



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



Docket No. 1887-25
Ref: Signature Date



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.

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 application on 8 May 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 revealed that you enlisted in the Navy and commenced active duty on 22 January 2003. While you were in service you were placed into the Disability Evaluation System (DES). As such, on 13 July 2006, you were reviewed by an Informal Physical Evaluation Board (IPEB), which found you to be unfit due to Post-Traumatic Stress Disorder with a 10% rating and for Lumbago with a 10% rating. The IPEB also described that it found the following conditions to be not unfitting and not contributing to the unfitting conditions: Cardiac Murmur, Spinal Cord Anomaly, Cervicalgia, and Migraine Headaches. On 21 July 2006, you executed your post-IPEB election of options (EOO) form, in which you indicated that you accepted the findings of the IPEB. Your EOO reflects that, in reviewing and executing the form, you received the assistance of a Physical Evaluation Board Liaison Officer (PEBLO). On 25 July 2006, the President, PEB, wrote to Commander, Navy Personnel Command, reporting that you were found to be unfit at 20% rating and that you should be separated with severance. Accordingly, you were separated with severance on 20 August 2006.

On 21 August 2017, the Physical Disability Board of Review (PDBR) wrote to you explaining that it had reviewed your case and that it granted you relief. In particular, the PDBR informed

you that, on 6 August 2017, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) “took action on your case by accepting the recommendation of the PDBR” and that your records would be corrected to reflect that you were retroactively placed on the Temporary Disability Retired List (TDRL) “in accordance with 38 CFR 4.129 for the six months beginning the date of your discharge with a 60 percent combined disability rating (PTSD (50%) and Lumbago (10%))” and that at “the conclusion of the six month TDRL period you will be assigned a permanent disability rating of 20% (PTSD (10%) and Lumbago (10%)) with entitlement to disability severance pay. The letter from the PDBR explained that the Assistant Secretary’s determination represented final action by the Department of the Navy and that conditions outside of the PDBR’s “defined scope of review and any contention not requested in this application may remain eligible for future consideration by the Board for Correction of Military Records.”

In your petition, you request that this Board provide to you “the appropriate rate” for your medical disability retirement. In support of your request, you assert that while you were in the Navy you were diagnosed with Ehlers-Danlos Syndrome, Migraine Headaches, Anxiety, Depression, PTSD, Fibromyalgia, Multi-Level Degeneration in Spine and Neck, Cervical Kyphosis and Tinnitus. You further explained that the Navy found you to be to be unfit for duty and 20% disabled due to tinnitus in both ears. You also asserted that you had a benign lump removed from your left breast leaving a scar of about 2 ½ inches in length and that your left knee had four prior surgeries. You provided a written statement in support of your petition, which included a listing of your current medical conditions and your prognoses, medical records from the Department of Veterans Affairs (VA) reflecting your post-service evaluations and treatments, and decision documents from the VA concerning your post-service VA disability ratings.

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 available documentation reflects that while you were in the DES, you were appropriately evaluated by the IPEB and found to have an unfitting condition. In your petition, you described that unfitting condition to be tinnitus but the IPEB documentation reflects that the unfitting condition found by the IPEB was PTSD. The IPEB also specifically addressed several other of your conditions, namely, Cardiac Murmur, Spinal Cord Anomaly, Cervicalgia, and Migraine Headaches, and found them all not to be separately unfitting or contributing to your unfitting condition. The Board further observed that you accepted the findings of the IPEB and you did so with the assistance of a PEBLO; which tends to demonstrate that you had awareness and understanding of your EOO prior to indicating your acceptance of the finding of the IPEB. Next, as noted above, the record demonstrated that, some years after your separation from service, you were further reviewed by the PDBR, which at the time constituted the highest level of review within the Department of the Navy for such matters. The PDBR reviewed the findings of your IPEB and found an error in the assignment by the IPEB of the disability percentage for your unfitting PTSD condition. The PDBR’s recommendation was approved by the Assistant Secretary of the Navy and it was implemented in 2017. As noted in the finding of the PDBR, its finding represented final action by the Department of the Navy

and your claims to this Board are constrained to claims outside of those brought before the PDBR. In light of these facts, and after full consideration of the documentation that you provided, the Board was unable to find in your petition, or in any of the supporting documentation you provided, any facts tending to demonstrate that there was any further error in the findings of the IPEB outside of the finding of the PDBR. The Board also determined there was insufficient evidence demonstrating that there was an injustice in your processing within the DES and the determinations by the IPEB. With respect to your reliance on post-service ratings by the VA to support your request, the Board did not find this to be persuasive because the fact that the VA may have rated you for disability conditions that it determined were service connected to your time in the service did not persuade the Board these conditions were unfitting at the time of your discharge from the Navy because 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. Thus, in light of the foregoing, the Board observed that you provided insufficient evidence to rebut the presumption of regularity. 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,

5/22/2025

