



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. 20-21
Ref: Signature Date

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Dear █

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 6 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. In addition, the Board considered the advisory opinion contained in Director CORB letter 5220 CORB: 002 of 4 October 2021; a copy of which was previously provided to you for comment.

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 shows that you entered active duty with the Navy in October 2008 after approximately six years of prior service in the Marine Corps. On 16 April 2016, you underwent testing due to symptoms of Atrial Fibrillation that found no abnormalities. However, due to continue Arrhythmia symptoms, you later underwent an ablation procedure on June 2016 that was successful. In the meantime, you were processed for separation due to high year tenure and discharged on 16 August 2016. Post-discharge, the Department of Veterans Affairs assigned you a combined rating of 70% effective 1 December 2017. Your former Commanding Officer provided a letter in 2019 stating that you should have been referred to a medical board but the command had to expeditiously process you for high year tenure. Medical records show you underwent a left heart catheterization procedure in November 2020 that determined you possessed a normal left ventricle and coronary arteries.

The Board carefully considered your arguments to be placed on the Permanent Disability Retirement List. You argue that you were erroneously discharged for high year tenure after your Ablation procedure

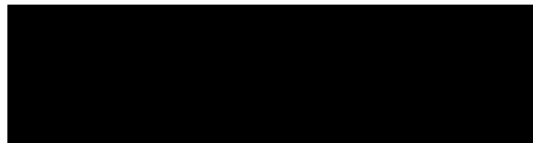
despite being unfit for continued naval service. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion in your case. Specifically, the Board found that, while you may have qualified for referral to the Physical Evaluation Board due to your inability to deploy during your recovery period from the Ablation procedure, it determined the preponderance of the evidence does not support a finding that you were unfit for continued naval service at the time of your discharge.

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 of the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting. In reviewing your medical record, the Board concluded your heart condition did not meet any of the criteria for unfitness. This finding was based on your May 2016 medical records that document that your Ablation procedure was successful and allowed you to stop all medication related to your heart condition within 60 days. Further, the Board noted your performance evaluation ending on 16 August 2016 that assigned you a performance trait average of 3.57 with an early promotion recommendation. The Board determined this was strong evidence that you were performing your duties well above fleet standards for your office, grade, rank, or rating. After considering these two factors in combination, the Board reached the conclusion that the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness at the time of your discharge. Since the evidence does not support a finding that you were unfit at the time of your discharge, the Board also concluded that you were not eligible for placement on the disability retirement list despite evidence you may have been eligible for a referral to a medical board. Further, in considering whether an injustice exists in your case, the Board took into consideration your most recent medical records related to the treatment of your heart condition. Those records document that your left ventricle and coronary arteries are currently normal based on a heart catheterization procedure that was conducted in November 2020. 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,

1/10/2022



Deputy Director

