



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

█  
Docket No. 1631-22  
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.

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 12 May 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 Marine Corps on 5 June 1985. From 7 January 1991 to 22 June 1991, you served in █. On 1 August 1992, you were discharged from active duty and you enlisted in the reserve component. Thereafter, you served in a variety of positions and activities. Notably, in 2006, you suffered a heart attack and underwent bypass surgery. On 11 September 2008, this Board denied your request to be placed on the disability retirement list due to your heart attack. The Board also denied your request for service credit for you be able to obtain a 20-year reserve retirement. In June 2016, the U.S. Department of Veterans' Affairs (VA) rated you with a 100% service connected disability for Chronic Fatigue Syndrome. On 26 October 2017, this Board denied your reconsideration request to be placed on the disability retirement list based on your Chronic Fatigue Syndrome.

In your current petition, you again seek a disability retirement. In support of your request, you provided a written letter, materials from the VA, as well as information concerning Chronic Fatigue Syndrome. You explained that "[n]ew medical evidence now points to people who have C.F.S. are at much higher risk for heart conditions, even heart attacks, and sometimes at even much earlier ages, such as in my case at only the age of 40."

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures, and disagreed with your rationale for relief. With respect to your request for a disability discharge, 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.

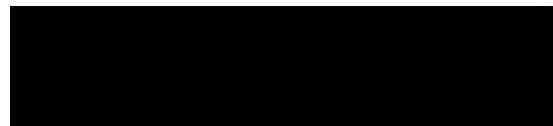
Here, as explained to you in its prior decision letter, the Board observed that there were no findings that you were unfit during service, nor did you provide any evidence of unfitness. In addition, the Board noted that neither your fitness reports nor your physical fitness tests indicated any deficiencies in your performance related to any physical or mental findings of unfitness. Accordingly, the Board determined no error or injustice exists in your case.

Finally, the fact that you have received a service connected disability rating for service connected disability conditions did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps 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.

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,

5/26/2022

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Deputy Director

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