



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. 7831-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 14 December 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, applicable statutes, regulations, and policies.

A review of your record shows that you entered active duty in the Navy on 1 April 1976. On 10 May 1977, you were assigned to six months of limited duty. On 2 November 1977, the Physical Evaluation Board (PEB) found you had a physical disability at a 20% rating warranting separation from the service with severance pay. You did not appeal the decision and you were discharged, on 6 January 1978, with an Honorable characterization of service.

For this petition, you request a disability retirement and argue that the PEB rated your knee at 20% but, when you submitted your Department of Veterans Affairs (VA) claim, you later received a 10% rating for your back. You contend that since your overall percentage is at 30% you rate a disability retirement.

The Board carefully reviewed your petition and disagreed with your rationale for relief. In reaching its decision, the Board noted that you did not provide any medical documents to support your contention that your back was an unfitting condition. The Board further noted that in order to qualify for military disability retirement, a medical provider refers a service member to the PEB if they believe the member has a condition that prevents them from continued service. In

this process, the service member has to be found unfit; meaning there must be evidence the service member is unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. In reviewing your record, the Board concluded there is no evidence that you were treated or diagnosed with an unfitting back condition while in service. Instead, the evidence supports that a medical board found you were unfit for the condition of your right knee, that you accepted the finding that you were unfit for your right knee, and you were ultimately discharged for that condition. Finally, the Board noted eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated.

In light of the foregoing standard applicable to the PEB, the Board did not discern any facts that would support you being eligible for a disability retirement based on your back condition. Rather, the evidence of record demonstrates that you were discharged with a 20% rating after failing to recover from a right knee condition. That PEB assigned rating percentage warranted separation with severance pay, not retirement. 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,

1/9/2024

