



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. 498-24
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.

A three-member panel of the Board, sitting in executive session, considered your request for reconsideration 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.

As this Board set forth in its letter to you denying your most recent petition, a review of your record shows that you enlisted in the Navy and commenced a period of active duty on 14 February 1995. You were involved in a motor vehicle accident and suffered from a fainting incident in 2007 but otherwise served without incident during your career despite receiving treatment for a number of conditions. Your performance evaluations from September 2017 through the date of your retirement consistently reflected that you were a top performing Sailor, with promotable or must promote recommendations and positive performance comments. In Fall 2019, you submitted your request to retire. As a result, you were released from active duty on 30 June 2020, after more than 25 years of active duty service, and transferred to the retired list.

In 2021, you filed a petition with this Board requesting that you be placed on the Permanent Disability Retired List (PDRL). On 8 November 2021, this Board issued you a letter to you informing you it denied your request, explaining as follows:

In your case, the Board determined the preponderance of the evidence does not support a finding that you met any of the criteria for a finding of unfitness at the time of your retirement from the Navy. In making this finding, the Board relied

primarily on your fitness reports leading to your retirement which documented you were performing well above fleet standards for your paygrade in a leadership position of great responsibility. Specifically, your fitness report ending on 15 September 2019 documents that you were serving as Leading Chief Petty Officer for 47 sailors and civilians while earning a 3.86 trait average and promotion recommendation. Further, the Board noted that you were promoted to E-8 in the prior reporting period. These factors led the Board to conclude there was no evidence that you suffered from an occupational impairment sufficient to merit a finding of unfitness for continued naval service. Further, the Board considered the fact none of your medical providers felt your conditions required a referral to the Disability Evaluation System. Therefore, after weighing the evidence, the Board was unable to support a finding that you were unfit for continued naval service due to any of your VA rated disability conditions including TBI, IBS, or GERD.

Thereafter, in 2023, you filed a request for reconsideration of that prior decision. In your 2023 request for reconsideration, you did not detail what you consider to be new matter in support of your petition. As this Board explained to you in its letter of 12 September 2023, you did not provide new medical evidence contemporaneous to your time in service demonstrating that you had an unfitting condition in service. Nor did you provide non-medical assessments from command personnel describing your inability to perform the duties of your rate. You also asserted that, due to COVID-19, the medical facilities did not document your two instances of traumatic brain injury (TBI) and that this contributed to your 100% service-connected disability finding by the Department of Veterans Affairs (VA). In light of your assertion that you suffered a mental health related condition, this Board applied liberal and special consideration to your assertions, pursuant to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness, which was reference and described more fully to you in this Board's 12 September 2023. In that letter, the Board also reiterated for you the standard applicable to findings of unfitness in the Disability Evaluation System. This Board then set forth a fulsome rationale explaining its denial of your request for reconsideration, despite the application of liberal consideration:

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. Despite its application of liberal and special consideration, the Board concurred with its prior finding. There is no indication at all in your service record that you had any unfitting condition within the meaning of the disability evaluation system while on active duty. The Board further observed that there is no evidence in your record, and you did not provide any, that any medical provider considered your conditions to warrant referral to a medical board for a determination of fitness for duty within the disability evaluation system. In addition, your performance evaluations during the last years of your service reflected that you were a fit and accomplished Sailor. With respect to the post-service award of disability benefits from the VA, the Board noted that the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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 sum, in its review and liberal consideration 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.

In your current petition, you request reconsideration of your prior petition, in which you requested that your naval records be corrected to reflect that you were placed on the PDRL. In support of this current request for reconsideration, you argue that this change should be made due to the “error and injustice” made by your medical providers in not referring you to a medical evaluation board (MEB). You argue that had you been referred to a MEB, you would have had your ratings by the VA determined prior to your retirement and you would have been placed on the PDRL. You provided a lengthy written statement and a variety of medical documents in support of this request for reconsideration. Notably, you did not set forth which, if any, documentation was new, in order to supplement your prior request. The Board nevertheless conducted a comprehensive review of your most recent request for reconsideration. 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 applied the same standard applicable to the Disability Evaluation System that it had explained to you twice before. In reviewing your record, the Board observed that the arguments that you made and the documents that you provided in this request for reconsideration were insufficient for the Board to change its prior decisions denying your request. Accordingly, the Board incorporated the rationale that it set forth in its prior letters to you, and it denied your petition.

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,

3/4/2024

