



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

██████████  
Docket No. 8767-24  
Ref: Signature Date

████████████████████  
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████████████████████

Dear ██████████,

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 6 March 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.

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 and the available documentation from your petition, the Board discerned that you were commissioned in the Navy and commenced active duty on 24 May 2002. On 13 January 2015, you completed your required service, and you thereafter affiliated with the Navy Reserve. You commenced a period of active duty on 26 May 2017, and you were honorably discharged from that period of active duty on 15 June 2018. On 25 June 2019, your command submitted a Line of Duty (LOD) request relating to healthcare benefits (LOD – Healthcare). On 16 October 2019, Navy Personnel Command (PERS-95) wrote to you informing you that it denied your request for LOD - Healthcare benefits. On 7 May 2020, you filed a request for LOD – Healthcare due to Left Shoulder Labral Tear and Left Infraspinatus Tendon Tear.

On 12 August 2020, PERS-95 wrote to you acknowledging that you incurred and/or aggravated a right labrum tear in shoulder and left meniscal tear in cartilage of left knee while on mobilization orders 26 May 2017 to 15 Jun 2018. PERS-95 further explained that you received

appropriate medical treatment and returned to a duty status effective 16 July 2018. According to PERS-95, based on this, it determined that you did not require an open LOD – Healthcare. PERS-95 further explained that if you sought reimbursement of medical expenses, they should be submitted to the Defense Health Agency by way of your command.

PERS-95 wrote to you again by letter dated 30 September 2020, informing you that, upon reconsideration, it determined that your condition was likely incurred while on orders from 26 May 2017 to 15 June 2018 and that LOD-Healthcare benefits were acknowledged for right labrum tear in shoulder and left meniscal tear in the cartilage of the left knee. PERS-95 reiterated that reimbursement of medical expenses should be initiated with the Defense Health Agency by way of your command. As relevant to your current petition, PERS-95 explained that if you were requesting compensation for lost wages, you should initiate an incapacitation pay request with your medical department representative.

Thereafter, you sought LOD-Incapacitation Pay for certain time periods that you allege you were incapacitated from working due to injuries incurred in the LOD. On 27 December 2022, PERS-95 responded to your LOD incapacitation pay request covering the period **1 September 2019 to 29 February 2020**. In its letter, PERS-95 listed each month, namely, September 2019 to and including February 2020, and for each month explained that your request for LOD-Incapacitation Pay was denied each month for essentially the same or similar reasons, specifically:

- (1) the medical documentation you provided did not support that you were disabled during the relevant time frame, and the letter provided the precise nature of information that it needed in order to approve your request;
- (2) the tax forms you submitted were unsigned/incomplete, and it provided the precise nature of information that it needed in order to approve your request;
- (3) you did not validate the income you received from the Department of Veterans Affairs (VA); and
- (4) it described acceptable documentation, and Section V of the pay request was not completed in its entirety.

On 8 February 2023, PERS-95 responded to your LOD-Incapacitation Pay requests for the period **1 March 2020 to 30 April 2020**. As it did in its letter discussed immediately above, PERS-95 listed each month and set forth its specific reasoning for denial, which essentially mirrored the reasoning discussed immediately above.

On 29 January 2024, Office of the Judge Advocate General, Administrative Law Division (Code 13), granted in part and denied in part your appeal for LOD-Incapacitation Pay relating to your left shoulder labral tear and infraspinatus tendon tear. Code 13 explained to you that PERS-95 denied your request for incapacitation pay on the basis that you failed to correct discrepancies identified in prior letters, namely, letters from PERS-95 to you dated 22 November 2022 and 27 December 2022. Code 13 also listed a letter from PERS-95 dated 8 February 2023, but it did not appear to cite the referenced letter within the body of its letter to you. That letter appeared to not

be in the materials submitted to this Board. After setting forth the above background, Code 13 explained, with emphasis added:

