



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

██████████  
Docket No. 361-25  
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.

A review of your record revealed that you were commissioned in the Navy and commenced active duty on 20 August 1990. On 3 January 1995, you were reviewed by a medical evaluation board (MEB), which issued a MEB report reporting its diagnostic findings as: (1) Chronic Low Back Pain; (2) Raynaud's Disease; (3) Positive Rheumatoid Factor; (4) Post-Traumatic Encephalopathy; and (5) Allergic Rhinitis/Reactive Airway Disease. Your case was forwarded to the Physical Evaluation Board (PEB). On 19 July 1995, the PEB found you to be unfit due to Chronic Low Back Pain, Post-Traumatic Encephalopathy, and Amnesiac Disorder due to head injury. The PEB assigned you a disability rating of 40% and determined that you should be placed on the temporary disability retired list (TDRL). You accepted the findings of the PEB on 25 July 1995.

While you were on the TDRL, you filed a petition with this Board in which you sought to have additional conditions added to your PEB finding. To assist it in reviewing your petition, the Board obtained an advisory opinion (AO) from the PEB. The PEB provided its AO by letter dated 2 January 1996, which was considered unfavorable to your requested relief. According to the PEB AO, the materials that you provided were reviewed by a medical staff member of the

PEB and it was determined that the ganglion cyst, breast and foot addendums that you provided were non-ratable diagnoses. The PEB AO further explained that it determined that these diagnoses would not change the original disability rating assigned by the PEB and should not be included as a part of the original PEB findings of 19 July 1995. This Board considered your petition and, by letter dated 12 February 1996, informed you that it denied your relief; explaining that it found the evidence that you submitted was insufficient to establish the existence of probable material error or injustice. The Board further explained that, in reaching its decision, it substantially concurred with the comments contained in the AO.

You remained on the TDRL for approximately five years. The PEB determined that the conditions for which you were placed on the TDRL had improved to a degree that you should be discharged from the TDRL. Thus, on 12 October 2000, you were discharged from the TDRL and paid severance.

In your current petition, you request to receive a medical retirement back-dated to the time that the PEB made its original determination of your fitness for duty. In this connection, you request retirement benefits from 1995 to the present. In support of your request, you state that you had a condition that you suffered with since your active duty service, which was noted by the MEB, but was not noted in the PEB. You asserted that a Navy doctor told you, in August 1995, that a sleep disturbance is a common component of “post-traumatic syndrome” and that your nighttime sleep is disturbed, and you had migraines. You explained that the doctor also mentioned that you had post-traumatic headaches and “difficulties with attention, concentration and memory clearly interfere with the full performance of her duties.” You also stated that, in September 1994, another Navy doctor reported finding a “pattern of neuropsychological deficits suggestive of residual post traumatic cerebral dysfunction” and that “[t]here was also a finding suggesting a probable decline in her general intellectual function.” In addition, you argued that none of your doctors that followed you during your time on the TDRL stated that you made an improvement to either return to active duty or be removed from the retired list, that in January 1998 it was reported that your condition was static, and that you declined over the years as evidenced by your diagnosis of post-traumatic stress disorder (PTSD) by the Department of Veterans Affairs (VA) in 2023. The Board also observed that in your petition you checked the block for “sexual assault” but it did not observe any evidence or argument evidencing same.

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. The available documentation demonstrated that you were reviewed by a MEB and through the PEB. The Board determined that the evidence and argument that you provided was insufficient to demonstrate that there was an error in the findings of the PEB in 1995 or in its decision that you be discharged from the TDRL in 2000. Similarly, the Board was unable to find sufficient evidence that there was an injustice in your processing through DES. In weighing your current evidence and argument, the Board considered that there is no evidence that you were hindered in your ability to provided evidence and argument to the MEB or the PEB while you

were in service. At the outset, the Board observed that you accepted the findings of the PEB. Next, the Board observed that while you were still on the TDRL in 1995 you took advantage of your ability to seek to have additional matters added to your PEB findings by way of addressing this Board. This demonstrates that, had there been an error or injustice apparent at the time, you were not restrained in seeking appropriate relief. In evaluating your current evidence and arguments, the Board placed greater weight on evidence that was reviewed contemporaneous to your service as opposed to nearly three decades after your transfer to the TDRL and twenty-five years after you were discharged from the PDRL.

With respect to your reliance on findings by the VA in 2023, 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. In sum, in its review and consideration of all the evidence, the Board did not observe any error or injustice in your naval records. 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,

4/16/2025

