



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. 2353-22
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 2 June 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, after having spent a period of time enlisted in the U.S. Army Reserve, you enlisted in the Navy and commenced a period of active service on 8 October 1996. You served without incident until 7 October 2000, when you were released from active duty with an Honorable characterization of service and transferred to the Navy Reserve. On 5 October 2002, you were transferred to the Individual Ready Reserve due to your unsatisfactory drill participation.

In your petition, you requested that you should have been advanced in rate because you contend that you were qualified for advancement. You also request that you be designated disability status due to a knee condition. You contend that you injured your knee while on active duty and difficulties with your knee continue to this day. In light of the two issues in your petition, the Board determined that it would separate these two issues for review. This letter refers solely to

your request for disability status based on your knee condition. In support of your request for disability status, you provided medical records and a cover page from the U.S. Department of Veterans' Affairs (VA).

The Board carefully considered your petition, but 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. 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.

In denying your request for a medical discharge, the Board observed that there were no findings that you had a qualifying disability condition while you were on active duty. To the contrary, the Board determined that your naval records reveal that you were fit to serve. The Board noted that you served through the end of your enlistment and you were fit to transfer to the Navy Reserve. At the time of your release from active duty, you were assigned a reentry code with no limitations for reenlistment. The Board also considered that you were only removed from the Navy Reserve and transferred to the Individual Ready Reserve due to your failure to meet your drill requirements. Finally, the Board reviewed the cover letter that you provided from the VA, which stated that the VA was working on your claim. The material you provided does not reflect that the VA found that you have service connected disabilities. Nevertheless, to the extent you provide such documents in the future, please note that eligibility for the 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. And, as noted above, the Board found that there is no evidence in your record that you suffered any unfitting condition while you were on active duty. Accordingly, with respect to your claim that you are entitled to disability status based on your active duty time in the Navy, the Board determined insufficient evidence of error or injustice exists to warrant 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,

6/23/2022

