



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

██████████  
Docket No. 9586-24  
Ref: Signature Date

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

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was 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 request on 27 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.

A review of your record shows that you enlisted in the Navy and commenced active duty on 30 May 1989. On 14 February 1995, you were reviewed by a Medical Evaluation Board (MEB). The MEB diagnosed you with Chronic Left Knee Pain and Patellofemoral syndrome. The MEB opined that your "medical condition interferes with the reasonable performance of assigned duties. On that basis, this case is referred to the Physical Evaluation Board [PEB] for fitness for duty determination." On 27 March 1995, the PEB found you to be unfit for chronic left knee pain and patellafemoral syndrome at 10%. On 29 March 1995, you executed your post-PEB election of options (EOO) reflecting that you conditionally accepted the findings of the PEB. Your stated condition was that you would accept the findings of the PEB if you remained on active duty until 15 June 1995. You stated that if your condition was not accepted, you would demand a formal hearing. Per the PEB findings, and in accordance with your conditional acceptance, you were discharged with severance on 15 June 1995.

In your application, you request to be medically retired or, in the alternative, be referred to the disability evaluation system (DES) for evaluation of all conditions. In support of your request, you contend that at the time you were processed through the DES you were actually suffering from numerous unfitting medical conditions which drastically interfered with your ability to successfully perform the duties of your office, rank, grade, or rating. You further state that your service treatment records indicate that you complained of lower back pain and radicular symptoms prior to your separation from service and that these symptoms interfered with your ability to perform the physical duties of his job, both singularly and when combined with your left knee pain. You also argue that the records from your disability processing do not discuss these conditions or the impact that they had on your duty performance and, thus, your back pain was never considered during your disability processing. In addition, you argue that you complained of suicidal ideation in June 1994, long before a MEB had been initiated and which you contend was most likely the result of severe depression that you were experiencing at the time, and that documentation associated with your MEB was silent as to whether this condition/symptom was ever considered by the medical providers prior to your separation from service. Finally, you also state that you requested a formal PEB review in your EOO. You have provided medical records as well as post-service findings by the Department of Veterans' Affairs (VA) in support of your request.

The Board carefully reviewed your contentions and the material that you submitted in support of your request for reconsideration, and the Board determined that it found no error or injustice in your naval records. 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. In your case, the available documentation reveals that there were no apparent defects in your processing within the DES. You argue that the records from your disability processing do not discuss your lower back pain or other conditions, or the impact that they had on your duty performance. The Board was not persuaded by this argument, which is based on evaluating documentation that was reviewed approximately thirty years ago. The Board presumes that the MEB and the PEB that reviewed you while you were in service had available all applicable medical documents before it while you were being evaluated, and you were availed of all procedural protections during your processing within the DES. In fact, contrary to your assertion that you elected to appeal your PEB findings, the contemporaneous documentation reveals that you conditionally accepted the findings of the PEB based on your request to stay in service through 15 June 1995. Your request was respected as indicated by your actual discharge date, which was 15 June 1995. Presumably, if at the time you believe that you had several conditions that were not addressed by the PEB, you would have raised the issue while you were actually before the appropriate forum for addressing such conditions. Finally, the Board was not persuaded by your reliance on post-service findings by the VA relating to a variety of conditions, because the Board observed that the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. Accordingly, the Board observed that you provided insufficient evidence to overcome the presumption of regularity, and it denied your request.

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,

4/10/2025

