



[REDACTED]  
 [REDACTED]  
 [REDACTED]

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 review of your record revealed that, after serving in the Navy Reserve, you commenced a period of active duty on 8 February 2019. While you were on active duty, you were referred to the Disability Evaluation System (DES) on 8 July 2022. On 12 December 2022, in connection with being placed into the DES, you were reviewed by a Medical Evaluation Board (MEB), which prepared a MEB package. According to the 12 December 2022 command's Non-Medical Assessment (NMA) in your MEB Package, the:

On 1 May 2023, the Department of Veterans Affairs (VA) in its role within the DES, prepared a

DES Proposed Rating, which assigned a 20% rating for your generalized idiopathic epilepsy and epileptic syndromes (referred as generalized idiopathic epilepsy and epileptic syndromes, not intractable, without status epilepticus). With respect to your shoulder condition, known as Hill-Sachs lesion right shoulder (claimed as right shoulder condition), the VA proposed a 0 percent evaluation. Concerning the shoulder issue, the VA explained, “your Shoulder Conditions examination indicated you reported dislocating your shoulder twice and have been treating the shoulder with conservative measures and have had no issues since.”

You were thereafter reviewed by an Informal Physical Evaluation Board (IPEB); which prepared its decision on 10 May 2023. The IPEB found you to be unfit with a 20% rating for Generalized Idiopathic Epilepsy and Epileptic Syndromes, Not Intractable, Without Status. On 14 June 2023, you prepared your Election of Options (EOO) form, in which you indicated that you did not accept the findings of the IPEB and demanded a formal hearing. On 14 August 2023, the President, PEB, informed you that your Formal PEB (FPEB) would be held 12 September 2023. On 12 September 2023, your assigned legal counsel submitted your Formal PEB petition, in which you stated that you sought to be placed on the permanent disability retired list (PDRL) due to your epilepsy condition as well as for your Hills-Sachs Lesion Right Shoulder Condition.

On 2 October 2023, the FPEB published its Formal Rationale, in which it explained that you were unfit due to your epilepsy condition at 20% disability. The FPEB also addressed your Hill-Sachs Lesion Right Shoulder Condition, and explained that it found that it was not unfitting, explaining as follows, edited for formatting:

[Petitioner testified] he had his shoulder relocated in the emergency room on 16 December 2019 and on 19 May 2022 and otherwise has had no treatment for his shoulder. He stated that he has had other occasions of his shoulder dislocating since 16 December 2019 that he has relocated on his own without medical treatment. The member stated that after the first shoulder dislocation on 16 December 2019, he continued to serve without shoulder limitations on his ship until the end of the operation. He reported in his personal statement dated 3 March 2023, ‘I have a strong desire to stay in the Navy, I am in a community that I excel in and wish to continue my service in this capacity and even enter commissioned ranks within my community. I have worked hard on improving my health, and even while on orders I walked over 100 miles around NAS Jacksonville during the summer following my second seizure as outlined in the timeline. In addition, I have had my best PRT scores in years.’

The FPEB Formal Rationale continued, with respect to your Hills-Sachs Lesion Right Shoulder Condition:

The member testified that he is not currently waived from the Physical Readiness Test (PRT). The Department of Veterans Affairs (VA) Compensation & Pension (C&P) examination dated 1 February 2023 found that this condition did not impact the member’s ability to perform any type of occupational task (such as standing, walking, lifting, sitting, etc.). [Petitioner] testified that this condition impairs his ability to perform his military duties such as hoisting, pulling, or lifting. He stated

that he does not believe he would currently pass the PRT because of his shoulder. The Board considered all of the evidence including the Narrative Summary, NMA, VA C&P exam, new evidence, and testimony and concluded that this condition is not unfitting. Per SECNAV M-1850.1, the mere presence of a diagnosis is not synonymous with disability. It must be established that the medical disease or condition underlying the diagnosis individually or collectively prevents the Service member from reasonably performing the duties of their office, grade, rank, or rating.

[Petitioner] incurred a Hill Sachs lesion of the right shoulder as a result of his shoulder dislocation, but the evidence does not support that this lesion or any shoulder condition has resulted in occupational impairment.

