



Docket No. 3770-25
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.

A three-member panel of the Board, sitting in executive session, considered your petition on 1 May 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, relevant portions of your naval record, and applicable statutes, regulations, and policies.

A review of your record reveals that you enlisted in the Navy Reserve and commenced your affiliation on 31 January 2003. On 19 June 2023, the Department of the Navy Bureau of Medicine and Surgery (BUMED) informed Commander, Navy Personnel Command, that you were Not Physically Qualified for retention the Navy Reserve. On 21 November 2023, you submitted a request for Line of Duty for Disability Evaluation System (LOD for DES). In your request, you stated that on 19 May 2022, during your “participation in a Command Sponsored Weapons Qualification Training,” you “experienced a significant back injury when I stepped out of my vehicle onto uneven ground. Since that date, I have been grappling with persistent and debilitating back pain, which has had a profound and ongoing impact on my daily life.”

On 2 July 2024, PERS 95, as the Benefits Issuing Authority (BIA) denied your LOD for DES request. According to its denial letter:

- a. The injury mechanism asserted, stepping out of a vehicle onto uneven ground, is inconsistent with the claimed conditions. This event may have caused back pain due to a muscle strain, as supported in the provided after-visit summary note of 19 May 2022. This note reflects a muscle strain diagnosis; however, lacks a history of present illness, past medical history, and provider assessment.

- b. Multiple radiology reports beginning in August of 2022 support your claimed condition, but are insufficient to determine the date of onset of condition.
- c. You did not submit any provider notes or other documentation supporting your claim that these conditions occurred or were aggravated during a qualifying service period.

On 22 July 2024, you appealed the PERS 95 decision to the Office of the Judge Advocate General, Administrative Law Division (Code 13). In your appeal, you argued that radiology reports from August 2022 support the onset of your condition. You further argued that, while the reports do not pinpoint the exact date of onset, they are consistent with the type of injury sustained from the incident described, and that, when considered with other records, demonstrate that your injury was not pre-existing but rather resulted from the incident in question. The Commanding Officer, Navy Reserve Center ██████████ transmitted your request and, in his endorsement, recommended disapproval of your request.

Code 13 denied your appeal and informed you by its letter of 10 January 2025; which explained that “in order for a condition to be determined to be in the LOD as a prior-service impairment that is eligible for duty-related DES entry, the condition must have been “incurred or aggravated during one period of active service or authorized training in any military service that recurs, is aggravated, or otherwise causes the member to be unfit during another period of service.” Code 13 further explained that:

3. The record does not establish by a preponderance of the evidence that you incurred right lateral and foraminal broad-based disc herniation, L3-4, with mild bilateral facet arthropathy during any period of active-duty service or that this condition was aggravated as a direct result of active-duty service. Therefore, your appeal is denied and these conditions are not eligible for duty-related LOD-DES referral.

In your petition, you appeal the Code 13 decision and seek to be granted LOD for DES for a back condition which you aver was incurred or aggravated during a period IDTT. In support of your request, you contend that the same injury that led to your finding of non-retention in the Navy Reserve was deemed not LOD, which barred you from the DES and resulted in a “procedural contradiction.” You further argued that your “injury occurred during authorized military training under official orders, meeting the criteria for LOD and DES referral under applicable policy.”

The Board carefully reviewed your petition and all of the associated materials and disagreed with your rationale for relief. First, with respect to your argument that there is a procedural contradiction in the fact that you were found not physically qualified to remain in the Navy Reserve due to a condition that was deemed not in the LOD, the Board did not find this to be a contradiction. On this point, the Board observed that Navy Reserve members are regularly found not physically qualified to remain in the Navy Reserve due to a wide variety of conditions. Some of those conditions may or may not have been “incurred” during a duty status; which is

why the LOD program exists. Second, with respect to your argument that your injury occurred during authorized military training under official orders, meeting the criteria for LOD and DES referral under applicable policy, the Board reiterated that an LOD finding is required for reservists to be placed into the DES to receive a service disability retirement because a nexus between the claimed injuries and service must be established. In your case, the Board found that your arguments and all of the material available upon which you base your relief were insufficient to rebut the cogent reasoning set forth in the Code 13 and PERS 95 denials of your LOD claim. Therefore, upon its careful review and as described above, 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,

5/15/2025

