



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

█  
Docket No. 4322-24  
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 12 December 2024. The names and votes of the panel members 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.

As described in its prior letters to you, a review of your record shows that you enlisted in the Marine Corps and commenced active duty on 28 June 2010. On 23 September 2014, you were reviewed by the Informal Physical Evaluation Board (IPEB), which found you to be unfit due to post-traumatic stress disorder and headache, with a combined disability retirement rating of 80%. You were initially directed to be transferred to the temporary disability retired list (TDRL), but, ultimately, you were transferred to the permanent disability retired list (PDRL) on 31 January 2015.

In 2020, you filed a petition with this Board seeking to have your PDRL record changed to reflect a 100% rating assigned by the Department of Veterans' Affairs (VA) for your traumatic brain injury (TBI) condition. In order to assist the Board in reaching a decision, the Board

obtained an advisory opinion (AO) from a qualified medical professional. According to the AO, in part:

The preponderance of evidence does not support the petition. This is due to the absence of objective evidence contemporary with the applicant's enlistment, initial Physical Evaluation Board (PEB) processing, or placement on the Temporary Disability Retired List (TDRL) for fiscal and/or behavioral incompetence as reflected in both PEB and associated Veterans Administration (VA) evaluations. The earliest suggestion of a need for an official family member caregiver was a VA issue that did not apparently appear until 2-3 months later and was not felt to have been of potential rating significance until much later. Nor did Traumatic Brain injury appear to have more than a contributory role to the applicant's impairment at that time. By the time of removal from the TDRL and placement on the Permanent Disability Retired List, there was more robust VA evidence suggesting the possibility of some cognitive issues and at least behavioral unreliability in the form of reported incidents of potentially dangerously neglectful behavior and a VA determination of financial incompetence, neither of which were independently 'diagnosed' or corroborated in the Navy TDRL evaluations.

Finally, the 2019 VA Decision Review Officer Decision (DROD) does not appear to be based on sufficiently comprehensive evaluations or detailed behavioral observations or detailed mental status examinations. Moreover, the VA DROD lumps in extra conditions that were not unfitting, or not even diagnosed, at placement on the TDRL in its Rating Decision. These substantive differences and inconsistencies are not resolved in the available evidence.

The Board considered your case on 10 September 2020, and it denied your requested relief. It reported its denial of your request by letter dated 15 September 2020, in which it explained its rationale as follows:

The Board carefully considered your arguments that you deserve a change to your PEB record to reflect the 100% rating assigned by the VA for your TBI condition. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinions in your case. Specifically, the Board determined that there was insufficient evidence to support a finding that your TBI symptoms were separately unfitting when considering the TDRL examinations in your case. Therefore, your TBI condition was properly not assigned a disability rating by the PEB. Absent evidence that addresses that issue, the Board concluded the change to your VA assigned rating for TBI results in no change to your combined PEB rating.

In 2023, you filed a request for reconsideration, in which you requested either an increase in your rating for PTSD, or addition of the condition of TBI as an unfitting condition for which you are on the PDRL, in accordance with your VA ratings. As new matter in support of your request for reconsideration, you provide a written statement and court documents relating to your VA disabilities. You also provided what you describe as newly discovered exams, tests, and records relating to your need for non-medical assistance due to PTSD or TBI while you were on active

duty. The Board denied your request by letter dated 4 January 2024. In denying your request, the Board explained that the new matter you provided was insufficient to overcome the findings of the AO in your prior case. In summary, the Board determined that the new matter you provided in support of your request for reconsideration was insufficient to change this Board's prior finding.

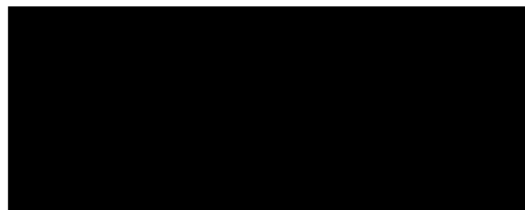
In your current request for reconsideration, you request (1) an increase in the 30 March 2018 IPEB rating to 100% rate for PTSD and find it resulted from combat related injury for "instrumentality of war;" (2) find your contributory Category 2 Cognitive Disorder separately unfitting and rate at highest under the law; and (3) an increase the 30 March 2018 IPEB rating to 50% rate for the VASRD DC 8100 for Headaches and find it resulted from combat related injury for "instrumentality of war." In support of this, your second request for reconsideration, you provided as apparent new matter a written statement, as well as documentation, in which you asserted that the PEB did not consider your head injury from your deployment in 2012 was caused by being hit by a chain gun on a [REDACTED] combat vehicle that caused loss of consciousness and resulting residuals such as headaches, photophobia, and PTSD symptoms. You also asserted that the Combat Related Special Compensation Board (CRSC Board) awarded you CRSC for your TBI and migraines.

The Board carefully reviewed your petition and the material that you provided in support of your second request for reconsideration and disagreed with your rationale for relief. In reaching its decision, Board determined that the new matter that you provided, including your written statement and documentation, was insufficient for it to change its prior decisions. The Board determined that its prior decisions were rational and included a fulsome description of the basis for its denial, including the review of an advisory opinion from your prior case. With respect to your request that certain disability findings by the PEB be considered combat related because the CRSC Board found certain conditions to be eligible for CRSC, the Board observed that the PEB and CRSC Board are distinct entities, review evidence for different purposes, with the PEB focusing on the entirety of your medical conditions in order to determine whether you are fit for service. In reviewing the decision of the PEB with respect to its combat related decision, the Board determined that its decision was rational and based on substantial evidence. As such, the Board determined that you provided insufficient evidence that the PEB erred in its finding that the unfitting condition for which you were medically retired was not combat related. In summary, the Board determined that the new matter that you provided in support of your request for reconsideration, as well as all was insufficient to change this Board's prior findings.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

12/20/2024

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