



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

Docket No. 5301-17
DEC 18 2017

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 November 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.

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.

A review of your record shows that you entered active duty with the Marine Corps in July 2002. On 7 March 2013, a medical board referred you to the Physical Evaluation Board (PEB) for Somatoform Disorder. The PEB found you unfit for continued naval service on 14 June 2013 for your Somatoform Disorder and rated your condition at 50% qualifying you for placement on the Temporary Disability Retirement List (TDRL). On 3 September 2015, the PEB continued their finding of unfitness but lowered your disability rating to 10% based on your progress in treatment, your successful completion of your college degree, and full-time employment. You requested a formal hearing to request an increased rating to 50% and the addition of fibromyalgia as an additional unfitting condition. The formal PEB affirmed the decision of the informal PEB and you filed a Petition for Relief to the Director, Secretary of the Navy Council of Review Boards. On 16 May 2016, the Director denied your petitioner stating there was insufficient evidence to change the results of your PEB.

The Board carefully considered your arguments that you should be placed on the disability retirement list based on your Somatoform Disorder and Fibromyalgia. You rely on your 2014 Department of Veterans Affairs rating of 50% and the special accommodations you require to perform your civilian employment as evidence of your impairment that qualifies for a 50% rating. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the rationale provided in the formal PEB hearing report and Director, Secretary of the Navy Council of Review Boards response to your Petition for Relief. Specifically, the Board found insufficient evidence that your Somatoform Disorder qualified for a higher rating than assigned by the PEB and that your Fibromyalgia created an occupational impairment sufficient to warrant a finding of unfitness for continued naval service. First, the Board examined the criteria under VASRD 9423 and concluded that the 10% rating for your Somatoform Disorder was appropriate in your case. The Board felt that your inability to perform your duties were not really impaired by your condition because you were able to perform your civilian duties well enough to earn a promotion in 2015. So despite the accommodations provided by your employer that allowed for a flexible work schedule, the Board so no evidence of decreased work efficiency, reduced reliability, or a drop on productivity that would be required for a higher disability rating. The evidence actually showed you were a valued employee who performed at a high level despite instances of being counseled for being occasionally a few minutes late to work. So the Board also felt you could have been found fit for active duty but for the special accommodations you received. Second, the Board agreed that there was insufficient evidence of unfitness for your fibromyalgia condition. While you were diagnosed with the condition, there was no evidence the condition created an occupational impairment sufficient to prevent you from performing the duties of your officer, grade, rank, or rating. As pointed out earlier, you were able to complete your college degree and successfully work full-time upon your placement on the TDRL. This evidence convinced the Board that insufficient evidence of unfitness exists for your Fibromyalgia condition. 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,



Executive Director