



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

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Docket No. 8501-20
Ref: Signature Date

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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 27 January 2022. 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 also reviewed a 1 November 2021 advisory opinion (AO) provided by Senior Medical Advisor, Secretary of the Navy, Council of Review Boards, as well as your 1 December 2021 response to the AO.

You enlisted in the Navy and commenced a period of active duty on 28 March 2000. On 2 April 2010, you reenlisted for a period of six years. In connection with you reenlistment, you were paid a selective reenlistment bonus (SRB) of \$44,074.80. You contend that in or about May 2010, your spouse engaged in marital infidelity, which resulted in you seeking assistance from mental health professionals. As part of your treatment, you were prescribed medication that resulted in your disqualification from serving in submarines. You were required to seek a change in your rating due to your disqualification from serving in submarines but were unsuccessful in obtaining a new rating. On 30 June 2010, you were evaluated by a medical professional, who prepared an abbreviated medical evaluation report, which found that, due to adjustment disorder with mixed emotional features manifested by depression, irritability, sleep disturbance in the context of worsening marital acrimony and pending divorce, you should be put on limited duty with a proposed end date of 30 December 2010. On 30 December 2010, you

were recommended for another period of limited duty based on continued mental health symptoms. Notably, neither of these abbreviated medical reports recommended you to be evaluated by a physical evaluation board (PEB). On 2 May 2011, your period of limited duty ended and you were returned to duty after undergoing a return to duty medical evaluation. Your return to duty medical evaluation determined that you were psychiatrically fit for full duty but not fit for nuclear or submarine duty as a result of your prescribed psychotropic medication. On 6 October 2011, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 21 October 2011, you underwent a discharge physical which found you fit for separation. The medical professional that conducted your discharge physical noted that you had no medical condition that disqualified you from the performance of your duties or warranted disability evaluation processing. On 26 October 2011, you were discharged from the Navy with an honorable characterization, based on a condition, not a disability. As a result of your discharge, the Navy sought recoupment of your SRB, because, during your service, you were disqualified in the skill for which the bonus was paid before you began earning any of your bonus.

In 2011, you filed a petition with this Board, seeking reversal of the recoupment of your SRB. Your petition was administratively closed due to your failure to provide documentation. You submitted another petition with this Board in 2013, again requesting reversal of the recoupment of your SRB. On 10 September 2014, this Board denied your petition, finding that the reason for your discharge, condition, not a disability, required that your SRB be recouped.

The Board carefully considered your arguments that you deserve a disability discharge, removal of all reference to condition, not a disability from your DD Form 214, and a reversal of the decision to recoup your SRB. In your petition, you contend that you were misdiagnosed by the Navy with an adjustment disorder resulting in your wrongful separation from the Navy for a condition, not a disability. In support of your contention, you argue that the Department of Veterans Affairs (VA) found that you were 70% disabled due to Major Depressive Disorder, and that, had you been provided a PEB, you would have been found unfit due to a Major Depressive Disorder. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the AO in your case.

In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; or the member's disability imposes unreasonable requirements on the military to maintain or protect the member.

In your case, the Board found no evidence that you suffered from a qualifying disability condition at the time of your discharge. In particular, the Board found that there is an absence of health record entries by your health care providers recommending that you be referred to a PEB for any condition, and the Board found concluded that the preponderance of the evidence supports the adjustment disorder diagnosis that formed the basis for your discharge. The Board considered your response to the AO, including that you believe that the AO applied circular reasoning. As a threshold matter, the Board noted that it applies a presumption of regularity in

evaluating the performance of duty of Navy officials, including its medical professionals. As a result, the Board observed that had your symptoms been sufficiently severe to qualify for a referral to the PEB, one of the several medical professionals with whom you consulted over a one-year period would have referred you to a PEB. Further, the Board also noted, and concurred with the AOs finding, that you were, more likely than not, suffering from a situational adjustment disorder based on your “nominally successful immediate post discharge social and occupational adjustment which included obtaining an Associate’s Degree, gainful employment, and remarriage.” Finally, with respect to your assertion that the Board should accept the finding of the VA with retroactive applicability, the Board concurred with the reasoning of the AO that, the VA’s ratings were issued too distant in time from your discharge to be able to reliably use them as evidence of your unfitness in 2010. The Board also 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. Ultimately, the Board concluded that your administrative separation for condition, not a disability was supported by the preponderance of the evidence in your case. As a result, the Board also determined there was no basis to grant your request to remove references to condition, not a disability from your DD Form 214 or reverse the decision to recoup your SRB bonus. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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,

2/2/2022

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Deputy Director

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