



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

██████  
Docket No. 1970-25  
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.

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 revealed that you enlisted in the Marine Corps and commenced active duty on 24 January 2000. While you were in service, you were placed into the Disability Evaluation System (DES) for review of a potentially unfitting condition. On 18 October 2011, in its role within the Integrated Disability Evaluation System (IDES), the Department of Veterans Affairs (VA) issued its proposed ratings. It proposed a 10% rating for your knee condition, which was referred to the Physical Evaluation Board (PEB). The VA also set forth findings for several claimed conditions that were not referred to the PEB. On 28 October 2011, your knee condition was evaluated by an Informal PEB (IPEB), which found you to be unfit due to your knee condition. The IPEB applied the 10% rating established by the VA as it was required to do. On 18 November 2011, you executed your election of options (EOO) form, reflecting you accepted the findings of the IPEB. On 21 November 2011, President, PEB, informed Commander, Navy Personnel Command that you had been found unfit at 10% and that you should be discharged with severance. On 28 February 2012, you were discharged with severance. You filed a prior application with this Board in 2020, in which you argued that the

PEB had failed to evaluate that he had an opioid condition while you were on active duty. This Board informed you by letter dated 9 Jun e2020 that your request was denied, explaining that, even assuming you had an opioid addiction that rendered you unfit, it would have been considered misconduct and not qualified as an unfitting condition.

In your current petition, you request to have your record corrected to reflect that you received a disability retirement. In support of your request, you assert that the VA updated your “controlling injury diagnosis” to include fibromyalgia nerve pain right knee. You further assert that the “neurological nature of the injury triggers a new rating calculation” and that, according to the VA’s combined rating system, your disability rating at the time of military separation would be 80%, a rating sufficient to meet and exceed the retirement threshold of 30% necessary for disability retirement.

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 VA in its role within the IDDES as well as an IPEB. Following the findings of the IPEB, you accepted the decision by indicating as such on your EOO. The Board was unable to find, and you did not provide evidence that there was a defect or other error at the time you were in the IDDES. Similarly, the Board was unable to find any injustice in the findings of the IPEB in your case. 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 and it denied your request for 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,

5/15/2025

