



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

■
Docket No. 2030-22
Ref: Signature Date

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 November 2022. 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 an advisory opinion (AO) dated 18 May 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 shows that you enlisted in the Navy and commenced a period of active duty on 19 February 1975. On 27 March 1975, you were found to be unsuitable for further service due to a character and behavior disorder. On 31 March 1975, you were discharged due to unsuitability based on a character and behavior disorder.

In your petition, you requested a medical retirement. In support of your request, you asserted that your arm was angled at 16 degrees, and you were told that it could only be angled at 14 degrees. You further asserted that you did everything that you could to stay and serve your country, and that you were denied a waiver.

In light of your request relating to medical concerns, the Board obtained the AO. According to the AO, in part, with format edited:

In-service records clarified Petitioner's administrative separation was not due to a diagnosed medical condition, cited by Petitioner as reduced extension of his right elbow. He was administratively separated for unsuitability for service due to his poor performance and attitude, lack of motivation, and 'character and behavior disorder which renders the subject unsuitable.'

Petitioner was evaluated by medical and mental health providers and showed no evidence of a medical or mental health condition that was unfitting for military service. He did not have a medical or mental health condition that qualified for consideration for a medical disability retirement.

In summary, the preponderance of evidence provides insufficient support for the request. This is due to the presence of objective evidence that at the time of separation, Petitioner did not suffer from a diagnosable medical or mental health condition that rendered him unfit for duty, or qualifying for medical disability retirement considerations. Had referral to the PEB occurred, a finding of fit to continue naval service would have been the likely result, with resulting administrative separation for unsuitability. Petitioner was appropriately evaluated and determined to be unsuitable for continued service and was administratively separated as a result of these determinations.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. The Board concurred with the AO in finding that you were discharged based on a character and behavior disorder, and that you did not have a medical or mental health condition that qualified for consideration for a medical disability retirement. In your petition, you provided nothing to the contrary, nor did you provide any material to rebut the AO. Accordingly, in light of all of the foregoing, the Board denied your petition.

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,

12/12/2022



Executive Director

Signed by:

