



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

[REDACTED]
Docket No. 7677-16

APR 24 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 March 2017. 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, your naval record and applicable statutes, regulations and policies.

A review of your record shows you entered active duty with the Marine Corps in September 2004. You were treated for a sleep disorder starting in 2007 and continued your career until a medical referred you to the Physical Evaluation Board (PEB) in 2012. On 2 January 2013, the PEB found you unfit for continued naval service due to a right rotator cuff condition, a left shoulder condition, and hypersomnia. You were rated a combined 30% for your disabilities and placed on the Temporary Disability Retirement List (TDRL) on 30 March 2013. You underwent a periodic TDRL examination on 25 February 2015 that resulted in the PEB finding you unfit only for your rotator cuff condition. You requested a formal hearing that resulted, on 17 June 2015, in the restoration of your left shoulder condition as an unfitting condition but affirmed the decision of the informal PEB that determined your hypersomnia/narcolepsy condition was not unfitting. You filed a Petition for Relief to Director, Secretary of the Navy Council of Review Boards (CORB) that was denied on 9 September 2015.

The Board carefully considered your arguments that your hypersomnia/narcolepsy condition is unfitting and should be rated at 80% resulting in your placement on the Permanent Disability Retirement List. You raised a number of arguments supporting your assertion that the PEB and Director CORB erroneously determined that your condition was not unfitting. Unfortunately, the Board disagreed with your rationale for relief. As you correctly pointed out in your brief to the Board, SECNAVINST 1850.4E provides the standard to be used in making determinations of

physical disability as a basis for retirement or separation. A service member must be unfit to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay. Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating. So the mere presence of a medical condition or specific correspondence of any manifestations thereof to an entry indicating a disability rating contained in the VA Schedule for Rating Disabilities is insufficient to warrant either a finding of unfitness for continued naval service or a specific disability rating by the PEB in the absence of demonstrated duty performance impairment of sufficient magnitude as to render a Service member unfit for continued naval service. By contrast, 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. So while your 80% rating by the VA is probative to the issue of how your capacity to perform in the civilian world is diminished by a disability, it is not dispositive on the issue of unfitness for continued naval service. So the Board was not persuaded by your VA rating because, despite your 80% rating for hypersomnia/narcolepsy, you were able to successfully perform your civilian employment duties. In addition, as detailed by Director CORB in his denial letter, your symptoms were well controlled by medication and allowed you to operate your vehicle and prevented sleep attacks, episodes of cataplexy, sleep paralysis or hypnagogic hallucinations.

Overall, the Board felt there was strong evidence you were able to perform your civilian occupation as a diesel mechanic successfully with limited accommodations. This convinced the Board that you would also be able to perform your primary MOS duties with the Marine Corps in a similar fashion with the aid of medication. The Board also considered the evidence provided regarding your past military performance but was not persuaded it was too probative to the PEB's determination in 2015 since you offered a 2-year civilian work history to consider. In addition, the arguments regarding the differences between the Marine Corps work requirements versus your civilian employment requirements was also not persuasive. The fact you were able to rise to the level of a supervisor in your civilian occupation that almost mirrors your primary MOS contributed to the Board's belief that your occupational impairment from your hypersomnia/narcolepsy was not sufficient to make you unfit for continued naval service despite your high rating from the VA and differences between the civilian and military environment. Therefore, the Board concluded that the PEB and Director CORB decisions to find your hypersomnia/narcolepsy as a Category III condition that was not separately unfitting was supported by the evidence. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application. The names and votes of the members of the panel will be furnished upon request.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. You are entitled to have the Board reconsider its decision upon the submission of

new and material evidence. New evidence is evidence not previously 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,



Executive Director