



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

██████████
Docket No. 3896-25
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 limitation and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 15 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 Navy and commenced active duty on 7 July 1988. During your service, you were placed into the Disability Evaluation System (DES). On 14 September 2006, an Informal Physical Evaluation Board (IPEB) found you to be unfit with a disability rating of 10% due to Migraine Headaches. In accordance with the finding of the IPEB, you were discharged on 1 November 2006 due to disability with severance pay.

In 2018, you filed a petition with this Board, in which you argued that you should have received a disability retirement based on the fact that the Department of Veterans Affairs (VA) awarded you a 90% service connected disability rating or otherwise be allowed to fulfill 20 years of active naval service. To assist it in reaching its decision, the Board obtained an advisory opinion (AO) from the Department of the Navy Council of Review Boards (CORB), which observed that

documents from your PEB file described that you had one prostrating migraine headache per month, which according to the CORB satisfied the requirement for a 30% disability rating. Relying upon the CORB AO, this Board informed you by letter dated 18 November 2019 that it granted your request in part and recommended that you be placed on the permanent disability retired list (PDRL) at 30%.

In 2021, you filed another application with this Board seeking to have your PDRL disability rating increased to 50%. The Board informed you by letter, dated 21 August 2021, that it denied your petition. The Board explained that it found insufficient evidence to support a finding that your migraine headache condition merited an increase based on severe economic inadaptability nor did it find sufficient evidence that any other disability condition was unfitting for continued naval service at the time of your discharge. The Board further explained that, while it took into consideration your assertions regarding your combined VA rating, the Board noted that 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 your current petition, you request to have your naval record corrected to reflect that, instead of being retired due to a disability, you were instead placed on Permanent Limited Duty (PLD) while you were on active duty and subsequently received a 20-year retirement. In support of your request, you assert that your current petition included new materials that this Board had not previously considered. You argued that you were “erroneously separated with severance pay instead of being retired for disability,” that your DES processing was “irregular,” that you should have been on track for a disability retirement from the outset of your referral to the DES, and that you were not aware of the significant financial consequences of being precluded from Concurrent Retirement and Disability and Pay (CRDP) because you were erroneously not process for medical retirement at the time. You argued further that a “Medical Officer sitting on the Informal PEB did indicate that, from a medical perspective,” your retention in service on PLD would not jeopardize your health or safety or that of others. On this point, you argued that this Board had not squarely considered your placement on PLD or the injustice and financial harm of your exclusion from CRDP. Finally, you argue that you should be granted constructive service based on fairness and equity.

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 had previously determined that the PEB erred in assigning you a 10% rating based on your migraine headache condition and it corrected that error in 2018. The Board disagreed that this error rendered your DES processing “irregular.” It also disagreed with your premise that you “should have been on track for a disability retirement from the outset of your referral to the DES.” The Board noted, you were in fact “on track” for a disability retirement from the outset of your referral to the DES. The reason you did not receive an immediate disability retirement was because, as it previously determined, the PEB applied an incorrect evaluation to your migraine condition and, as a result, you were discharged with severance. While the failure to apply the correct rating to your migraine condition was in error, and this Board resolved that error in 2018, it did not, however, render your DES processing “irregular.”

Concerning your argument that that you were not aware of the consequences of being precluded from CRDP, the Board determined that PEB findings are without regard to an individual's understanding of CRDP. In other words, the Board observed that the PEB in your case made its determinations based on the facts before it relating to your potentially unfitting conditions and determined that an individual's knowledge of the CRDP program is not an appropriate or required factor to be considered in assessing a service member's fitness for duty or in assigning a disability percentage within the DES.

Next, the Board addressed your argument that this Board had not squarely considered your placement on PLD. In reaching its decision, the Board observed that PLD is potentially applicable where a service member's skill or experience justifies the continuance of that service member on active duty in a limited assignment. Each case is individually considered and the service member's length of service to date is not a controlling factor in PLD decisions. PERS-454 of Navy Personnel Command may, upon a service member's request, particularly from a service member with over 18 years but less than 20 years of active service, retain a service member who was found unfit to continue Navy service by the PEB in a PLD status when such retention is in the best interest of the service and consistent with the guidance in SECNAVINST 1850.4 (Series) and MILPERSMAN 1300-1401. PERS-454 may authorize PLD for a service member in order to provide continuity in a key, mission-essential billet pending relief or to meet needs of the Navy manning requirements. The PLD program is not intended as a pathway for retirement but, instead, is based on mission-essential needs of the Navy. In your case, the Board was unable to find evidence in your records, and you did not provide any, that you or your command requested that you be placed in PLD while you were on active duty. The Board also observed that the CORB AO mentioned that it is not the role of the PEB to make PLD recommendations but simply to state whether a member's retention in a PLD status would jeopardize the member's health or safety, or that of others. Therefore, the Board found no error or injustice with this Board's decision to place you on the PDRL vice PLD.

Finally, the Board addressed your argument that you should be awarded constructive service so that you could reach 20 years of service based on fairness and equity. On this request, the Board found insufficient evidence to grant you the requested relief. The Board noted that it already awarded you significant relief by placing you on the PDRL and did not observe any other errors in your record or any injustices related to your placement in the DES and your eventual disability retirement from service. 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,

5/28/2025

