



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

█  
Docket No. 2123-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 25 July 2024, has carefully examined your current request. 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.

You previously applied to this Board for a change to your PEB findings. Your request was denied on 15 February 2007. As described, in its prior letter to you, a review of your records reveals that you completed an enlistment in the Navy from 27 June 1974 to 23 April 1980. You reenlisted in the Navy and commenced another period of active duty on 21 December 1984. While you were on active duty, you were reviewed by the Physical Evaluation Board (PEB), which found that you were unfit for duty due to undifferentiated somatoform disorder, a mental disorder, which it rated at 30%. In addition, the PEB determined that you suffered from three conditions that were not separately unfitting and did not contribute to the unfitting condition: namely, gastroesophageal reflux disease, hiatal hernia, and post-surgical epigastric pain. You accepted the findings of the PEB on 20 February 1995. On 15 March 1995, the Chief of Naval Personnel directed that you be medically retired with a 30% disability rating, and you were medically retired on 29 April 1995. You provided documentation that after your service, the Department of Veterans' Affairs (VA) awarded you various service-connected disability ratings.

In its denial of your 2005 application, this Board set forth its factual findings and rationale for denial as follows:

The Board found that on 2 November 1994, the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of undifferentiated somatoform disorder, a mental disorder that it rated at 30% disabling. In addition, the PEB determined that you suffered from three conditions that were not separately unfitting and did not contribute to the unfitting condition, namely gastroesophageal reflux disease, hiatal hernia, and post-surgical epigastric pain. You received an Enlisted Performance Evaluation Report on 30 November 1994 which covers the 1 December 1993 - 30 November 1994 period. Your performance trait average for that period was 3.9 on a 4, 0 scale, and you achieved a score of "excellent" on the physical readiness test. You were described by your reporting senior as "...a DOER zealously completing each task to perfection. A self-starter and self-contained working machine. He is recommended for advancement." You accepted the findings of the PEB on 20 February 1995, and were released from active duty on 29 April 1995. You were transferred to the Retired List by reason of physical disability the following day. On 4 March 1996, the Department of Veterans Affairs (VA) awarded you a combined disability rating of 80% for dysthymia, hiatal hernia, low back strain, sinusitis and rhinitis, a throat condition, bronchitis and asthma, headaches, and skin infections. Those ratings were based, in large part, on changes in the rated conditions that occurred following your release from active duty, your subjective complaints, and your failure to obtain post-service employment.

The Board was not persuaded that your mental disorder was mischaracterized by the medical board or PEB as somatoform disorder rather than dysthymic disorder, or that the condition was ratable in excess of 30% at the time of your discharge from the Navy. The Board concluded that your receipt of VA ratings for multiple conditions that were not rated by the PEB is not probative of the existence of error or injustice in your Navy record, because the VA assigned those without regard to the issue of your fitness for military duty vis-a-vis each condition. As you have not demonstrated that you were unfit for duty because of any condition other than that was rated by the PEB, the Board was unable to recommend corrective action in your case.

In your current petition, you seek reconsideration of this Board's denial of your claim for increasing your disability retired pay from 30%. In support of your request, you assert that your disability retirement rating was grossly erroneous, which you contend is evidenced by your post-service VA rating decisions. You argue that your undifferentiated somatization has never been treated by VA psychiatrists, and it was inconsistent with your VA findings. In support of your request for reconsideration, you provided additional documentation, which included findings from the VA in 2023 and 2024 reflecting that you have a post-service VA rating of 100%

The Board carefully reviewed all of the material that you appended to your request and it disagreed with your rationale for relief. In its careful review of your arguments and documentation submitted, and specifically the new matter that you presented, and the Board was

unable to discern any new and material evidence that would tend to support changing the Board's prior decision. In particular, the Board observed that its prior rationale – that your receipt of VA ratings for conditions that were not found unfitting or rated by the PEB is not probative of the existence of error or injustice in your Navy record – remains valid. As the Board explained in its prior decision, the VA assigns ratings without regard to the issue of fitness for military duty. Therefore, the Board determined the new material you provided was insufficient to demonstrate that you were unfit for duty because of any condition other than that was rated by the PEB. In sum, the Board determined insufficient evidence of error or injustice exists to warrant 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,

8/5/2024