The record indicates that you underwent surgery on 18 May 2019 and were recommended 30 days of convalescent leave by your medical provider. In accordance with reference (c) [SECNAVINST 1770.5], the preponderance of the evidence demonstrates you were disabled and unable to perform military duties as the result of your LOD injury for that recommended period of convalescent leave between 18 May 2019 and 17 June 2019. **As such, you are entitled to incapacitation pay for the period of 18 May and 17 June 2019.** Your 2019 tax return, 2019 W2s, and NSIPs-generated “IDT Detail Review” provide a preponderance of evidence that you did not receive any civilian or military pay from 18 May 2019 through 17 June 2019. Accordingly, your appeal is granted in part, and you are entitled to all pay and allowances provided by law or regulation for a Service Member of the regular component of a uniformed service of corresponding grade and length of service for the period of 18 May 2019 through 17 June 2019.

Code 13 continued that PERS-95’s decision to “deny your incapacitation pay requests from 11 March 2019 through 17 May 2019 and 18 June 2019 through 30 April 2020 was substantially correct.” According to Code 13, with emphasis added:

The record fails to support by a preponderance of the evidence that you were unable to perform military duties or that you incurred a loss of earned income from non-military employment or self-employment as a result of your LOD injury for these periods. Accordingly, the portion of your appeal requesting incapacitation pay for the periods of **11 March 2019 through 17 May 2019 and 18 June 2019 through 30 April 2020 is denied.**

On 1 February 2024, PERS-95 wrote to you, explaining that, as directed in the Code 13 letter, your pay information will be sent to DFAS [Defense Finance and Accounting Service] to authorize incapacitation pay for the period of 18 May 2019 through 17 June 2019, in the amount due to you by your paygrade and time in service.

In your petition, you request to be awarded LOD-Incapacitation Pay for the period 18 May 2019 to 2 February 2021 due to the surgery and rehabilitation of a documented LOD injury to your left shoulder. In support of your request, you explained that there was delay by PERS-95 in processing the acknowledgment of your injury. You further assert that after your surgery, you were in a sling for six weeks, then you attended physical therapy five days per week for five months and continued medical care for a month in order to return to fit for duty status. You state that you were not able to work due to the complexity of the surgery and recovery, and due to the extreme physical nature of your jobs. In further support of your petition, you enclosed a written statement setting forth the background of your shoulder injury, as well as a variety of medical records and documents, including surgeons’ notes and the like.

In its review of your petition, including all of the materials that you provided, the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that it applies 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. Further, the Board observed that it will review petitions such as yours only after available remedies are exhausted. In the absence of a theoretical extenuation circumstance or rationale, requests for LOD-Incapacitation Pay must be submitted through all levels of review, including through the level of Code 13, before this Board will consider them for error or injustice. In its thorough review of your petition and all associated materials, including all of the materials that you provided in support, the Board observed that it appeared to have before it letters from PERS-95 denying your LOD-Incapacitation Pay requests for the period **1 September 2019 to 30 April 2020**. You seek in this petition, however, LOD-Incapacitation Pay for the period **18 May 2019 to 2 February 2021**, which is not entirely coextensive with the documents provided to this Board. Further, the Board observed that in the documentation that this Board reviewed, it appeared that PERS-95, in its letters to you denying you LOD-Incapacitation Pay, set forth the precise information that your requests needed to include (e.g., medical documentation, tax forms, validated income from VA, Section V completed in its entirety). In addition, the Board found the 29 January 2024 letter from Code 13, which granted and denied your requests for certain time period, to be rational and supported by substantial evidence. By contrast, in its careful review of the materials that you did provide in support of your request, the Board found that the information provided did not appear to contain sufficient relevant information to support your claim for LOD-Incapacitation Pay over the time period that you requested, nor did such information tend to demonstrate that Code 13's decision was in error or would render an injustice. Accordingly, the Board denied your petition in its entirety.

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, \_\_\_\_\_

3/20/2025

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