



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. 1868-22
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 1 August 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 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 enlisted in the Navy Reserve in November 1977. On 7 August 1978, you were ordered to 36 months of active duty in the Navy, and you thereafter commenced a period of active duty. On 22 December 1978, you were discharged from active duty. There is no the basis for your discharge in your official military personnel folder. Post-service, you were granted service connected disabilities by the U.S. Department of Veterans' Affairs (VA). According to the VA documentation in your petition, the effective date of the last change to your current VA award was 1 December 2021 with a 40% service connected disability rating.

In your petition you seek a change to your discharge Navy from Honorable to "Honorable under service connected disability." In support of your request, you provided information

demonstrating that the VA awarded you a 40% service connected disability rating and an assertion that you were discharged from the Navy for a seizure disorder caused by a head injury.

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures, and it 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. In denying your request for a disability discharge, the Board observed that there were no findings that you had a qualifying disability condition while you were on active duty. In reaching its conclusion the Board also determined that the presumption of regularity applied to the process employed with respect to your narrative reason for separation. Your record does not contain any documentation, nor did you provide any, that there was any error or injustice in your separation from the Navy. Therefore, absent substantial evidence to the contrary, the Board relied on the presumption to conclude you were properly discharged from the Navy.

In addition, the fact that the VA later provided you service connected disability findings, the Board noted that such findings from the VA for service connected disability conditions did 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, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

8/19/2022

