



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. 266-21
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 4 November 2021. 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 opinions contained in Medical Advisor CORB letter 1910 CORB: 002 of 14 September 2020 and Director CORB letter 1910 CORB: 001 of 16 September 2021 along with your response to the opinions.

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 August 2010 and served as a Cryptologist Linguist. You were treated for multiple medical conditions during your period of active duty including Dysthymic Disorder and a Thyroid Nodule in the months leading up to your release from active duty. Medical record document that you received therapy sessions for your mental health issues through 21 June 2016 and were prescribed medication. In addition, your medical providers attempted to perform a biopsy on your Thyroid Nodule prior to release from active duty but were constrained by the lack of an available appointment to perform the procedure. Therefore, prior to your release from active duty on 11 July 2016, you were referred

to [REDACTED] Medical Center in conjunction with your spouse's military transfer to the area for continuation of your treatment. On 4 August 2016, a successful biopsy was performed and confirmed that your nodule was malignant. As a result, you underwent a thyroidectomy on 29 August 2016 and received a positive prognosis along with follow-up radiation treatment. In the years that followed, the Department of Veterans Affairs (VA) rated you for a number of service connected disability conditions including Depressive Disorder (50%) and Malignant Neoplasm of the Thyroid (60%). Medical notes associated with those conditions document that both conditions were well controlled as of 2020.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list for your depression and thyroid conditions. You argue that the Navy ignored unfitting disability conditions that were later rated a combined 90% by the VA. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinions 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; 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 your case, the Board agreed with the advisory opinions that the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness due to your depression or thyroid condition. In reviewing the medical evidence in your case, contrary to your assertions that your disability conditions were "ignored," provided treatment that was appropriate in light of the circumstances of your case. Regarding your depression symptoms, you were provided therapy and medication that addressed your symptoms until the end of your active duty service. As pointed out in the advisory opinion, your medical record did not document any history of duty limitations associated with your mental health and you were deemed physically fit for separation after two separate examinations. Medical records during your active duty service document that your depression symptoms were "well controlled" by the prescribed medication in the months leading up to your discharge from the Navy. Similarly, the Board found no error with the Navy's decision to release you from active duty prior to conducting a biopsy of your thyroid nodule. While the nodule ended up being malignant, the subsequent thyroidectomy and treatment resulted in a near 100% survival prognosis. In the Board's opinion, this supports the finding that your thyroid condition did not actually interfere significantly with your ability to perform your duties and was not a condition so serious to impose unreasonable requirements on the Navy to maintain you on active duty. In considering whether an error or injustice exists with regard to your release from active duty with the nodule, the Board took into consideration that you canceled your biopsy appointment prior to your release from active duty and, therefore, contributed to the inability to properly diagnose your condition. Finally, the Board evaluated the evidence that you were found fit for separation on two separate occasions. In considering this evidence, the Board noted that the Manual of the Medical Department Chapter 15-20 requires separation examinations and evaluations for active duty members and states "comprehensive evaluations are conducted for the purposes of ensuring

that Service members have not developed any medical conditions while in receipt of base pay that might constitute a disability that should be processed by the Physical Evaluation Board (PEB) and to ensure Servicemembers are physically qualified for recall to additional periods of active duty. Thus, the standards for being physically qualified to separate are the same as those being qualified to continue active duty Service” This was strong medical evidence to the Board that the Navy carefully considered your existing disability conditions and concluded on two separate occasions that you were fit for active duty despite these conditions. As a result, the Board disagreed with your characterization that your separation processing was “hasty” or that you were “put out” by the Navy with serious disability conditions without being properly evaluated. The Board also noted that you were assigned a preferred reenlistment code consistent with Navy’s determination that you were medically fit for continued active duty service and not involuntarily discharged for your medical conditions. When considered these factors in combination, the Board determined the preponderance of the evidence supports the Navy’s actions in your case. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

In reviewing the evidence, the Board carefully considered your arguments in rebuttal to the advisory opinions in your case. However, the Board was not persuaded by your arguments and made its findings based on the previously discussed reasoning.

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,

11/8/2021

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[Redacted line]

Deputy Director

Signed by: [Redacted signature]