



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

█
Docket No. 1663-23
Ref: Signature Date



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.

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 4 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 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 had a history of anal fissures prior to your entrance on active duty in the United States Navy on 14 May 1983. After Christmas vacation in 1983, you experienced abdominal pain, which developed into light-headedness. On 24 January 1984, you had a syncopal episode, fell, and went to the emergency room at █. You were referred to a Medical Board; upon evaluation, the Medical Board diagnosed you with Crohn's Disease and Mandibular Fracture (due to the fall). The Medical Board concluded that you were unfit for full duty and referred you to the Physical Evaluation Board (PEB) for disposition. On 5 April 1984, the Informal PEB found you unfit for Crohn's Disease and stated that it existed prior to entry, was not aggravated by service, and not ratable. You subsequently requested a formal PEB hearing. On 31 May 1984, you underwent a formal PEB hearing; you asked to be found unfit with a 30% rating for Crohn's disease. The PEB found you unfit for

Crohn's Disease with a 10% rating. You accepted the formal PEB findings and were discharged on 31 December 1984 with an Honorable characterization of service due to physical separation with severance pay.

Post-discharge, the Department of Veterans Affairs (VA) granted you a disability rating of 30% for your Crohn's disease effective 28 December 2012.

In your petition, you request placement on the Permanent Disability Retired List (PDRL). You contend that at the time of discharge, you did not realize the implications of medical separation versus medical retirement. You further argue that you did not have any counsel or person representing your interests during the PEB process. Finally, you argue that the assigned VA rating of 30% rating for Crohn's disease warrants your placement on PDRL.

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 reaching its decision, the Board noted that you requested a formal board hearing after the Informal PEB found that your Crohn's disease was not ratable. In addition, according to the record of Formal PEB testimony, you were represented by assigned counsel. Finally, the Board observed that you signed acceptance of the Formal PEB findings and elected not to submit a statement in rebuttal. Consequently, the Board determined you were appropriately represented throughout your disability processing and knowingly accepted the findings of the PEB. Further, the Board found no evidence that there was any error or injustice with your PEB process. Finally, the Board was not persuaded by your VA evidence since it was determined to be too remote in time from your discharge date, i.e. approximately 28 years after the fact. As a result, the Board concluded that your assigned 10% rating was supported by the preponderance of the evidence and you did not qualify for placement on the disability retirement list since your rating was less than 30% at the time of your discharge. 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,

6/1/2023

