



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

█  
Docket No. 6582-23  
Ref: Signature Date

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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 29 February 2024. 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 were commissioned an ensign in the Navy and commenced a period of active duty on 10 May 1991. According to a medical record within your medical evaluation board (MEB) file, you were shot in the early morning of 1 October 1992. A MEB issued its report on 19 November 1993, which diagnosed you with a variety of conditions related to your gunshot wound and referred you to the physical evaluation board (PEB). As your case was in the PEB process, an initial line of duty finding determined that your gunshot-related injuries were not in the line of duty/due to your own misconduct. As a result of this finding, the PEB originally found you to have a non-ratable condition. After a further legal review determined that your injuries were in the line of duty, on 15 July 1994, the PEB found you to be unfit with a 10% disability rating, as follows:

2. Legal Review conducted on 22 April 1994, determined that your disability is not due to intentional misconduct/willful neglect and that you should be assigned a disability percentage rating.

3. I have reviewed your case in light of the Record Review Panel's disagreement with the Legal Review. Based on my review, I concur with Legal Review and find that you are UNFIT FOR DUTY and that your disability is ratable under Va Code 5099-5003 at 10%.

You were thereafter discharged on 15 January 1995 due to disability with severance.

In your petition, you request that your medical discharge be upgraded such that you be placed on the permanent disability retired list (PDRL) retroactively. In support of your request, you contend that a complete medical exam was not done in 1994 as required by law. You further state that painful chest scars have required surgery in the late 90s and, as recently as 2021, when a fragmented wire in your sternum popped through your chest in a swimming pool. Additionally, you assert a shortened diaphragm should have been evaluated and recognized. In support of your request, you included a written statement, medical documentation, including from the time you were in service, as well as documentation from the Department of Veterans Affairs (VA).

After review of your petition, and the entirety of the materials you provided, the Board did not agree with your rationale for relief. In reaching its decision, the Board observed that it relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In applying this principle to your request, the Board observed that you provided insufficient evidence to overcome the presumption of regularity that attached to the findings of the PEB approximately thirty years ago. After review of the available documentation, the Board was unable to find a defect in the process and findings in your case before the PEB. In addition, the Board was not persuaded by your reliance on post-service findings by the VA. Therefore, in its review of all the evidence, the Board did not observe any error or injustice in your naval records. 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,

3/11/2024

