



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

[REDACTED] Docket No. 5440-17

DEC 15 2017

Dear [REDACTED]

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

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 December 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 that you entered active duty with the Navy on 23 April 1976. You injured your back in December 1977 that resulted in your placement on Limited Duty on 18 January 1978. After you were returned to full duty, you again injured your back in September 1978 that resulted in your referral to the Physical Evaluation Board (PEB) by a medical board on 13 December 1979. The PEB found you unfit for continued naval service due to your low back pain and rated your condition at 10%. You accepted the findings of the PEB and were discharged on 4 May 1979 with severance pay.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list due to your Department of Veterans Affairs (VA) rated disabilities including Post-Traumatic Stress Disorder (PTSD). You assert that you are rated a combined 100% for your various service connected disabilities. Unfortunately, the Board disagreed with your rationale for relief. The Board lacked evidence that you were suffering from any disability condition, other than your low back pain, at the time of your discharge. You provided no evidence that you were diagnosed with other qualifying disabilities in May 1979 or that those disabilities prevented you from performing your military duties. Absent evidence of unfitness for continued naval

service for conditions other than your back, the Board lacked the evidence to grant relief in your case. Further, the Board lacked any evidence that the PEB committed an error in rating your back condition in 1979. The fact you accepted the findings of the PEB also persuaded the Board that insufficient evidence of error or injustice exists in your record. Finally, the fact you possess disability ratings from the VA was not persuasive to the Board without evidence of military unfitness at the time of your discharge. 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 the fact you may now possess high ratings from the VA for a number of service connected disabilities does not equate to a finding of unfitness for those same disability conditions. 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 area.

Executive Director