



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. 7115-21
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 24 October 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 considered the 16 September 2022 advisory opinion (AO) from a qualified medical professional. Although you were provided an opportunity to comment on the AO, you chose not to do so.

The Board determined that a 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 9 September 2005. On 8 November 2007, you completed your required service and you were released to the Navy Reserve. The AO described your medical treatment history from 2006 to your separation from the Navy Reserve. Medical conditions that were reviewed or treated included back pain and post-traumatic stress disorder. While in the Navy Reserve, you were subject to a medical readiness review process (MRR). In connection with your MRR, you prepared a form, dated 27 March 2020, in which you stated that your injuries were not in the line of duty. You submitted a similar forms again on 22 April 2020. In connection with your MRR, on 12 May 2020, your commanding officer provided a non-medical assessment (NMA), addressing your fitness for service. According to your commanding officer's NMA, your medical condition did not affect your ability to carry out all duties, and that he highly

recommended that you be retained. However, a new commanding officer submitted an NMA, on 9 November 2020, which stated that you were non physically qualified and you were not worldwide assignable. On 14 December 2020, BUMED found that you were not physically qualified for retention in the Navy Reserve.

On 26 March 2021, your commanding officer provided to you a letter explaining that Chief, BUMED, found that you were “not physically qualified for retention in the Navy reserve by reason of obstructive sleep apnea, post-traumatic stress disorder, and cervicgia, degenerative joint disease, and migraine headaches” The letter provided you with three options, (1) request discharge by reason of being not physically qualified; (2) request transfer to the Retired Reserve if eligible; and (3) request a review by the Physical Evaluation Board (PEB) on the basis of available medical records. Option 3 provided further, that you would be notified of the PEB’s recommended findings and given an opportunity to accept or rebut, or to demand a formal hearing before a hearing panel empowered to conduct formal hearings. On 30 March 2021, you selected the option for requesting transfer to the retired reserve. On 16 August 2021, Navy Personnel Command order you to the Retired Reserve effective 1 August 2021.

In your petition, you request to be placed into the Integrated Disability Evaluation System (IDES) process. In support of your request, you contend that your separation was erroneous because it was based on false information. You asserted that your injuries were incurred or aggravated in service and that the U.S. Department of Veterans’ Affairs has found that you have service connected injuries.

In order to assist it in reviewing your petition, the Board obtained the 16 September 2022 AO. According to the AO:

In summary, the evidence establishes [Petitioner] elected a non-disability retirement when found Not Physically Qualified, Do Not Retain by the Bureau of Medicine's Department of Qualifications and Standards. He had the option to appeal this finding via a Physical Evaluation Board referral, but opted otherwise. To have been eligible for consideration for a medical disability retirement, the Applicant would have required a Line of Duty Benefits (LODB) letter, which he did not obtain.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation and supporting materials that you provided, and the Board disagreed with your rationale for relief. In denying your petition, the Board substantially concurred with the findings of the AO. In particular, the Board observed that you did not obtain a line of duty benefits letter. In fact, while you were in the Navy Reserve, you submitted at least two forms in which you stated that your conditions were not in the line of duty. Further, as described by the AO, you were provided an opportunity to rebut the finding of not physically qualified by requested a PEB, which allowed for a formal hearing if you disagreed with the findings of the PEB. You did not request a PEB. Instead, you opted for a non-regular reserve retirement. The Board acknowledged your honorable service to your country, and acknowledged you are receiving tax free income from the VA for your service connected

disabilities. With respect to your VA service connected disabilities, however, the Board concurred with the AO's explanation that:

[t]he Veteran's Administration (VA) does not establish Line of Duty determinations for DES purposes. Whereas the VA operates under a presumption of service-connection, DES adjudication of reserve component member conditions requires an affirmative finding by the Chief of Naval Personnel in order to be eligible for consideration. The Applicant retired per his voluntary election of options, which was appropriate based on the findings of the Bureau of Medicine and established policy regarding subsequent administrative disposition.

Accordingly, in light of all of the foregoing, the Board did not discern an error or injustice in your naval records 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,

11/7/2022

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