



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. 3996-24
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 29 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.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 13 July 2008. While you were on active duty, you were placed into the Disability Evaluation System (DES) due to seizures, and you were reviewed by the Physical Evaluation Board (PEB). On 7 July 2008, the President, PEB, wrote to the Commandant of the Marine Corps (CMC) stating that you had been found unfit with a 40% rating and that you should be transferred to the temporary disability retired list (TDRL). On 31 August 2008, you were so transferred to the TDRL. While you were on the TDRL, you were reviewed by Periodic Physical Examination (PPE). On 10 April 2012, and Informal PEB (IPEB) found that you had improved to a 10% unfitting rating. In its notes, the IPEB wrote that it found that you had no seizures while you were on the TDRL and, in fact, had none since 2007. On 23 May 2012, the President, PEB, informed CMC that you were unfit at 10% and should be separated from the TDRL with severance.

In your petition, you request that your narrative reason for separation be changed to permanent disability. In support of your request, you contend that when you were placed on the TDRL in 2008, your rating with the Department of Veterans Affairs (VA) was only 20%. You further explained you are now have been awarded an 80% rating by the VA and that your condition has

worsened over the years and that you now have at least one grand mal seizure a month, with smaller seizures weekly.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. At the outset, the Board observed that the DES evaluates service members when they are in service for a determination whether they are unfit for service due a qualifying condition that renders them unable to perform the duties of their office, grade, rank or rating. In your case, the PEB record makes clear that you were evaluated by the PEB, placed on the TDRL, and evaluated by a PPE while you were on the TDRL. The Board did not find any apparent defects in the process that you were provided during your time in the DES and while on the TDRL, and you did not provide evidence demonstrating that the findings by the IPEB during your PPE were defective or otherwise in error. With respect to the documentation that the VA has rated your seizure condition higher some time after you were removed from the TDRL, the Board observed that the later VA findings were not issued concurrent with the PEB findings that formed the basis for your TDRL removal. Absent substantial evidence to the contrary, the Board relied on the presumption of regularity to determine the PEB properly adjudicated your case based on the PPE report. Ultimately, the Board determined the evidence you provided was insufficient to overcome the presumption of regularity in your case.

In sum, in its review and consideration of all of the evidence, the Board did not observe 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,

9/25/2024

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