



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. 1860-24
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 reveals that you enlisted in the Navy and commenced active duty on 12 December 1994. During your service, you were placed in the Integrated Disability Evaluation System (IDES). In connection therewith, you underwent a medical examination, which reported, "I believe that his complaints could be attributable to PTSD [post-traumatic stress disorder] and not his minor head trauma, and I would not suggest further investigation." On 6 June 2014, the Department of Veterans' Affairs (VA), in its role within the IDES set forth its proposed ratings for your potentially unfitting conditions that were to be reviewed by the Physical Evaluation Board (PEB), as well as other conditions for which it proposed service-connected disabilities. This document describes TBI, but it expressly did not list it as a potentially unfitting condition. On 11 June 2014, an Informal PEB found you to be unfit with a 40% rating due to Chronic Low Back Pain. On 7 July 2014, the President, PEB, reported the results to the Chief of Naval Personnel and recommended that you be permanently retired. You were so retired on 31 December 2014.

In your petition, you request that this Board to review your PEB file based on your assertion that your TBI should have been found as an unfitting condition. In support of your request, you contend that you do not understand why the PEB only rated your back condition as unfitting.

You assert that you did not know about your TBI diagnosis until you requested your medical records from the National Archives and Records Administration.

The Board carefully reviewed all of your contentions and all of the material that you submitted in support of your petition, and the Board determined there was insufficient evidence to grant you relief. In reaching its decision, the Board carefully reviewed your complete file PEB file as you requested. After thorough review, and as described above, despite your contention that your TBI condition was not known at the time you were in service, it appears that the condition was specifically identified and addressed. Further, as described above, the condition was evaluated by medical professionals while you were in the IDDES, and it was specifically excluded from being a potentially unfitting condition. Your petition did not appear to provide any evidence that these findings, which were contemporaneous to your service and the time that you were in the IDDES, were in error. You also did not provide a sufficient basis that these medical determinations caused an injustice. Thus, in the absence of evidence that there was an error in the medical professional's assessment at the time you were in the IDDES, along with absence of any injustice, the Board determined that there was no basis for a change to your 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,

8/2/2024

