



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

[REDACTED]  
Docket No. 414-17

FEB 25 2018

[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 1 February 2018. 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. In addition, the Board considered the advisory opinion contained in Director CORB ltr 1910 CORB: 002 of 20 Nov 2017; including your rebuttal evidence.

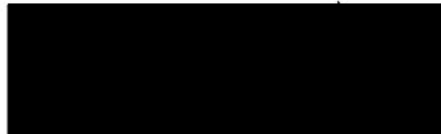
A review of your record shows you entered active duty with the Marine Corps in July 2008. In February 2015, you underwent a left labral repair that eventually resulted in your referral to the Physical Evaluation Board (PEB). You were determined to be unfit for continued naval service due to your left shoulder condition and rated at 20% based on the rating issued by the Department of Veterans Affairs (VA). Prior to your discharge from active duty on 29 April 2016, you aggravated your left shoulder injury while moving boxes. This aggravation of your unfitting condition was rated by the VA under a different VASRD code and issued a separate disability rating on 26 October 2016.

The Board carefully considered your arguments that you were improperly rated by the PEB since you suffered a second injury to your shoulder that was later rated by the VA. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion contained in Director CORB ltr 1910 CORB: 002 of 20 Nov 2017. Specifically, the Board found that you did not suffer a different disability condition when you aggravated your left shoulder in March 2016. The Board relied upon the 19 August 2016 imaging report that shows your left shoulder pain was the result of bony defects in the scapula from the prior labral surgery. This evidence convinced the Board that you aggravated the same

injury in March 2016 that was previously rated by the PEB. Based on VASRD 4.14 that prohibit pyramiding of any disability condition, the Board concluded that the PEB was not authorized to issue a separate disability rating for your shoulder condition using a different VASRD. The Board did not find persuasive the VA's decision to issue you a separate rating for your shoulder condition since it agreed with the advisory opinion that the VA appears to have violated VASRD 4.14 by issuing a separate disability rating using essentially the same description of the shoulder impairment used to rate you under another VASRD. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application.

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,

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director