



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

█  
Docket No. 7439-21  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 December 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 25 October 2022 advisory opinion (AO) of a qualified medical professional, a copy of which was provided to you and to which 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 27 November 1964. On 21 January 1966, you received nonjudicial punishment for unauthorized absence and missing movement. On 26 August 1966, you were convicted by a special court-martial for an 18-day period of unauthorized absence. On 24 October 1967, you were convicted by a special court-martial for a 73-day period of unauthorized absence and for missing movement. On 18 October 1968, you were again convicted by a special court-martial for two instances of unauthorized absence totaling 118 days. The sentence of your final special court-martial included that you be discharged from the naval service with a bad conduct discharge.

On 4 December 1968, you received a mental health evaluation and you were diagnosed with passive-dependent personality, with no evidence of neurosis or psychosis, and you were described as immature. On 14 January 1969, you were medically cleared for discharge. On 25 April 1969, you were discharged with a bad conduct discharge per your court-martial sentence.

In 1975, you applied for an upgrade of your discharge with the Naval Discharge Review Board (NDRB). On 18 February 1975, the NDRB denied your request. In 2007, you filed a petition with this Board requesting that your discharge be upgraded and that you receive a disability discharge. You asserted you suffered hardship during your service because of your mother's health and that you had a diagnosed heart murmur. This Board informed you of its denial of your petition by letter dated 1 April 2008, as follows:

The Board found that you served on active duty in the Navy from 27 November 1964 to 25 April 1969, when you were separated a bad conduct discharge. During that period, you were convicted by three special courts-martial, and incurred 463 days' time lost.

Although it is possible that you suffered from an undiagnosed heart murmur while on active duty, there is no indication in the available records that you were unfit for further service by reason of physical disability. You would not have been entitled to disability separation or retirement in any case, because a bad conduct discharge would have taken precedence over disability evaluation processing.

You filed another petition in 2015, which this Board denied on 29 August 2016 on the basis that you did not provide new matter in support of your request. Thereafter you filed another petition in 2019, and you included in your request a letter from a medical provider, who diagnosed you with Generalized Anxiety Disorder and Depression. This Board informed you of its denial of your petition by letter dated 7 February 2020, as follows:

First, the Board applied liberal consideration to the facts of your case based on your 2019 letter from your medical provider that diagnosed you with a mental health condition. Second, despite applying liberal consideration, the Board determined an upgrade to your characterization of service was not appropriate. The Board determined the seriousness of your misconduct outweighed the mitigation offered by your mental health condition. You were documented to have multiple incidents of long term unauthorized absences and missing movement that resulted in three special court-martial convictions and a non-judicial punishment during a 34-month period in which you were absent approximately 7 months. As part of your convictions, you were sentenced to 11 months of total confinement for your misconduct in addition to a punitive discharge. The Board felt the seriousness of your misconduct and the significant negative affect on good order and discipline was reflected in your punishments and should not be mitigated, despite liberal consideration of the evidence. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

In your current petition, you seek an upgrade to a general (under honorable conditions) characterization of service or the award of a medical disability. In support of your request, you assert that your mother was sick, and that you had post-traumatic stress disorder (PTSD).

In order to assist it in reviewing your petition, the Board obtained the 25 October 2022 AO, which was considered unfavorable to your request. According to the AO:

Petitioner's in-service clinical and non-clinical records did not contain evidence he experienced a traumatic event while in service or exhibited any psychological symptoms or behavioral changes indicative of PTSD, or any other mental health disorder. He underwent a psychiatric evaluation on 12/4/1968 while in-service that diagnosed him with a Passive-Dependent Personality, but found he did not have any symptoms or signs of 'neurosis or psychosis' and his mental status examination was 'essentially negative' and he did not require any additional studies or treatment. In a previous petition to the BCNR, he had presented an 8/20/19 letter from his primary care physician who stated he had treated him for Generalized Anxiety Disorder beginning in 2011, which he reported the Petitioner had stated began after being denied a hardship discharge in 1967. There was no mention of traumatic history or an in-service or post discharge diagnosis of PTSD. After reviewing all available evidence, I attribute greater weight to the mental health evaluation by a psychiatrist contemporary to Petitioner's military service over a non-mental health provider's evaluation 50 years after his military service. In summary, in my medical opinion, the preponderance of objective clinical and nonclinical evidence provides insufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have his discharge amended to a disability retirement.

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 request for upgrading your discharge, the Board observed that it previously denied your request for an upgrade to your characterization of service after applying liberal consideration to the entirety of your petition. The Board observed that your current petition did not include matter sufficient to change the Board's decision relating to your discharge characterization. As noted in its prior decision, your enlistment in the Navy was marked by your unauthorized absences totaling approximately 7 months, a nonjudicial punishment, conviction by three special courts-martial, and the award of a bad conduct discharge. Thus, the Board could not discern any error or injustice in your naval record with respect to your discharge characterization.

With respect to your request for a disability retirement, the Board similarly could not discern any error or injustice. In reaching its decision, the Board observed that, in order 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; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

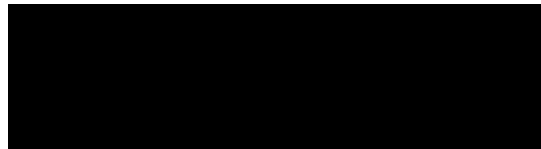
In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness at the time of your discharge. At the outset, the Board concurred with the AO's opinion. The Board found that the AO provided a careful analysis of the relevant medical factors and concluded that there is no basis for awarding you a disability discharge. Indeed, as noted by the AO, the Board found no evidence contemporaneous to your service that tended to support the applicability of a basis for a disability retirement. To the contrary, the evidence in your record clearly established that you were discharged due to your continued misconduct while you were on active duty. Thus, in light of all of the foregoing, the Board determined there was no error or injustice in your naval record and it denied your request for reconsideration.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/5/2023

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Deputy Director

Signed by: 