



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

█
Docket No. 645-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 17 February 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, as well as the 5 January 2022 advisory opinion (AO) from a qualified medical professional and its endorsement, copies of which were provided to you and to which you requested an extension in responding. Final determination of your case was held in abeyance in order to allow you sufficient time to submit a response to the AO. On 17 March 2022, at the expiration of the extension, no response to the AO was received from you.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 1 June 2000. From March 2007 to July 2007, you served in █. According to your petition, while you were in █, you witnessed the explosion of improvised explosive devices and mortars. In July 2009, you were diagnosed with an adjustment disorder for expressing depressed mood after signing an extension to remain in █ without you dependents. After this, you were eventually declared fit for full duty. You continued to serve without incident until 29 May 2015, you expressed suicidal ideation, and you were seen by a medical clinic. On 14 June 2015, you were diagnosed with adjustment disorder after expressing a number of symptoms that could not be medically explained, including expressing anxiety at the thought of returning to his position, and you were recommended for administrative separation. On 7 July 2015, you were evaluated by the Senior Medical Officer (SMO) aboard █. According to the SMO's evaluation, you did not have an unfitting a disability at the time. On 9 July 2015, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 30 July 2015, the discharge authority directed that you be discharge due to a condition, not a disability. On 20 August 2015, you were so discharged.

You previously filed a petition with this Board in 2016 seeking similar relief. In connection with your petition, this Board obtained an AO from a qualified medical professional, who carefully reviewed your

medical and service records, and after a full analysis, recommended that no relief be granted. On 11 June 2017, concurring with the opinion of the AO, this Board denied your petition. In 2019, you requested reconsideration of your petition. On 12 November 2019, this Board denied your request for reconsideration, finding that the preponderance of evidence did not support your petition.

In your current petition, you contend that you were misdiagnosed by the Navy with adjustment disorder when the correct diagnosis should have been combat PTSD entitling you to an assessment by a medical evaluation board and military disability retirement. You further contend you were found to have service connected disabilities by the Department of Veterans' Affairs (VA), and you provided a 5 November 2020 report of a psychologist in support of your petition. In reviewing your current petition, the Board considered all of your contentions and the material that you submitted in support of your petition. After careful review, the Board did not agree with your rationale for relief.

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 reviewing your record, the Board concluded 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 from the Navy. Rather, the Board substantially concurred with the finding of the AO. Specifically, the Board concluded that the preponderance of the evidence did not show the presence or adverse effects from a mental disorder over the six-year period between 2009 and your administrative separation processing. The Board found this lack of mental health symptoms during this period more persuasive than your more recent post-discharge diagnosis for PTSD. Further, the Board noted that your PTSD diagnosis was issued based on a lower standard of proof. In addition, the fact that the VA rated you for service connected disability conditions did not persuade the Board these conditions were unfitting at the time of your discharge from the Navy because 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. 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,

3/23/2022



Deputy Director

