



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

██████████
Docket No. 1195-25
Ref: Signature Date

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Dear Petitioner:

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

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, considered your request on 30 July 2025. The names and votes of the panel members 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, your prior application together with all material submitted in support thereof, the material this Board considered in its prior decision, the 16 May 2025 advisory opinion (AO) from PERS 95 of Navy Personnel Command, your response to the AO, and relevant portions of your naval record, and applicable statutes, regulations, and policies.

You previously applied to this Board for LOD incapacitation pay and were denied on 15 August 2024. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

You enlisted in the Navy Reserve on 31 January 1996. Over the course of your Navy Reserve service, you served periods of active duty from time to time. On 21 June 2018, you submitted a Line of Duty (LOD) request in regard to an injury that you assert you incurred while performing a physical readiness test during your last period of active duty mobilization at Guantanamo Bay, Cuba. On 26 November 2018, Commander, Navy Personnel Command (PERS 9) denied your LOD request, explaining that your condition was considered a "chronic degenerative problem that was present prior to mobilization." It further explained that you had a "neurologic issue that was present and undisclosed prior to the mobilization" and that you "were aware of the issue and were working with the VA [Department of Veterans Affairs] to get an evaluation." According to PERS 9, the issue was "due to chronic degenerative disease of the neck" and that, while the

symptoms appeared to have “increased during the mobilization,” that was “consistent with the normal progression of the disease.”

Thereafter, you submitted an appeal to the denial of your LOD request, which was transmitted via your commanding officer. On 9 May 2019, Navy Personnel Command, in its capacity as the Benefits Issuing Authority, forwarded your appeal to the Department of the Navy Office of the Judge Advocate General (Code 13), recommending denial of your appeal, stating that “it has been determined that the member is not entitled to Line of Duty Healthcare benefits.” On 19 July 2019, Code 13 denied your request for LOD benefits. Separately, on 18 May 2023, you were notified by Navy Personnel Command that you were authorized to receive retired pay effective 3 May 2023.

You filed your original petition to this Board in 2024. In that petition, you requested LOD Incapacitation Pay for the period 15 December 2017 to 23 July 2018. In support of your request, you argued that you were unable to go back to your civilian job due to an injury you incurred while mobilized to ██████████. Specifically, you asserted that you incurred a neck injury while performing the physical readiness test at ██████████, and you subsequently received medical evaluation and treatment for the condition. In order to assist it in reviewing your petition, the Board obtained a 5 April 2024 AO; which was considered unfavorable to your request. According to the AO, it was likely you had an increase in pain secondary to your cervical degenerative disc disease as the result of activities occurring while performing physical training during the claimed period of service. Further, the AO explained that the cervical spondylosis with radiculopathy was clearly related to degenerative disease of the cervical spine. However, according to the AO, the degenerative disc disease would not have developed in the four-month period after you commenced your set of mobilization orders. Thus, according to the AO, your cervical spondylosis with radiculopathy was not incurred or aggravated as a result of qualified naval service beyond the natural progression of the condition. You were provided a copy of this AO and you chose not to provide a response in rebuttal.

In your request for reconsideration, you again request LOD Incapacitation Pay for the same period due to your inability to return to work after your mobilization. You provided a personal statement in which you argued that you did not have neck issues prior to your mobilization in early 2017. You asserted that you acutely injured your neck and had X-Rays and MRI imagery, which showed you had an injury, and that your neck injury was so debilitating that you were not able to return to your civilian job from 15 December 2017 until 23 July 2018. You also made specific arguments in rebuttal to the aforementioned AO, in which you stated that although PERS 95 stated your cervical spondylosis was degenerative disc disease that could not have developed during your mobilization to ██████████, you never had neck pain that limited you in your military or civilian duties until you injured your neck during physical training at ██████████. Additionally, you argued, that even though you had VA disability ratings before your mobilization, none of those were related to the neck, and that, if you had cervical degenerative disc disease prior to the mobilization as PERS 95 asserts, it was not an issue until aggravated while performing physical training while on mobilization orders.

The Board carefully reviewed your petition and the material that you provided in support of your request for reconsideration and it disagreed with your rationale for relief. In reaching its

decision, the Board continued to find the analysis and findings set forth in the AO to be persuasive, rational, and based on substantial facts. Notably, among other things, the AO explained that according to VA notes of August 2016, which is prior to your mobilization, you complained of upper extremity neuropathy (radiculopathy). Further, an October 2016 VA note indicated that you had neck pain and neuropathy (numbness) in both arms. These statements by the AO are contrary to your assertion in your current request that you did not have any neck issues prior to your mobilization to ■■■■■■■■■■. The AO ultimately found that your condition was pre-existing based on the medical evidence. In counterbalance, the Board found that the new arguments and material you provided contained insufficient evidence to overcome the rationale of the AO and this Board's prior decision. In its careful review of the entirety of available evidence, the Board concurred with the conclusion of the AO, and determined that it was unable to find an error or injustice in the denial of LOD benefits and, ultimately, Incapacitation Pay. 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,

8/14/2025

