



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. 1293-22
Ref: Signature Date

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Dear █

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 7 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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 17 December 2001. On 25 April 2007, you underwent a pre-separation physical, which found that you were fit for separation. In connection with your fitness for separation, you signed a written counseling contained in your medical records, as follows:

You are being examined because of your planned separation from active duty service. You have been found physically qualified to separate or retire, which means that no medical condition has been noted that disqualifies you from the performance of your duties or warrants disability evaluation system processing. To receive disability benefits from the Department of the Navy, you must be unfit to perform the duties of your office, grade, or rating because of a disease or injury incurred or exacerbated while in receipt of base pay. Some conditions, while not considered disqualifying for separation or retirement, may entitle you to benefits the Department of Veteran's Affairs. If you desire additional information regarding these benefits, contact the Department of Veteran's Affairs

On 15 May 2007, you were separated with an Honorable characterization of service and issued a narrative reason for separation of non-retention on active duty.

In your petition, you contend that you were receiving care for medical issues and that you were performing your duties efficiently and effectively while on limited duty. You further contend that you were told by a physician that you would be medically separated because your duties, and that you were under the impression that you were being medically separated or medically retired but you were not afforded the opportunity for a medical board or physical evaluation board. You also state that you did not sign a Page 13 counseling/warning concerning your separation, and that you believe your re-entry code (RE-3M) (ineligible for reenlistment in current rating) and separation code (JGH) (failure to meet current standards for retention) conflict. In support of your contention, you provided an 18 June 2021 statement from the Department of Veterans Affairs (VA) which sets forth a finding of 100% service connected disabilities as of 8 October 2019. The letter you provided did not state the type of disabilities.

The Board carefully considered your contentions and reviewed the materials that you provided. 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 of 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.

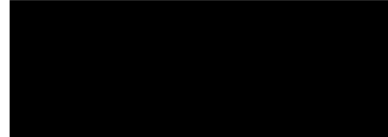
In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness during service. You did not provide any documentation supporting that you were in the process of being medically retired or separated on account of a disability while you were in service. In fact, the Board observed that you were never referred to a medical board and signed a written notification that fully explained that you were fit for separation. Finally, the fact that the VA rated you for service connected disability conditions did not persuade the Board these conditions were unfitting at the time of your discharge from the Navy since 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. As a result, the Board determined the preponderance of the evidence does not support placement on the disability retirement list. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

Regarding your contention that your reentry and separation codes conflict, the Board disagreed. Both codes are authorized to be assigned to personnel released from active duty due to non-retention on active duty. Since you were not retained on active duty due to failure to meet reenlistment standards in your assigned rating, the Board found no error or injustice with the assigned codes.

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,

5/4/2022

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Deputy Director

Signed by:

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