



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 [REDACTED], 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.

Sincerely,

10/11/2022

