



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

█  
Docket No. 942-24  
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 18 July 2024. 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 enlisted in the Navy and commenced active duty and commenced active duty on 22 September 2004. During your service, you were evaluated for potentially unfitting conditions. In connection therewith, your commanding officer submitted a non-medical assessment on 23 September 2019 as follows:

The member is unable to perform the primary duties as an Aviation Electrical Technician in his present medical condition in any environment. He is being treated for Right hip impingement and right hip psoas tendinitis. The member has the following limitations: No shipboard duty, no deployment or overseas duty, no field duty, no combat duty, no climbing ladders, no overhead lifting, no PRT, no running or impact activities, no boots, PT at own pace. He has shown no signs of progress in his medical condition and therefore is unable to perform duties and assigned tasks required of an Aviation Electrical Technician without putting himself or others at risk of serious injury.

On 6 November 2019, you were reviewed by a medical evaluation board, which described your symptomology as follows: “has daily anterolateral right hip pain, especially upon flexing his hip when climbing steps. Pain has improved since surgery, but he still has pain after prolonged walking, physical therapy and wearing steel-toe, flight line boots.” You were eventually reviewed by an Informal Physical Evaluation Board (IPEB). On 12 December 2019, the IPEB issued its finding that you were unfit due to a hip condition; it did not specify a disability rating as it was awaiting the determination of the Department of Veterans’ Affairs (VA) in its capacity as a component of the Integrated Disability Evaluation System (IDES). On 13 January 2020, the VA issued its findings within the IDES program. Thereafter, based on the input from the VA, the IPEB issued its finding that Petitioner was unfit with disability ratings as follows:

1. RADICULOPATHY, LUMBAR REGION - LEFT (STABLE) 8720 10%
2. RIGHT HIP FEMORACETABULAR IMPINGEMENT (STABLE) 5024-5251  
10%

In your election of rights, you accepted the findings of the IPEB and did not request a Formal PEB. However, you sought reconsideration of the VA’s IDES findings of disability ratings from the VA Decision Review Officer (DRO). The DRO did not change its decision, and the PEB reissued its decision noted above. On 9 November 2020, the President, PEB informed Navy Personnel Command that you were determined to be unfit with a 20% disability rating and should be discharged with severance. Although your final discharge date does not appear to be in your service record, you have stated that your last day in the Navy was 29 January 2021.

In your petition, you request to have your PEB findings reevaluated. In support of your petition, you contend that your original PEB finding was 20 percent but that your VA rating was 70 percent. You believe this was an error and that your PEB Liaison Officer (PEBL) advised you not to add mental health issues to your medical evaluation board documents. You assert that you later tried to provide additional information to supplement your PEB file, but that you were unsuccessful in getting through to your PEB representatives. You contend that the Covid 19 pandemic caused your case to be placed on hold and that your PEBLO ultimately quit. You also provided a 21 December 2023 finding by the VA that demonstrates you had a combined 90% service connected disability rating effective 30 January 2021 and a combined 100% service connected disability rating effective 12 January 2023.

The Board carefully reviewed all of your contentions and all of the material that you submitted in support of your petition, and disagreed with your rationale for relief. In reaching its decision, the Board carefully considered your complete file PEB file, which included the supporting medical records contained therein. It also considered the materials that you provided, as well as your arguments, in the context of your processing within the IDES. The Board concluded that the findings of the PEB in your case, as supported by the VA in its role within the IDES, was rational and based on substantial evidence contemporary to your naval service. In making this finding, the Board considered that your September 2019 non-medical assessment addresses only issues related to your hip condition.

To the extent you rely upon post-service findings by the VA to support your petition, the Board noted that the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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. In conclusion, in its review and consideration of the entirety of your petition, the Board determined you provided insufficient evidence of an error or injustice in your naval record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

8/5/2024

