



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. 3135-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 8 August 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, applicable statutes, regulations, and policies, to include the Kurta Memo.

A review of your record shows that you entered active duty in the United States Navy on 28 December 1984. You suffered from chronic post-traumatic stress disorder (PTSD) related to the May 1987 Persian Gulf Missile strike of the █, where you had been stationed for the past three years. Over the years, you were treated several times by mental health, and you were referred by a medical evaluation board (MEB) at Naval Hospital Pensacola Florida to the Physical Evaluation Board (PEB) for chronic PTSD. The Informal PEB found you Unfit for PTSD at 30% and placed you on the Temporary Disability Retirement List (TDRL) on 30 May 2001.

You underwent a periodic physical examination (PPE), on 19 November 2002, and the PEB continued you on TDRL. You underwent your second PPE, on 30 April 2004, and the PEB retained you on TDRL. You underwent your third PPE, on 8 September 2006, and the IPEB reduced your rating to 10%, warranting removal from the TDRL. You were removed from the TDRL on 17 November 2006.

You filed a petition with the Board in 2007 requesting placement on the Permanent Disability Retired List (PDRL). Based on that request, the Board obtained an advisory opinion (AO) from

the Council of Review Boards (CORB). The CORB AO supported the 10% finding, stating that the third PPE report “indicated relatively mild impairment (including ability to participate in skydiving and serve as an instructor therefore-which was also a bit inconsistent with other indication of lack of interest in pleasurable activities-the ability to pursue a relationship leading to-then recent marriage, intermittent nature of symptoms, & relatively mild manifestations... this suggests a level of residual disability more compatible with the IPEB finding of 10% or severance.” The Board concurred with the AO and denied your request on 14 February 2008.

For this petition you claim you should have been placed on the PDRL as you were placed on the TDRL in 2001 and should have been placed on the PDRL after five years. You also argue that your rating (presumably with the Department of Veterans Affairs (VA)) was 30% at the time of your discharge and your current rating is at 100%.

The Board carefully reviewed your petition and disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service, to include whether they qualified you for the military disability benefits you seek.

The Board observed that while the statute at the time directed the final adjudication of TDRL status within five years, it did not direct the automatic transfer of service members to the PDRL if the deadline was not met. Therefore, the Board was not persuaded by your argument based on the expiration of the five year statute time limit.

Rather, the Board considered the medical evidence in your case to determine whether you were properly removed from the TDRL after your third PPE. The Board concluded the PEB acted rationally based on the medical evidence that showed you suffered from a relatively mild level of impairment consistent with a 10% rating. In making this finding, the Board again concurred with the CORB AO.

Finally, the Board was not persuaded by your arguments regarding the VA ratings at the time of your discharge or your current rating. As previously discussed, you underwent a PPE just prior to the PEB decision to lower your rating to 10%. In the Board’s opinion, the PEB acted on the latest medical evidence in making the final adjudication of your disability status at the time. Absent evidence that the PEB decision was not based on the most current medical evidence available at that time, the Board determined the presumption of regularity applies in your case. In light of the foregoing, the Board did not discern any error or injustice in your naval records. 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,

9/9/2024

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Executive Director

Signed by: 