



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. 8478-22
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 20 April 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 a 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 revealed that from 1999 to 2005, you served periods of active and reserve service in the Air National Guard. On 30 January 2010, you received a commission in the Navy and commenced active duty service as a member of the Nurse Corps. During your service, you exhibited medical conditions, including post-traumatic stress disorder (PTSD) and you were placed into the disability evaluation system. In July 2019, the Informal Physical Evaluation Board (IPEB) found you to be unfit with a 70% disability finding and recommended that you be placed on the temporary disabled retired list (TDRL). On 12 July 2019, you accepted the findings of the IPEB. On 12 August 2019, you were issued your formal Notification of Decision on the results of the IPEB, which found you disabled at 70% and to be transferred to the Temporary Disability Retired List (TDRL). On 27 November 2019, you were transferred to the TDRL.

While you were on the TDRL, you underwent a routine evaluation and you were referred again to the IPEB. On 20 June 2022, the IPEB found that you remained unfit, but that your disability level was reduced to 50%. That same day you submitted an Election of Options (EOO) stating that you did not accept the findings of the IPEB. On 15 August 2022, you were notified of a forthcoming Formal PEB, to be conducted on 27 September 2022. On 22 September 2022, you submitted a new EOO accepting the findings of the IPEB. On 27 September 2022, the PEB issued its Notification of Decision of 50% finding and you were thereafter transferred to the permanent disability retired list (PDRL).

In your petition, you request to have your disability finding changed to 70% from the current 50%. In support of your request you state your IDES counsel gave you bad information in order to avoid a formal hearing. You provided an affidavit from your former lawyer stating that it was his understanding that, because you were receiving Combat Related Special Compensation (CRSC), you would not have any adjustments to your pay due to the reduction in your disability rating. Thus, according to your former IDES counsel, he advised you that if you were in receipt of CRSC your pay would not change, and you accepted the findings of the IPEB based on his advice. You also provided a 19 July 2022 letter from a therapist at a veterans' center, who indicated that he strongly supports a 70% disability rating for you.

The Board carefully reviewed your petition and the material that you provided in support of your petition and it disagreed with your rationale for relief. In its review of your materials, the Board did not observe any evidence that there was any error or injustice apparent in the findings of the 21 June 2022 IPEB. To the contrary, the Board observed that you were appropriately evaluated by professionals during your evaluation by the IPEB, and those professionals made findings and recommendations that were supported by appropriate medical evidence, which included access to all of your service record documents, and to your military medical records. With respect to the letter from your therapist supporting a 70% finding, the Board determined the findings of the medical professionals at the IPEB, who, as noted, had access to the entirety of your military records including your medical history and a focused background on making such findings, deserved more weight than your therapist's opinion. With respect to your assertion that you relied on bad legal advice in accepting the findings of the IPEB, the Board did not find that to be persuasive because even assuming, *arguendo*, that you did not rely on such legal advice, the outcome would have been that you were reviewed by the FPEB. The Board determined that your attendance at the FPEB would have been futile because the evidence that you provided would, more likely than not, have not overcome the rationale provided by the medical professionals at the PEB. Finally, of less significance, but notable, the Board found that it strained credulity that neither you nor your attorney failed to appreciate that a 20% reduction in disability rating would result in a smaller disability pension. As a result, the Board did not observe any error or injustice to warrant a change to your PEB findings. 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,

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Executive Director

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