

## DEPARTMENT OF THE NAVY

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

> Docket No. 5222-21 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.

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 19 September 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. The Board also reviewed the 9 August 2022 advisory opinion (AO) from a qualified medical professional. A copy of the AO was provided to you for comment but you chose not to do so.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 28 April 1972. On 31 July 1974, you were disenrolled from nuclear power school. On 12 August 1974, you were reviewed by an Enlisted Performance Evaluation Board, which determined that you were unsuitable for further service. You received a pre-separation physical evaluation by a physician on 29 August 1974. The examining physician determined that you were physically qualified for separation from service. Subsequently, you were discharged due to unsuitability. As noted in the AO, after your discharge, you presented post-discharge evidence of an April 1976 diagnosis of Schizophrenia, Schizo-Affective Type, Depressed with Paranoid and Catatonic Features, and you were assigned a 30% disability rating effective 30 August 1974 by the Department of Veterans' Affairs. This was later reevaluated in September 1976, and your VA disability rating was increased to 100%.

In 1978, you filed a petition with this Board seeking to have your discharge changed to a military retirement due to physical disability. The Board obtained an AO for that case. According to the

AO from 1978, your discharged due to unsuitability was appropriate and your condition did not constitute a physical disability. The Board denied your petition in February 1979. In 1988, you filed another petition with this Board, which the Board denied on the basis that you provided no new evidence.

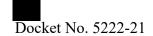
In your current petition you seek to have the Board set aside your 1974 involuntary separation, be medically retired for disability, correct your Record of Release or Discharge from Active duty (DD 214) to reflect that you were retired, and that you be awarded back pay and allowances. In support of your request, you contend that there is new evidence in the form of a 2018 Navy and Department of Defense governing personality disorder discharges under which your discharge would not be sustainable today. You include as evidence a 2021 letter from a VA attending psychologist concluding your personality disorder diagnosis was unsupportable at your time of discharge and is unsupportable now. You also cite a memorandum from former Secretary of Defense which you contend requires that your request be provided liberal consideration, because you contend it related to mental health conditions that were unrecognized/not diagnosed at time of your discharge. You also assert that in 1974, you were protected by constitutional due process, and you should have been afforded a pre-discharge hearing because you contend your personality disorder discharged affected your liberty interests.

In connection with reviewing you petition, the Board obtained the 9 August 2022 AO, which was considered unfavorable to your position. According to the AO:

Petitioner's in-service records contain two psychiatric evaluations with findings of "No psychiatric disorder noted" and later a diagnosed Passive Dependent Character Disorder. In both instances, the mental status examinations did not find evidence of neurosis or psychosis. These evaluations were based on Petitioner's personal and clinical information available at the time of the evaluations, Petitioner's self-reported history, as well as the observations of the mental health examiners. The symptoms described by the Petitioner, or observed by the examiners, were not sufficient to meet diagnostic criteria for a mood or psychotic disorder at the time of the examinations in the clinical opinion of the examining mental health providers. In both instances, Petitioner was returned to full duty without limitations, with a recommendation for discharge due to unsuitability on the second evaluation. At no time was he considered not responsible for his actions, unfit for duty, or appropriate for referral to a medical evaluation board.

The AO concluded, "the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention of unfitness at the time of his discharge from military service and request for medical disability retirement for post-discharge diagnosed conditions of psychotic bipolar disorder and schizophrenia."

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition and the Board disagreed with your rationale for relief. With respect to your assertion that there is a stigma associated with a personality disorder narrative reason for discharge, the Board observed that, according to your service record, the basis for your discharge was unsuitability and not personality disorder. In so finding, the Board reviewed an available

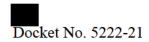


copy of your DD 214, and observed it does not appear to state that you had a personality disorder reason for discharge. Thus, the Board concluded that any new guidance concerning the reflection of a personality disorder narrative reason set forth on your DD 214 is not applicable. In fact, the Board observed that the only reflection of a personality disorder diagnosis is within your naval medical records from your time in service.

In addition, 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 denying your request for a disability retirement, 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 materials that you provided as well as available service records as well as the AO. The Board substantially concurred with the finding of the AO, and it further noted, as found by the AO, that there was an absence of any medical referrals to a medical board for determinations of fitness while you were on active duty. In fact, the Board observed that you were found physically qualified for discharge. With respect to your citation of the Hagel Memo and the application of liberal consideration, the Board does not apply such consideration when it comes to qualification for disability retirement determinations, which rely upon objective medical findings. That memorandum relates to the upgrading of unfavorable discharge characterizations. The Board determined that your honorable characterization of service was not considered unfavorable, given that it is the highest level of discharge characterization available.

Further, the fact the VA rated you for service connected disability conditions that were determined to be service connected to your time in the Navy 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 finding of fitness for duty. In light of all of the foregoing, the Board did not observe any error or injustice in your discharge and characterization of service. Accordingly, the Board observed no error or injustice in your discharge. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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.



