



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. 2003-21
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.

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 a 7 January 2022 advisory opinion (AO) of the Psychiatric Advisor to Secretary of the Navy, Council of Review Boards (CORB), a copy of which was provided to you and to which you provided no response.

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 enlisted in the Navy and commenced a period of active duty on 1 December 1998. Beginning on 17 April 2017, you consulted with a psychologist for various mental health stressors and you engaged in several follow up appointments. The 7 January 2022 AO describes in more detail your medical history, including your consultations to address mental health stressors. On 17 July 2017, you received nonjudicial punishment for failing to obey an order on two occasions, making a false official statement, and being drunk on duty. You appealed this imposition of nonjudicial punishment, and the appeal resulted in the latter two of the charges being dismissed, resulting in you being punished solely for the two instances of failing to obey an order or regulation. On 25 July 2017, you were notified that your

recommendation for advancement to Chief Petty Officer was withdrawn as a result of your nonjudicial punishment. On 30 November 2018, you retired from the Navy. In 2019, you filed a petition with this Board, seeking to have your nonjudicial punishment removed from your record. On 18 February 2021, this Board denied your petition, finding that you did not provide sufficient evidence that the nonjudicial punishment was unfair or improper.

In your petition, you contend that your nonjudicial punishment was unfair, that your command did not consider the medical aspect of your case, that you were struggling with post-traumatic stress disorder (PTSD) at the time, and that you should have had your PTSD considered when you were being reviewed for discharge. You further contend that your PTSD is service connected and you assert that this has been confirmed by a finding of service connection by the U.S. Department of Veteran's Affairs (VA).

In connection with your contention seeking a medical retirement, the Board obtained the 7 January 2022 AO, and its forwarding endorsement, which, set forth your relevant medical history during the pertinent times in your active service, concluded that:

While he was placed on Limited Duty during the last months of his active duty service, this appears not reflective of an inability to reasonably perform his duties as an AD2 on anything more than a transient basis. His treating psychiatrist noted limitations from weapons access and deployment, which are considered pro forma restrictions pending medication stability in accordance with OPNAVINST 3591.1F. There is no indication these restrictions would have been considered permanent in nature. Further, the Applicant's treating psychiatrist found the Applicant to be fit to retire. An examining physician also conducted a retirement physical and found the Applicant "physically qualified . . . for release from active duty and perform all duties of his rate/rank at sea or ashore." Although the Applicant's symptoms had substantially improved after his acute presentation in May 2018, had his case been referred by a Medical Evaluation Board to the Physical Evaluation Board, he would not have overcome the presumption of fitness delineated in DoDI 1332.18. As such, a medical retirement cannot be recommended.

As noted above, you were provided a copy of the AO with its forwarding endorsement, and you did not provide a response to the AO.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition. In your case, the Board determined the preponderance of the evidence did not support a finding that you met any of the criteria for unfitness in order for you to qualify for a medical retirement. In concurring with the findings of the AO, the Board observed that, in order for you 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. Here, the Board

carefully reviewed the medical evaluations conducted while you were on active duty, including those relating to your mental health, and the Board determined that it did not find any factors in support of your request for a disability retirement. With respect to your assertions that your command should have considered your PTSD in your nonjudicial punishment, and that your administrative discharge was unfair, the Board noted that you, in fact, retired from the Navy with an honorable characterization of service after having been found physically qualified for retirement, and that you were not administratively discharged. In its full review, the Board did not observe any procedural or substantive error with your nonjudicial punishment, the command's decision to remove your recommendation for advancement to E-7 based on your misconduct, or your retirement. Therefore, the Board found no basis to remove any derogatory material from your record, advance you to E-7, place you on the disability retirement list, or grant you severance pay. Accordingly, the Board observed no error or injustice with your naval record and denied your petition.

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,

2/23/2022

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Deputy Director

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