



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

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Docket No. 7648-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

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, sitting in executive session, considered your application on 12 September 2024. The names and votes of the panel members 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. The Board also reviewed the 27 July 2024 advisory opinion (AO) from a licensed medical doctor, which was considered unfavorable to your position. You were provided a copy of the AO, and an opportunity to rebut the AO, and you did not provide a response.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 enlisted in the Marine Corps and commenced active duty on 13 February 1996. While you were in service, you were reviewed by a medical evaluation board (MEB), which issued a report on 31 August 1999 reflecting that you were diagnosed with post-concussive syndrome and recommended that you be referred to the Physical Evaluation Board (PEB). On 8 November 1999, an Informal Physical Evaluation Board (IPEB) found you to be unfit due to post-concussion syndrome at 30% disabling and placed you on the Temporary Disability Retired List (TDRL). On 31 January 2000, you were transferred to the TDRL. While you were on the TDRL, you were reviewed by an IPEB, which found that your condition had improved such that your service disability rating was reduced to 10%. On 1 June 2002, you were discharged from the TDRL with severance.

In your petition, you request that your record be corrected to reflect that you received a disability retirement rather than discharge with severance. In support of your request, you contend that, due to a head injury you suffered while serving, you were placed on the TDRL at 30% for post-concussive syndrome in 1999. You assert that during your physical exam in 2002, your symptoms had not actually improved, yet the IPEB decreased your service disability rating to 10% and you were discharged. You state that you had to quit your civilian job in 2021 due to the severity of your symptoms, which you contend are directly related to a traumatic brain injury (TBI) condition from 1998. You provided a letter from the Department of Veterans Affairs (VA) reflecting that you were awarded a 70% service-connected disability for Post-Traumatic Stress Disorder (PTSD) as a result of TBI effective 10 July 2021, which was increased to 100% effective 1 May 2023.

In order to assist it in reviewing your petition, the Board obtained the 27 July 2024 AO. According to the AO, you did not present clinical evidence of medical care for your service-connected conditions between the time of your discharge from the TDRL and your presentation for care from the VA in January 2022. The AO explained that the evidence at the time of your discharge from the TDRL indicated that you were able to maintain employment and continued employed until 2021. The AO found that, after review of all available objective clinical and non-clinical evidence, there was insufficient evidence presented that the PEB erred in its finding of 10% disability evaluation and recommendation for discharge with severance pay at the time of your discharge from the TDRL. Thus, the AO noted that, in the doctor's medical opinion, the preponderance of objective clinical evidence provides insufficient support for your contention the PEB erred in recommending that you be discharged from the TDRL with severance pay at a 10% disability evaluation.

In its careful review of your contentions and the material that you submitted in support of your petition, the Board disagreed with your rationale for relief. In reaching its decision, the Board substantially concurred with the AO, which the Board determined was reasonable and based upon substantial facts. The Board also noted that you did not provide any evidence to rebut the recommendations of the AO. With respect to your argument relating to VA findings, the Board observed that the VA findings upon which you rely in your petition were for a compensation and pension disability rating by the VA and were remote in time from the findings of the IPEB in your case. Such post-service findings by the VA are tied to the establishment of service connection and are manifestation-based without a requirement that unfitness for military duty be demonstrated. By contrast, the findings by the IPEB were related to the unfitting nature of your disability. Thus, in light of the foregoing, the Board denied your petition.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or 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,

10/8/2024

