



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

█  
Docket No. 7446-21  
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 3 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.

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.

The facts of your case remain relatively unchanged. A review of your record shows that you entered active duty with the Navy in September 1972. You reported to medical on 12 October 1977 with injuries to your face and reported hitting a wall. You were treated with sutures and returned back to full duty. You served until the expiration of your term of enlistment and were discharged on 1 October 1980 with a RE-1 reenlistment code and an Honorable characterization of service. Prior to your discharge from the Navy, you underwent a separation physical which cleared you for separation from active duty. After your discharge, you enlisted with the Air Force Reserve until you decided to enlist in the Air National Guard in 1983. As part of your Air National Guard enlistment, you underwent an enlistment physical on 19 November 1983 which medically cleared you to enlist. You subsequently enlisted in the Air National Guard on 13 December 1983. During your Air National Guard service, you commenced a period of active duty on 20 April 1984 and served until 30 May 1985. You extended your Air National Guard

enlistment on 22 November 1986 and served until your discharge on 27 October 1989 for unsatisfactory participation.

Your Department of Veterans Affairs (VA) record shows that you were diagnosed with dysthymic disorder in 1996 but were later rated for psychotic disorder at 100% on 1 July 2008. However, in 2017, the VA assigned you a retroactive rating of 70% for your psychotic disorder effective 27 February 1995 until its increase to 100% in 2008. The VA also determined you were individually unemployable effective 27 February 1995. On 26 August 2019, the United States Court of Appeals for Veterans Claims remanded your claim for Traumatic Brain Injury (TBI) after setting aside the VA's decision to deny you a service connection.

You also provided evidence that you applied for disability benefits from [REDACTED] in November 2009 due to several mental health diagnoses.

This Board previously denied your request for disability benefits on 6 September 2018, 4 April 2019, 30 January 2020, and 18 June 2020. The most recent decision by this Board was made in accordance with a 10 June 2020 U.S. Court of Federal Claims remand order.

The Board carefully considered your arguments that you deserve to change your narrative reason for separation to disability. You argue that you should receive a disability pension since your multiple disability conditions are tied to your Oct 1977 head injury that materialized after you departed active duty. Unfortunately, the Board disagreed with your rationale for relief.

Secretary of the Navy Instruction 1850.4 (1977) states that a service member is unfit due to a disability when the member is unable, because of the disease of injury, to perform the duties of their office, grade, rank or rating. The mere presence of a physical disability condition does not, in itself, require a finding of unfitness since each case must be considered to determine the nature and degree of functional impairment produced by a physical disability. Findings of unfitness for continued naval service are made by the Physical Evaluation Board (PEB) based on a medical board referral. A medical board is required to refer a service member for consideration by the PEB in cases where the ability of a service member to continue to meet the physical requirements of active duty is in question. If the PEB determines a service member meets the standard for unfitness, the service member may be discharged for the physical disability or placed on the disability retirement list depending on the disability rating assigned to the unfitting disability condition. Therefore, in order for a service member to be discharged with a narrative reason for separation of physical disability, a service member must meet the criteria for unfitness, i.e. inability to perform the duties of their office, grade, rank or rating due to a disability condition.

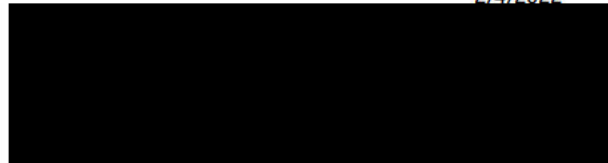
In reviewing the evidence in your case, the Board found insufficient evidence that you met any of the criteria for unfitness at the time of your discharge from the Navy. As in the previous Board decisions, evidence that you were medically cleared for enlistment in the armed forces after your discharge from the Navy convinced the Board that the preponderance of the evidence does not support a finding that you were unfit for continued naval service in October 1980. Therefore, based on the same rationale from their 18 June 2020 decision, the Board found no error with your assigned narrative reason for separation from the Navy.

Based on your arguments, the Board also considered whether an injustice exists with your assigned narrative reason for separation from the Navy. You state that you became symptomatic for multiple disability conditions after your release from active duty necessitating the awarding of military disability benefits in your case. The Board also disagreed with this rationale for relief based on strong evidence that you are being fairly compensated for your service connected disability conditions. The Board concluded that the VA's mission is to ensure veterans, such as you, who become symptomatic for service connected disability conditions post-discharge to be compensated and treated for those disabilities. The evidence in your record documents that you are receiving the maximum allowed compensation and pension benefits from the VA. Therefore, the Board concluded any arguments of injustice are adequately addressed through your receipt of non-military disability benefits. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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,

2/4/2022



Signed by:

