



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. 3012-22
Ref: Signature Date



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 22 July 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.

You enlisted in the Navy and commenced a period of active duty on 10 January 1981. On 30 November 1981, a medical board diagnosed you with painful right thoracic convex scoliosis, which existed prior to your enlistment, which the medical board determined was not aggravated by service. The medical board recommended that you be discharged by reason of physical disability, without entitlement to disability benefits administered by the Department of the Navy. After being advised of the findings and recommendation of the medical board, you declined to submit a statement in rebuttal thereto or to request an appearance before a physical evaluation board. You also requested that you be administratively discharged as soon as possible. On 4 December 1981, you were discharged in accordance with the recommendation of the medical board.

On 8 January 1982, you filed a claim with the U.S. Department of Veterans' Affairs (VA) for disability compensation related to a back condition. The VA confirmed the diagnosis of slight thoracic scoliosis, and denied your request for service connection for that condition. In 1983, you sought relief from the Navy Discharge Review Board (NDRB). The NDRB found that your discharge characterization was not in error because it was based on your 2.6 evaluation performance trait average. Subsequently, you filed six prior cases with this Board, all of them

either denied based on the merits or administratively closed due to your failure to provide new and material evidence in support. For example, in its 1996 letter denying your petition, this Board did not accept your contention that you sustained a significant injury to your neck/upper back, explaining:

it is not substantiated by entries in your naval medical record. In addition, it concluded that your present description of the manner in which you allegedly injured your back is not credible. It noted that your upper back pain was initially attributed to a possible muscle strain related to dragging lines and hoses, rather than recent external trauma, and that you advised the medical board that your symptoms had begun in boot camp. The fact that you were not treated for back or neck pain before your enlistment was not considered significant, because the available Navy medical records establish that you had an old fracture of the T1 vertebra which probably caused slight cervical thoracic scoliosis. Although the condition became symptomatic as you participated in military training, there is no indication that the underlying condition was aggravated beyond its natural, expected progression during your brief period of naval service. The Board found it particularly significant that your symptoms resolved shortly after you were discharged from the Navy, and that a Veterans Administration physician noted on 19 March 1982 that you had full, free, complete range of motion of all extremities, and no complaints of neck or back problems at that time.

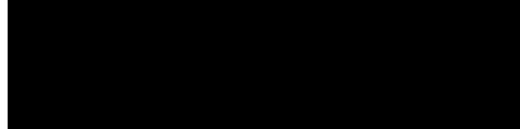
In your current petition, you contend that you were working underneath a T-28 aircraft and, as you went under the middle of the aircraft, you were not bent over enough and you hit your cervical spine bone. You further contend that you reported to sick call that you had back pain, but you did not explain the cause of the injury, and that the treating physician overlooked your symptoms. You also assert, as you had previously, that you did not have a spinal injury prior to joining the Navy.

After carefully considering this most recent petition, the Board found no evidence that you suffered from a qualifying disability condition at the time of your discharge. The Board substantially concurred with its prior finding. The Board observed at the outset, as it had before, that your assertions are not supported by medical entries in your naval medical records. The Board found that there is also an absence of health record entries by your health care providers recommending that you be referred to a physical evaluation board. To the contrary, your medical board determined that you should be discharged due to a preexisting medical condition; a fact relied upon by the prior Board decision to deny your request. The Board also observed that your current explanation of the cause of your injury is different from two of your prior explanations for the cause of the injury. This fact led them to again question the credibility of your version of events that led to your back condition and to concur with the VA decision that your condition was not incurred or aggravated by your active duty service. Therefore, the Board concluded that insufficient evidence of error or injustice exists with regard to your discharge from the Navy. 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,

8/4/2022



Executive Director

Signed by:

