



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. 1359-21
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 10 March 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 26 January 2022 advisory opinion (AO) of a qualified medical professional, and its endorsement. A copy of the AO and its endorsement was provided to you and you did not provide a response.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 10 July 1995. You began to manifest an allergic condition and were eventually referred to a medical board in 1998 with a diagnosis of Anaphylaxis, Asthma, and Allergic Rhinitis. On 6 July 1999, your command conducted a non-medical assessment of your condition, explaining that you were "placed on limited duty for allergies to certain shipboard and aviation maintenance materials" and that you were "receiving weekly allergy shots and daily medication to treat [your] allergies." Your command concluded that "[a]lthough he has an outstanding work-ethic, his ability to perform as an Aviation Electronics Technician is questionable due to his allergies. Further, these allergies may complicate possible reassignment to another rat[ing]." On 15 September 1999, an Informal Physical Evaluation Board (IPEB) found as follows:

(1) A unanimous finding of “Unfit” (“Category I”) with a disability rating of 10% under VASRD Diagnostic Code 6602 for “ASTHMA” and a recommended disposition of separation with severance pay.

(2) “ANAPHY[L]AXIS” was found to be a “Related [but not unfitting] Category 2 Diagnosis;” and

(3) “ALLERGIC RHINITIS” was found to be a “Category III: ...not separately unfitting ...[or contributing] to the unfitting condition(s).”

You conditionally accepted the IPEB findings on 14 October 1999 and you were discharged on 12 January 2000 with severance pay.

In reviewing your current petition, the Board considered all of your contentions and the material that you submitted in support of your petition. You contend that you were given an improper discharge and that you could not fight for a favorable separation due to medical issues and sexual assault trauma. After careful review, the Board did not agree with your rationale for relief. In connection with its review of your petition, the Board obtained the AO, which was considered unfavorable to your request for relief. According to the AO, “after consideration, it has been determined the evidence provides insufficient support for the request,” further explaining, in part:

submitted medical records contemporary with the petitioner’s enlistment indicate no recurrence of an Anaphylactic Reaction since December 1997 during the ensuing nearly 2-year period prior to an apparent medical separation despite problems with completion of immunotherapy protocols, and periods of unexplained loss to clinical follow up, not to mention the absence of documentation of anaphylactic episodes post separation.

In reviewing of the entirety of your application package, and in light of the AO, the Board concluded the preponderance of the evidence does not support a finding that the conditions for which you were evaluated were erroneous. At the outset, the Board observed that, contrary to your contention, you in fact received a favorable separation, which was characterized as honorable and were afforded your required due process rights. Further, you did not provide any evidence to support your assertion that you were the victim of a sexual assault while you were on active duty, nor did you provide a contention as to how any such sexual assault would impact the findings of your IPEB, particularly in light of the lack of medical records relating to such while you were on active duty. In addition, the Board observed that you did not provide any findings from the Department of Veterans’ Affairs (VA) describing their rating(s) of you, in any, and whether any rated disability stemmed from an unfitting condition while you were active duty. Further, even assuming, *arguendo*, that you did provide ratings from the VA, you should note that compensation and pension disability ratings by the VA are tied to the establishment of service connection and are manifestation-based without a requirement that unfitness for military duty be demonstrated. In conclusion, the Board determined that, as noted by the finding of the AO, you were correctly separated with severance pay based on the specific findings of the IPEB,

which you conditionally accepted in October 1999. 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,

3/24/2022

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Deputy Director

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