



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. 3689-24
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.

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 and applicable statutes, regulations, and policies.

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 reveals that you were graduated from the Naval Academy and commenced active duty on 24 May 2019. On 4 May 2022, you were referred into the Disability Evaluation System (DES). According to Physical Evaluation Board (PEB) records, you were diagnosed with Major Depressive Disorder. On 29 July 2022, you submitted a personal statement requesting that to be found fit by the PEB. Ultimately, the PEB found you to be unfit and determined that you should be retired due to permanent disability. You were so retired on 30 March 2023. You have provided documentation that, post-service, you were rated by the Department of Veterans' Affairs (VA), which included Major Depressive Disorder with Traumatic Brain Injury (TBI) rated at 70%. The VA retroactively set the effective date for these conditions to be 31 March 2023, the day after your medical retirement.

In your petition, you request to have your military disability retired pay be upgraded from 50% due to Major Depressive Disorder to 70% based on Major Depressive Disorder and Traumatic

Brain Injury (TBI and Tension Headaches). In support of your request, you assert that post-service VA evaluations indicate that your symptoms returned once you began to resume a full workload. In particular, you argue that at the time of your PEB, you were given a low-intensity job and, consequently, symptoms of your TBI were not aggravated. You explained that you had a personality that seeks to “push through” painful difficult times and that, in your current engineering job, you work through complex problems, which made your tension headaches return.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your request and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, pursuant to Navy regulations, it “relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties.” SECNAVINST 5420.193 at § 3(e)(2). In your case, the Board was unable to find any error or injustice in the findings of the PEB. On this point, the Board noted that, while a member is being processed in the Integrated Disability Evaluation System (IDES), such as you were, it is actually the VA, and not the PEB, that determines the service disability ratings. The PEB is actually constrained to apply to the unfitting condition(s) the disability ratings as determined by the VA. Service members, including those who have been retired due to permanent disability such as yourself, often apply directly to the VA to have their VA disability ratings reassessed as their service connected conditions worsen over time. Post-discharge, if the VA issues new ratings for conditions found unfit by the PEB, these new ratings are not retroactively applied to a former member’s DES case unless the VA determined it made a material error in the original rating. The Board found no such evidence in your application. In other words, the Board determined that your record does not contain, and you did not provide, sufficient evidence to demonstrate that the PEB made an error in applying the disability rating assessed by the VA in its capacity within the IDES. Thus, your assertion that your service connected conditions have worsened over time after your retirement was not persuasive. The fact the VA has determined that your unfitting conditions have worsened since your retirement is not unusual and does not provide evidence that the PEB erred, or there was an injustice, when it assigned your disability rating within the IDES. 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,

9/11/2024

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