



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

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Docket No. 5066-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was 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 14 January 2026. 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. The Board also considered an advisory opinion (AO) furnished by Navy Personnel Command on 4 June 2025 and your response to the AO.

A review of your naval record reveals that you enlisted in the Navy and commenced active duty on 15 June 1978. After completing your obligated active duty service on 14 June 1982, you affiliated with the Navy Reserve. In May 1999, you asserted during a medical examination that you injured your back while you were on a two-week period of active duty for training. You were later reviewed for your physical qualification to remain in service and, on 10 January 2003, your command informed you that you were found to be not physically qualified (NPQ) for retention in the Naval Reserve.

In your application to this Board, you request to be issued a Notice of Eligibility (NOE) due to your back injury effective on the date of your injury, reimbursement of lost wages in the amount of \$16,000, and compensation for medical bills in the amount of \$9,606. In support of your request, you stated that your injury happened during your mandatory physical fitness test while performing your two week annual training and the injury was an aggravation of a 1995 back injury. You state that your request for an NOE was not completed in a timely manner and the reserve Navy captain referred you to his civilian practice. You also argued that your NOE was

disapproved due to the previous injury and you incurred medical bills and loss of wages due to this error and injustice.

In order to assist it in reviewing your petition, the Board obtained the 4 June 2025 AO, which was considered unfavorable to your requests. The AO was prepared by the “PERS 9” office within Navy Personnel Command, which is the office within the Department of the Navy with responsibility for evaluating requests for NOE’s (which are now called Line of Duty, or LODs).

According to the PERS 9 AO, your application was reviewed by the PERS-95 Senior Medical Officer, “whose duty it is to make recommendations to the BIA regarding eligibility for LODHC [Line of Duty – Health Care] benefits.” According to the Senior Medical Officer:

Based on the documentation provided in reference (a) [petition case file], the LOD-HC would have been denied. There was a history of back pain and other back issues prior to the injury during the claimed period of orders, and there is a specific injury noted in 1995 while bowling. No career documentation was provided to show that the 1995 injury was incurred during a period of qualified service, so the supposition is that there is no nexus to service. Pre-existing conditions are generally denied for benefits, because they are not the Navy's responsibility, unless there is documentation that the initial injury was also incurred in the line of duty. There is no documentation to support that the initial injury was in the line of duty.

Further, according to the Senior Medical officer,

[The applicable SECNAV instruction] would support denial of the LOD-HC request. Documentation provided does support aggravation while on orders in May of 1999. [Petitioner] went to sick call that day, was diagnosed with an L5 strain, given some medication and told to follow up as needed. He did not follow up with a provider until late July at which time he saw an orthopedic surgeon who was also a military provider. The only explanation for the delay in follow up was his personal statement saying that the Navy Reserve Center corpsman told him on June’s drill weekend to ‘wait until next month’ to see if his back pain improved. There is no other documentation of this. It is unable to be determined past a preponderance of the evidence whether the injury continued or whether it improved and was then re-aggravated in the two months between the aggravation in May and when he saw a provider in July 1999.

With regard to the timing of your command’s processing of your request for an NOE, the AO explained that “[w]hether the command processed his NOE in two months or 20 months is irrelevant, because NOE denial was due to the initial injury not being related to service. There is no indication of any injustice or deprivation of due process.”

The AO next turned to your request for reimbursement of your medical bills, explaining that this would not be authorized if your LOD-HC was not approved, and, in any event, the documentation you provided did not appear to support the reimbursement number requested in your petition. In fact, according to the AO, your request for reimbursement of lost pay would not

be authorized if the LOD-HC was not approved. Furthermore, according to the AO, you provided no financial documentation nor any proof that you were actually incapacitated from your civilian job, and without financial documentation, there is no way to calculate or verify your claimed amount of lost pay.

You provided a response to the AO and referred the Board to your initial letter for your rationale to explain the 26 year delay in the submission of your application. In regards to the AO describing your condition as pre-existing, you explained that your claimed condition occurred four years after you hurt your back while bowling, and you sincerely believe that it was not serious enough to mention, such as twisting an ankle. Concerning the AO's statement that you did not follow up with a provider until late July, you responded by stating that you checked in every drill weekend with the administrative office to complain about your pain. As for the AO's finding that you failed to provide sufficient financial documentation, you explained that all that you could find was your social security statement. You also provided a letter from your manager during the time in question, which stated that you told him that you injured your back in May 1999 while on Navy Reserve training, and that you missed some time from work due to a back surgery in February 2000. Finally, you explained that enclosure 10, tab 3 of your medical records index shows the timeline for your surgery and mentions you missing work.

The Board carefully reviewed your contentions and the material that you submitted in support of your request and it disagreed with your rationale for relief. In reaching its decision, the Board substantially concurred with the finding of the AO, which the Board determined to be rational and based on substantial evidence. In that regard, the Board considered that the AO based its decision on a review of all available documentation and was in fact prepared by the office that makes decisions concerning NOE (now called LOD) requests. The Board was not persuaded by your rebuttal to the AO, finding that the explanations you provided were insufficient to overcome the carefully rendered opinion of the AO. In conclusion, in its review of all of the evidence, the Board did not observe any error or injustice in your naval records. Accordingly, given the totality of the circumstances, the Board determined 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,

1/30/2026