Thereafter, the FPEB issued its findings on 3 October 2023, stating that you were unfit due to epilepsy. On 26 October 2023, you executed another EOO to the findings of the FPEB; in which you indicated that you did not accept the FPEB findings and requested a written appeal. On 30 October 2023, your legal counsel submitted a legal brief in support of your appeal of the findings of the FPEB. In the legal brief, you provided what you contended were recent medical records “indicating that Petitioner has experienced multiple dislocations since the time of his FPEB, has started a course of physical therapy to work on improving his shoulder function, and has been waived from the push up and plank portions of the PRT.” Further, according to the legal brief, you were “restricted from not only the push-ups and planks, but is also limited in which cardio events he can participate in.” You also provided a “light duty chit indicating Petitioner is restricted from lifting or carrying heavy equipment, consistent with his testimony at the hearing.” Thus, according to your legal brief, your shoulder condition represented an occupational impairment.

On 27 November 2023, the Director, Department of the Navy Council of Review Boards (CORB), denied your appeal of the FPEB decision. In explaining his decision, Director, CORB, explained that the MEB was aware of your right shoulder condition but did not refer the condition to the PEB, nor did the MEB assign you any restrictions with respect to your shoulder. Director, CORB, explained further that, at the FPEB Appeal hearing, you explained that there have been no changes to your right shoulder and that, prior to the FPEB, you avoided seeking treatment for your right shoulder because you wanted to be found fit. You further explained, prior to being found unfit for epilepsy, you intended to fight through any right shoulder limitations because you did not believe your right shoulder condition was service limiting and that you would adapt, overcome, and push through any right shoulder pain in order to stay in the Navy. Director, CORB, ultimately determined that your epilepsy independently (or separately) prevented you from performing duties associated with your office, grade, rank, and rate. By contrast, according to Director, CORB, your shoulder condition did not have that same limitation. Director, CORB, further explained that the VA found no occupational impact as a result of your right shoulder, and you successfully completed the last PRT. In conclusion, Director, CORB did not find your right shoulder condition to be independently service limiting or interfered with your performance of duties, constitutes a medical risk, or imposes unreasonable requirements on the military to maintain or protect your health.

In light of the foregoing decision on your appeal, the FPEB issued another finding document, reflecting you were found unfit at 20% for your epilepsy condition and that your right shoulder condition was not separately unfitting and did not contribute to the unfitting condition.

On 21 December 2023, you executed another EOO, this time requesting that the VA reconsider its findings. Along with your EOO, your legal counsel submitted a legal brief in support of your request based on new medical evidence; which you asserted supported that your epilepsy condition should have been rated at 40%. On 24 January 2024, the VA Decision Review Officer reported its decision that no change was warranted in the proposed rating for your epilepsy condition. On 13 February 2024, President, PEB, issued its Notification of Decision to the Chief of Naval Personnel and recommended that you be separated. You were so discharged on 31 August 2024.

In your petition, you seek review of the finding of the PEB in your case and request to have your shoulder injury be recognized as separately unfitting. In support of your request, you assert that your request is based on new information that was not available to the PEB. You provided an affidavit from your legal counsel before the PEB. You also provided medical records from the time of your final PEB decision appeal through July 2024; which is when you assert you required surgery on your right shoulder. You assert that these records make clear that your shoulder condition was much more severe than contemplated by the FPEB and the Director, CORB. You further argue that you had been placed on short-term limitations, due to your already-evident recurrent shoulder dislocations, but you had only been able to be treated by your primary care provider and physical therapy at that point. You explained that the decision denying your relief was based upon the fact that your condition had not been considered unfitting prior to the time between your FPEB and your Appeal Hearing; though you explained that you had avoided seeking treatment for your shoulder or revealing the problems he was experiencing because you had been hoping to be found fit at the FPEB. You provided documents, including medical records, in support of your request with to your application.

In its review of your petition, the Board considered the entirety of the arguments and documentation that you provided, and it did not agree 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. Thus, as it considered your request for relief, the Board observed that, while you were in the DES, you were evaluated thoroughly. You were assigned a legal counsel and it appears you were able to seek relief at every opportunity that was made available to you. Namely, your case was reviewed fulsomely by the VA, in its role within the DES and by the IPEB; during which you sought relief at every available opportunity. The available records demonstrate that your appeals were each thoroughly considered and properly adjudicated based on an extensive review of your medical evidence. In its review of the materials, you provided in support of your petition, the Board observed that a diagnosis of a medical condition, such as your shoulder condition, does not necessarily result in a finding of unfitness. The Board further observed that the documents you provided were insufficient to overcome the well-reasoned and well-supported prior findings in your case. Further, the Board was unable to find an error or injustice in your naval record.



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,

5/14/2025

