



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

█
Docket No. 9132-22
Ref: Signature Date

█
Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was 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 23 May 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 shows that you enlisted in the Marine Corps and commenced a period of active duty on 13 June 2016. During your service you were referred to the Physical Evaluation Board for review of your fitness due to an epilepsy related medical condition. On 24 March 2020, the Informal Physical Evaluation Board (IPEB) found you to be unfit with a 40% disability. On 1 April 2020, the Petitioner agreed with the IPEB's findings. On 17 April 2020, the IPEB issued a notification of decision that you were found to be 40% disabled and transferred to the temporary disabled retired list (TDRL). While you were on the TDRL, you underwent periodic physical examinations. On 14 July 2022, the IPEB found your medical condition had improved such that you were unfit with a 10% disability. Accordingly, the IPEB determined that you should be discharged from the TDRL with severance pay. You did not agree with that result and requested to be reviewed by a Formal PEB (FPEB). Pursuant to your

request, you were notified that you would be attending an FPEB on 25 October 2022. On the day before your FPEB was scheduled to be conducted, 24 October 2022, you submitted a new form accepting the IPEB's findings of a 10% disability finding and you were eventually released from the TDRL with severance pay.

In your petition, you request that you be provided a formal hearing before the PEB. In support of your request, you contend that you were not able to have a formal hearing after the PEB findings came back as 10 percent and that you selected that he did not accept those findings to include a request for a formal hearing. You further assert that your appointed lawyers did not perform their duties and neglected to represent you properly and that you were not provided any information of when your formal hearing would be conducted at the PEB in order to provide evidence to support your claim that he should be medically retired. In your request, you also provided a description of your current symptoms.

In its review of your petition, the Board did not agree with your rationale for relief. In its review of your PEB files, the Board did not observe any error or injustice. To the contrary, your PEB files demonstrate that your medical conditions were appropriately reviewed by the PEB and you accepted the initial findings transferring you to the TDRL. With respect to your subsequent PEB findings, your records indicate that you initially did not accept the finding of the IPEB, which found that your condition had improved to a 10% disabling condition. Your record also demonstrates that, pursuant to your request, the PEB directed that you be reviewed by an FPEB. Further, your record also indicates that, the day before your FPEB, with the assistance of counsel, you elected to accept the finding of the IPEB. Your petition did not provide any evidence to support your contention that you were improperly represented by counsel or that you were not notified of the scheduled FPEB hearing. 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,

6/5/2023

