



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

Docket No. 5570-17
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. This case was considered pursuant to the United States Court of Federal Claims order in *Wood v Maybus*, Case number 16-1383C.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 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. In addition, the Board considered the advisory opinion contained in Senior Medical Advisory CORB ltr 1812 CORB: 002 of 7 Aug 2017 and Director CORB ltr 1812 CORB: 001 of 7 Aug 2017 and your comments regarding both advisory opinions.

A review of your record shows you entered active duty with the Navy in May 2000. In 2006, you developed symptoms of diarrhea and hematachezia that resolved until approximately 2010. You were later diagnosed with Crohn's Disease in June 2010. After your Crohn's Disease diagnosis was confirmed in 2011, you were eventually referred to a medical board that forwarded your case to the Physical Evaluation Board (PEB). The PEB found you unfit for continued naval service on 29 February 2012 due to Crohn's Disease with Irritable Bowel Syndrome as a related diagnosis. After the Department of Veterans Affairs rated your PEB referred condition at 30%, you were recommended for placement on the Temporary Disability Retirement List (TDRL) on 23 April 2012. You accepted the PEB findings on 27 April 2012 and were placed on the TDRL with a 30% disability rating effective 28 July 2012. On your second Periodic Physical Examination (PPE), it was reported on 3 March 2015 that you were undergoing treatment with Cimzia and your Crohn's Disease symptoms were well controlled except for constipation. The report recommended continued evaluation of your condition with

the Cimzia medication. However, on 2 April 2015, the PEB recommended your separation from the Navy with a 10% disability rating for your Crohn's Disease based on the March 2015 PPE report. Your request for reconsideration resulted in no change to the PEB findings leading you to request a formal PEB hearing. On 26 June 2015, the PEB President concurred with the informal PEB's findings after the conclusion of the formal hearing. You filed a Petition for Relief with Director CORB that, again, resulted in no change to the PEB findings. This led you to file suit in Court of Federal Claims which directed this Board to consider your request for relief.

The Board carefully considered your arguments that the PEB's findings were improper since your Crohn's Disease was improperly rated and other unfitting conditions were not considered as unfitting. In addition, you assert that your PEB was not yet ripe for consideration when adjudicated by the PEB. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinions contained in Senior Medical Advisory CORB ltr 1812 CORB: 002 of 7 Aug 2017 and Director CORB ltr 1812 CORB: 001 of 7 Aug 2017. Specifically, the Board concluded that there was sufficient evidence to support the PEB's findings.

With regard to your Crohn's Disease, the Board agreed with the PEB that your condition should be rated at 10% based on moderate severity with infrequent exacerbations. Despite your formal hearing testimony and assertions in your application that contradict the 2015 PPE report, that medical report shows that your Crohn's Disease was in remission with limited symptoms associated with Cimzia use. In the Board's opinion, this medical evidence supports the 10% rating issued by the PEB since your condition was moderate, based on the remission status, with infrequent exacerbations reported rather than frequent exacerbations.

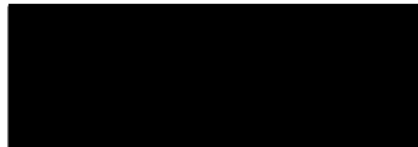
Further, the Board also agreed with the PEB's determination that there was insufficient evidence to support findings of unfitness for your other claimed disability conditions. There was no medical evidence that military medical providers felt your other disability conditions required a referral to the Disability Evaluation System. Your references to Compensation and Pension examination reports and previous in-service diagnoses for service connected disabilities were not persuasive to the Board since they did not specifically address the issue of unfitness. The Board does not doubt these disability conditions may have existed while you were on active duty but lacked evidence they created an occupational impairment sufficient to prevent you from performing the duties of your office, grade, rank or rating. The fact you may have been temporarily prevented from performing certain aspects of your duties, e.g. physical fitness assessments or particular physical activity was insufficient evidence, by itself, to warrant a finding that you were unfit for continued naval service due to these other disability conditions since there was no determination by your command that these other disability conditions prevented you from performing your duties. The strongest evidence relied upon by the Board was the 20 December 2011 Non-Medical Assessment (NMA) from your command. That assessment does not address occupational impairments for disability conditions other than those associated with your gastrointestinal condition. While the comments in the NMA stating "multiple diagnoses of debilitating medical conditions, chronic fatigue and limited mental ability" could be interpreted, as you argue in your application, as attributable to a mental disorder or other disability conditions if considered out of context, the Board concluded this was not the

case since those comments refers to conditions which was diagnosed "approximately one and half years ago" and for which you underwent "four procedures and one major surgery." In the Board's opinion these references are to your Crohn's Disease diagnosis in June 2010 and to procedures and surgery involving your gastrointestinal disorders. Further, the Board considered the fact you chose not to comment on the medical board findings to request consideration of other disability conditions. In the Board's opinion, this confirmed that you agreed with the medical board referral and did not feel that other disability conditions, other than your gastrointestinal ones, were unfitting.

Finally, the Board determined the PEB properly considered your case with the evidence before it and had no legal obligation to wait for additional evidence of potential unfitting conditions since those other conditions were not referred to the PEB when you were placed on the TDRL and, as discussed above, there was no evidence that those conditions were unfitting at that time. 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

