



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

██████████
Docket No. 11427-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 3 April 2025, has carefully examined your current request. 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 shows that, after more than six years of prior service, you reenlisted in the Marine Corps on 15 May 2006. During this period of service, you were placed into the Disability Evaluation System (DES) and reviewed for fitness by the Physical Evaluation Board (PEB). On 10 December 2008, the PEB found you to be unfit, assigned your unfitting condition a 30% rating, and determined that you should be placed on the temporary disability retired list (TDRL). You were transferred to the TDRL on 15 May 2009. While you were on the TDRL, you were reviewed again by the PEB. In connection with this review, the Formal PEB (FPEB) issued a formal rationale dated 13 April 2011. In its formal rationale, the FPEB explained that you provided new medical evidence in support of your position; which indicates that you were authorized at that time to present new evidence for consideration by the FPEB. The FPEB also noted that you provided information that had already been considered by the PEB. The FPEB concluded that your condition had improved to a 20% disability rating.

On 6 June 2011, you filed a Petition for Review (PFR) of the findings of the FPEB. In your PFR, you requested an additional disability rating of 10% due to a left elbow lateral epicondylitis condition; which would have increased your overall rating to 30%. On 13 June 2011, the Director, Secretary of the Navy Council of Review Boards (CORB) denied your PFR; explaining that it found the decision of the FPEB to be supported by a preponderance of the evidence. The CORB explained that, while the evidence reflected an overuse injury to your left elbow, the evidence did not show this condition to be separately unfitting. Rather, the CORB observed that medical records demonstrated that, among other things, you had full range of motion of your left elbow.

On 28 June 2011, Commandant of the Marine Corps (CMC) wrote to you explaining that, as described above, the PEB found that the condition for which you were placed on the TDRL was considered permanent and was rated at 20%; which would result in you being discharged with severance pay effective 31 July 2011. On 31 July 2011, you were discharged from the TDRL with severance pay.

On 13 April 2013, CMC wrote to you again, explaining that a review of your records demonstrated that your disability was incurred in a combat zone and your separation orders should have reflected that combat related status and your separation orders were thus modified.

In 2013, you filed a petition with this Board wherein you argued that a non-physician improperly provided input/made decisions concerning your PEB. In connection with that petition, this Board obtained an advisory opinion (AO) from the CORB; which is the organization within the Department of the Navy that administers the PEB. The AO from the CORB went through your history before the PEB and opined that the preponderance of evidence demonstrated that the provider at issue was sufficiently privileged to qualify for access to your medical records. This Board then transmitted the CORB AO to your representative. Ultimately, this Board denied your initial application after determining that the evidence did not support the relief you sought.

In your current application, you request to be “returned to medical retirement at 50%” and placed on the PDRL. In support of your request, you assert that you were placed on the TDRL at 30% and later discharged from the TDRL at 20%. You state that you did not receive a Certificate of Release or Discharge from Active Duty (DD Form 214) when you were removed from the TDRL. You also assert that you had an additional surgery on your right shoulder, which was not permitted to be added as evidence to the PEB, that this error has aggravated your post-traumatic stress disorder (PTSD) condition, and that some of the MEB’s decisions were improperly made by a non-doctor.

The Board carefully reviewed your contentions and the material that you submitted in support of your request for reconsideration, and 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 did not include information relating to a surgery on your right shoulder and that this error has aggravated your PTSD. The Board was not persuaded by this argument, which is based on evaluating documentation that was

reviewed more than 12 or so years ago. The Board presumes that the MEB and the PEB that reviewed you while you were in service or when you were on the TDRL 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. Here, the Board determined you have provided insufficient evidence to support your position that you were foreclosed from providing additional information to the FPEB. In fact, as noted above, you in fact provided new material to the FPEB, which fully considered the information, and you also raised a new medical issue before the FPEB, which was fully considered and adjudicated. You were then afforded the ability to file a PFR, which you did, and which was fully considered by the CORB. Presumably, if at the time you believe that you had several conditions that were not addressed by the FPEB, you would have raised the issue while you were actually before the appropriate forum for addressing such conditions. Accordingly, the Board determined you provided insufficient evidence to overcome the presumption of regularity.

Additionally, the Board found insufficient support for your assertion that your PTSD has worsened as a result of the findings of the FPEB in a manner that would increase your disability rating at your time of discharge from the TDRL or at the time you were in the DES. With respect to your reliance on post-service documentation from the Department of Veterans Affairs (VA), the Board did not find these to be persuasive, 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.

Finally, with respect to your assertion that you did not receive a DD Form 214 upon your discharge from the TDRL, the Board noted that when service members are discharged from the TDRL, they are not “released or discharged from active duty.” Accordingly, the Board determined your discharge from the TDRL does not merit a new DD Form 214. In conclusion, based on all of the foregoing, 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,

4/16/2025

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Executive Director

Signed by: ■