



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. 6821-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your spouse's 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 13 February 2025. 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, to include the 23 December 2024 Advisory Opinion (AO) provided to the Board by a Licensed Physician, the 26 July 2024 AO from Navy Personnel Command (NPC), and your rebuttal response to the NPC AO.

A review of your spouse's record shows that he entered the Navy Reserve (USNR) and began initial active duty training on 28 December 1993. He was released from active duty on 9 May 1994 and transferred to his Reserve unit. On 13 October 2001, your spouse reenlisted with a new contract expiration date of 12 October 2004. On 19 March 2004, Commanding Officer, █ notified your spouse his assignment to █ (in pay status) was terminated effective 01 March 2004 due to transfer from the Selective Reserve to the Individual Ready Reserve (IRR) noting his enlistment would remain in effect until 12 October 2004. The notification stated he would no longer have an active drilling obligation, and that "non-participation" was the reason for action.

For this petition, you state your husband was diagnosed with a heart-related condition in August 2002, placed on the Heart Transplant list in September 2003, and received a heart transplant in October 2003. You request the Board grant your spouse medical retirement at a 100% rating.

You contend that your spouse's command excused him from drill but improperly did not refer him to a Physical Evaluation Board (PEB) for determination of fitness for continued service and then unjustly separated him in absentia at the end of his contract. You argue had he been properly referred to the PEB he would have been found unfit for duty and medically retired. In addition, you state your husband attempted to apply for surviving spouse benefits but was unable to complete the process before his death on 28 January 2023.

The Board carefully reviewed your petition and, based on your assertions, requested an AO from NPC (PERS-95). PERS-95 noted for Reserve service members to be eligible for a medical retirement, their injuries or medical conditions have to be determined to have been sustained or exacerbated while in an active duty status of more than 30 days via a Line of Duty (LOD) determination. If a Reserve Member is granted a LOD, then the member is referred to the PEB to ascertain if the medical condition prevents the member from continued service and warrants a disability discharge. PERS-95 further noted that Reserve members have 180 days after the period of active duty to report the injury or illness.

The Board noted your husband had one period of active duty over thirty days – from 28 December 1993 to 9 May 1994. Thus, your spouse would have had to request for a LOD by November 1994 and provide documentation to show how the conditions were incurred on active duty and aggravated while in an active duty status. In reviewing his record, the Board noted your spouse was found eligible to reenlist in 2001 and did not have symptoms until August 2003, nine years after his beyond 30-day period of active duty ended. Consequently, the Board found he was not eligible for a LOD determination.

The Board also requested an AO from a physician advisor. The physician advisor's AO stated in pertinent part:

Review of the available objective clinical and non-clinical evidence documented Petitioner successfully executed the responsibilities of his rate and rank during his period of active duty for training (12/28/1993-5/9/1994) and during his service in the Navy Select Reserves from May 1994-October 1999. There was no evidence of military personnel or medical records pertaining to his reserve duty performance from October 1999 up to (and beyond) his diagnosis of Congestive Heart Failure in August 2002 when he began treatment for Congestive Heart Failure.

There was no evidence of military administrative or personnel records referencing his medical condition or impact on his ability to perform his military requirements for continued service in the USNR.

There was no evidence in the available records of any actions by Petitioner to inform his command of his condition, request a Line of Duty Benefits status determination, or request referral to the PEB for a condition which the member alleged was incurred or aggravated while on active duty.

There was no objective evidence of his command being aware of his medical status,

initiating any evaluation to determine whether he remained physically qualified for continued USNR affiliation, initiating any determination of LODB status, or taking steps to refer Petitioner to the DES prior to transferring him to the IRR in April 2004 (citing non-participation as the reason for action) then separating him in absentia at the end of his obligated service contract in September 2004.

Review of the available evidence indicated Petitioner did incur a serious cardiac condition requiring a heart transplant while in the USN Selective Reserve. However, the available evidence did not establish a nexus between Petitioner's cardiac condition and Petitioner's service on a period of active military service extending beyond thirty days, a requirement for Petitioner to request referral to the PEB for a condition which was incurred or aggravated while on active duty.

There is no evidence of either Petitioner requesting referral to the PEB for a condition incurred during a period of active duty, nor of the command initiating a medical review process to determine the presence of a physically disqualifying/unfitting medical condition. Any question of the appropriateness of the administrative processes taken (or not) by Petitioner or his command are deferred to the Advisory Opinion requested of Navy Personnel Command.

Had Petitioner been deemed eligible for referral to the DES, it is likely his diagnosis of Congestive Heart Failure and subsequent heart transplant would have been found unfitting for continued military service an appropriate disability evaluation rendered.

After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of his service in the Navy Reserves, Petitioner developed a cardiac condition that impaired his ability to reasonably perform the duties of his rank and rating. However, the available evidence did not establish a nexus between his medical condition and Petitioner's service on a period of active military service extending beyond thirty days.

The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner's widow's request for referral to the PEB and assignment of disability rating of 100%."

After thorough review, the Board concluded that insufficient evidence of error or injustice exists to support relief in your case. In making this finding, the Board substantially concurred with both AOs and was unable to find a nexus between your husband's heart condition and a qualifying period of active-duty service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Notwithstanding the decision not to grant relief, the Board expressed its condolences for your loss.

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,

3/6/2025

