record reflecting your capabilities at the time for the Board to consider. There was no evidence available regarding how you performed the duties of your office, grade, rank, or rating at the time, because you were removed from the [redacted] before anyone had the opportunity to assess your performance of those duties. You cannot legitimately claim that the Board erred in failing to consider evidence which does not exist. Ironically, after first claiming that the Board improperly relied upon irrelevant evidence, your second claim for relief in your complaint to the D.D.C. alleged that the Board's decision in Docket No. 7600-15 was unsupported by substantial evidence. Not only did this claim essentially negate your first claim, but it also attempted to shift the burden of proof away from yourself.

Third, even if this Board was the PEB and therefore subject to the relevant statutes and regulations pertaining to fitness determinations, it would have been required to consider the assessment of your performance in your Limited Duty capacity. Paragraph 4209g of SECNAVINST 1850.4E includes FITREPs and performance evaluations among the list of

[11] On remand, this Board agreed with the Plaintiff's contention in the *Nyan* case that the PEB applied the wrong standard in evaluating the Plaintiff's fitness for duty, and directed that the Plaintiff's naval record be corrected to reflect that he was placed on the Temporary Disability Retired List.

documents which must be reviewed by the PEB in making fitness determinations, and the FITREP you received for your performance in a Limited Duty capacity was the only one available for review.

Finally, for the reason previously stated, the assessment of your performance of your Limited Duty capacity was, contrary to your contention, entirely relevant to the Board's retroactive assessment of your ability to perform the duties of your office, grade, rank, or rating. In your current application to this Board, you stated that your duties while serving on-board the [redacted] included "overseeing and managing 13 Information System Technicians that were responsible for maintaining the ship's radio and computer equipment, including satellite communications and cryptographic equipment, as well as standing five-hour watches, which require alertness, every ten hours." You provided no evidence that you were incapable of performing these duties, and your ability to successfully perform the administrative tasks associated with your Limited Duty clearly suggests that you were also capable of performing the duties you were assigned on board the [redacted]. You are asking this Board to conclude that you were incapable of performing these tasks based solely upon the circumstances which prevented you from resuming them prior to your voluntary separation. You failed to explain, and the Board fails to see, how the physical and mental capabilities you demonstrated to successfully perform those administrative tasks while in a Limited Duty status differed substantively from those required to perform the duties your previously assigned duties on board the ship. Certainly the technical knowledge requirements were different, but the physical and mental requirements were not. If you were able to concentrate sufficiently to perform those administrative tasks, you were also able to perform the tasks that a URL officer must perform.

Finally, the Board disagreed with your argument that your continued service represented a decided medical risk to your health and imposed unreasonable requirements on the Navy to maintain or protect you. As discussed above, URL officers are expected to perform a wide variety of functions in a variety of locations. There is no evidence whatsoever that your condition worsened after your removal from the [redacted], or that shore duty would present any risk to you. While you continued to demonstrate obsessive compulsive tendencies while assigned on-shore, there was no evidence that your continued service would have represented a risk to yourself or other.

Having found no error in the PEB's finding of fitness, the Board turned to consideration of whether your continued absence from the PDRL constitutes an injustice warranting relief. In this regard, the Board continued to find the progression of your condition since your discharge to be irrelevant. As stated previously, the Board sympathizes with your situation, but could not justify granting you a medical retirement for which you did not qualify. Such an action would be an injustice to the thousands of former service members suffering under similar or even worse conditions, but who also did not qualify for a medical retirement. Further, the Board explicitly disagreed with your contention that the Navy caused your condition. Your symptoms began to manifest themselves while you were studying overseas away from any Navy supervision, and the medical evidence in your record clearly reflects that you were genetically predisposed to this condition. The Board could identify nothing that the Navy did which would cause you to develop MDD. To the contrary, the evidence reflects that the Navy went above and beyond to

provide you opportunities denied to most and did everything in its power to ensure that your medical needs were cared for after your diagnosis. Certainly your condition manifested itself while you were serving in the Navy, and the disability compensation that you now receive from the VA as a result is certainly warranted. However, the Board did not find that the Navy "owed" you anything in this regard. Next, the Board notes that you continue to have access to medical treatment through the VA. The Board acknowledges your assertion that such service is inadequate, but that represents an injustice imposed by the VA and not by the Navy. Finally, the Board determined that you have been treated more than fairly by the Navy given the totality of the circumstances. You received a degree worth hundreds of thousands of dollars from one of the most prestigious institutions in the world free of charge, for which you were not required to fulfill your service obligation. You were also permitted to obtain further education overseas at the government's expense before beginning to repay this obligation, which undoubtedly added to the service obligation which you were not ultimately required to complete. In exchange for these incredibly valuable benefits, you served a total of two months at sea and a little more than a year performing Limited Duties stateside. You were ultimately honorably discharged, not required to repay any of the benefits that you received despite failing to meet your service obligation, and have since enjoyed all of the benefits that would have accrued to you if you had completed your service obligation, to include disability compensation calculated for a 100 percent disability rating while being denied no continuing medical treatment for your condition. There simply is no injustice in this result.

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,

3/28/2023

[redacted]