



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. 1121-22
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 13 April 2023. The names and votes of the panel members 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 2023 advisory opinion (AO) from a qualified medical professional, which was provided to you and to which you did not provide a response.

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.

A review of your record revealed that you enlisted in the Navy and commenced a period of active duty on 14 June 2010. Throughout your service you served honorably and generally receive above-average performance evaluations. Your final performance evaluation, covering the period ending 11 April 2019, marked you as "Early Promote," and described you as an administrative expert that was already performing at the next level. There is no indication in your performance evaluation that you were unable to perform your duties within your rate. On 11 April 2019, you completed your required active service and you were released from active duty with an honorable characterization of service, and an RE-1 reentry code, meaning that you were eligible and recommended for reenlistment. As a regular practice of the naval services, prior to your separation from service, you would have been required to be found to be fit for separation by a medical practitioner.

After your separation from service you affiliated with the Navy Reserve. While you were in the reserve, on 20 March 2020, you applied for Line of Duty Benefits (LODB), in which you described a variety of medical conditions that you contend were incurred during your active duty service. On 6 November 2020, Navy Personnel Command (PERS-95) denied your request for LODB, explaining that issues that you listed were incurred on active duty, and that the purpose of LODB is to address circumstances where a member of the reserve is injured during a period of active duty orders or otherwise in the line of duty. In PERS-95's denial letter, it carefully detailed the method by which you were required to appeal its decision. Neither your service record nor your current petition provide any evidence that you appealed NPC's denial of your request for LODB.

In your petition, you request to be reviewed by a physical evaluation board or otherwise be placed into the legacy disability evaluation system in order to establish your eligibility for a service disability retirement. In support of your request, you contend that you never received a medical board prior to separation. You further explain that, before your separation in 2019, your doctor extended your original separation date to receive additional treatment for your health concerns and your doctor believed you would get treatment in the reserves. You further state that after you arrived in the reserves, you were immediately placed in a Temporary Not Physically Qualified status and placed into Medical Retention Review. You further assert that since your separation, your disabilities have not improved that that you are currently in the Individual Ready Reserve seeking to resolve this issue. You have submitted documentation that, after your release from active duty, you applied for disability benefits with the U.S. Department of Veterans Affairs (VA), which ultimately rated you at 100% service connected disability, with a retroactive effective date to the day after your discharge from active duty (12 April 2019).

In order to assist it in reviewing your petition, the Board obtained the 28 February 2023 AO, which was considered unfavorable to your position. According to the AO, in the doctor's "medical opinion, the available objective clinical and non-clinical evidence did not indicate Petitioner's cited medical conditions, individually or collectively, prevented the Service member from reasonably performing the duties of her office, grade, rank, MOS, or rating including those duties remaining on a Reserve obligation for more than 1 year after diagnosis." The AO further found that, "had Petitioner been referred to the Physical Evaluation Board for a determination of fitness for service at the time of discharge from active military service, it is highly likely the PEB would have found her FIT for continued service." Thus, the AO concluded, "in my medical opinion, the preponderance of objective evidence provides insufficient support for Petitioner's contention that at the time of her discharge she was unfit for continued military service and should have been medically retired."

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. 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.

At the outset, the Board observed that you failed to exhaust your administrative remedies by failing to appeal the denial of your LODB request, despite being provide clear instruction on the method in which to appeal. In addition, even setting aside your failure to exhaust your remedies, addressing the merits of your request, the Board concurred with the findings of the AO in finding that there is no indication that you were unfit while you were on active duty. By way of example, your performance evaluations were positive, you were fit for release from active duty, you received an RE-1 reentry code, and you were allowed to affiliate with the Navy Reserve. The Board did not discern any contrary evidence in your record, and you did not provide any such evidence to the contrary.

With respect to your submission of VA findings, the award of such a disability for conditions connected to your service in the Navy would 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 requirement that unfitness for military duty be demonstrated. Accordingly, in light of all of the foregoing, the Board denied your request for a medical discharge.

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,

5/1/2023

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Deputy Director

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