



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

█  
Docket No. 0368-22  
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 21 April 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 28 February 2022 advisory opinion (AO) from a qualified medical professional, a copy of which was provided to you, and to which you did not provide a response.

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 entered active duty in the Navy and commenced a period of active duty on 29 April 1996. On 27 November 1996, you received nonjudicial punishment for three periods of unauthorized absence, and for disrespect. That same day, you were notified of the initiation of administrative separation processing and your rights in connection therewith and you waived your right to an administrative board. On 7 January 1997, the discharge authority directed that you be discharged. On 11 January 1997, you were discharged with an Other Than Honorable (OTH) characterization of service.

In your petition, you requested that your discharge characterization be changed to a medical discharge contending you were under the care of a VA Hospital for "severe injuries and

depression.” You further contend that you were treated with anti-depressant medication and you were hospitalized. You did not provide any in-service or post-discharge clinical evidence of diagnosed medical or mental health conditions, nor records of inpatient medical/mental health treatment.

To assist the Board in evaluating your petition, it obtained the 22 February 2022 AO. According to the AO:

Petitioner’s in-service records did contain evidence Petitioner experienced depressive and anxiety symptoms during his military service and received inpatient and outpatient treatment for symptoms of depression and anxiety. There was no clinical evidence presented which offered a psychiatric diagnosis or recommended treatment plan. He did not provide any post-discharge evidence of a mental health condition. The clinical information available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. His contention of unfitness is not supported by the objective evidence as his in-service record demonstrated acceptable performance of his duties and successful completion of service schools and training. At separation, the examining physician did not consider the range of medical and mental health symptoms/conditions endorsed by Petitioner to be physically disqualifying for separation from service, or in need of additional consultation/referral. Petitioner’s service records do not show any evidence of ongoing occupational impairment or unfitness for duty.

The AO concluded that, “the preponderance of evidence provides insufficient support for the request. This is due to the presence of objective evidence that the applicant’s duty performance was judged to have been adequate at the time of separation. Had referral to the PEB occurred, a finding of fit to continue naval service would have been the likely result.”

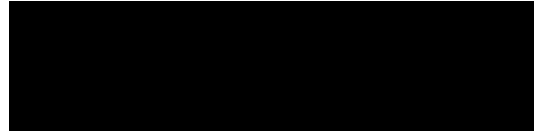
The Board carefully considered your arguments. Unfortunately, the Board disagreed with your rationale for relief. In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, 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; or the member’s disability imposes unreasonable requirements on the military to maintain or protect the member.

In your case, the Board determine the preponderance of the evidence did not support a finding that you met any of the criteria for unfitness. In making this finding, the Board concurred with the findings of the AO. In particular, the Board observed that there is no in-service evidence that you suffered an unfitting condition while on active duty. In addition, the Board noted that you were ineligible for disability processing due to your administrative separation processing for misconduct that resulted in an OTH. The Board further noted that there was no evidence supporting a finding that you were not mentally responsible for your misconduct. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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,

5/23/2022

A large black rectangular redaction box covering the signature area.

Executive Director

A black rectangular redaction box covering the name of the Executive Director.