



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

[REDACTED]
Docket No. 4966-17
NOV 13 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 26 October 2017. 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.

A review of your record shows you entered active duty with the Navy in July 2012. In November 2012, you developed pain while exercising that eventually led to surgery and referral to the Physical Evaluation Board (PEB) for bilateral compartment syndrome. The PEB found you unfit for continued naval service and rated your condition at a combined 40% after your Petition for Relief to Director, Secretary of the Navy Council of Review Boards was approved. The PEB initially noted that your condition was permanent but later changed their determination to indicate your condition "may" be permanent when recommending your placement on the Temporary Disability Retirement List (TDRL). You were placed on the TDRL on 28 March 2017.

The Board carefully considered your arguments that you deserve to be placed on the Permanent Disability Retirement List since the PEB determined your condition was permanent. Unfortunately, the Board disagreed with your rationale for relief. SECNAVINST 1850.4E states that the permanent nature of a disability determined whether a Servicemember is able to return to full military duties. However, it clarifies that it does not mean that a disability condition is stabilized. Based on this definition, the Board determined that the permanent nature of your disability did not mean that your condition was stabilized at the time of your placement on the TDRL. In other words, the medical determination that your condition was permanent was not conclusive evidence that it would not get worse or improve. The regulations additionally state that Servicemembers should be placed on the TDRL "when they would be qualified for

permanent disability retirement but for the fact that the member's disability is not determined to be of a permanent nature and stable." Since there was no medical evidence your unfitting disability condition was permanent and stable, the Board concluded that the PEB properly placed you on the TDRL. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application.

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,

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

Executive Director