



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

█  
Docket No. 0333-23  
Ref: Signature Date



Dear █

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 8 February 2024. 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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 1 February 2007. During your service you were placed into the Disability Evaluation System and, on 17 February 2016, you were reviewed by an Informal Physical Evaluation Board (IPEB). The IPEB found you to be unfit at 50% due to bipolar disorder. Thereafter, you were placed on the temporary disability retired list (TDRL) at a 50% disability rating due to bipolar disorder. While you were on the TDRL, you were reviewed by periodic physical examinations. On 16 July 2019, your condition was reviewed by an IPEB, which found that the unfitting nature of your disability improved to a level of 10% disability. On 29 August 2019, you completed an Election of Options form, on which you noted you did not accept the findings of the IPEB, and requested a Formal PEB (FPEB). On 27 November 2019, the FPEB concurred with the IPEB and recommended that you be separated with a 10 percent rating for your unfitting bipolar disorder. In support of its finding, the FPEB published a fulsome Formal Rationale, explaining:

Although the member has a diagnosis of Bipolar Disorder, the documentary evidence from his psychiatrist confirms that he does not have symptoms of

depression or hypomania while on Latuda. The provider's main focus of treatment has been his ADHD, titrating to effect his Vyvanse that is specifically indicated for the treatment of ADHD and moderate to severe binge eating disorder, not Bipolar Disorder. The member has successfully completed his Fire Academy program and has been involved in social relationships but has recognized his recent involvement in an unhealthy relationship and ended it. As documented by his psychiatrist, [Petitioner] is on continuous medication, which has controlled the symptoms of his Bipolar Disorder, but his use of Latuda makes him unfit to return to service. Further, in accordance with Title 26 U.S.C. §104 (b) (3) and 10 U.S.C §1212, BIPOLAR DISORDER is neither combat related nor incurred in a combat zone.

As a result of the finding of the FPEB, you were discharged from the TDRL with severance pay on 1 April 2020. In the meantime, you sought an increase in a service connected disability rating from the U.S. Department of Veterans' Affairs (VA). On 20 March 2020, the VA issued a rating decision that assigned to you a 50 percent service connected disability rating for bipolar disorder with residuals of traumatic brain injury.

In your petition, you request to be provided a service disability retirement by increasing the rating found by the FPEB to 50 percent for your bipolar disorder. In support of your request, you contend that due to your bipolar disorder, you should have been found unfit for further military service and medically retired for your bipolar disorder at a 50 percent rating. You assert that the FPEB ignored evidence that supported a 50% disability rating for bipolar disorder. Specifically, you argue that the PEB erred by relying on your anecdotal self-reporting, and it misinterpreted the reports of your treating psychiatrist and treating clinician. In your view, the PEB should have given less weight to your assessment of your own symptoms and condition, and more weight to the assessment of your treating psychiatrist and treating clinician, at and around the time of your removal from the TDRL.

In its careful review of your contentions and the material that you submitted in support of your petition, the Board disagreed with your rationale for relief. In reaching its decision, the Board determined that you provided insufficient material for the Board to find that the FPEB erred in its finding. Nor did the Board find that there was an injustice in its finding. The Board noted that the Formal Rationale provided by the FPEB was based on medical information contemporaneous to your time on the TDRL, and it provided a reasonable and rational decision based on its medical analysis of the evidence provided to it at your FPEB. With respect to your argument relating to VA findings, the Board concluded the documented observations of your psychiatrist were more probative when considering the severity of your Bipolar disorder symptoms. As explained in the FPEB rationale, at the time of the FPEB, your psychiatrist had concluded that your Bipolar disorder symptoms were controlled by the Latuda medication. In the Board's opinion, even after considering the VA assigned rating for your condition, this evidence supports the FPEB findings in your case. Therefore, the Board found insufficient evidence of error or injustice to overturn the PEB decision in your case. 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,

2/28/2024

