



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. 3110-22
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 9 March 2023. 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, to include the Secretary of Defense Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," 3 September 2014 (Hagel Memo), the Under Secretary of Defense Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," 25 August 2017 (Kurta Memo), and the Under Secretary of Defense Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018 (Wilkie Memo).

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 18 October 1974. On 5 August 1975, you received nonjudicial punishment for a period of unauthorized absence from 7 to 31 July 1975, and for missing ship's movement. On 14 August 1975, you received nonjudicial punishment again, for absence from morning quarters and failing to obey a lawful order. On 14 August 1975, you received a psychiatric evaluation, as a result of which you provisional diagnosis of Immature Personality. On 14 August 1975, you were discharged by reason of unsuitability with a General (under honorable conditions)

characterization of service. On 2 September 1975, your Commanding Officer transmitted notification of your discharge to the Chief of Naval Personnel. In his transmittal letter, the commanding officer explained that the discharge was based on your “inability to adapt to Navy life following extensive effort and counseling at all levels of leadership in this command.” The Commanding Officer further explained that you underwent a psychiatric examination, which revealed that you were “incapable of serving adequately in the Naval service because of [your] personality disorder.”

In your current petition, you seek to (1) have your Certificate of Release or Discharge from Active Duty (DD Form 214) corrected to its original version, and (2) be awarded a medical retirement. In support of your petition, you contend that the Personnel Officer on your ship altered your DD Form 214 in order to cover a rape that you contend occurred while you were in service.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. With respect to your request to correct your DD Form 214, the documents you provided did not appear to be incorrect. The first copy of the DD Form 214 that you provided does not contain the basis for your discharge. You should note that the DD Form 214 that you submit as an alleged altered version states “Copy 2” in the bottom right hand corner, and contains the authority and reason for your discharge. In other words, Copy 1 of a DD Form 214 does not contain the reason for your discharge, but Service Copy 2 provides additional information that is not contained in Copy 1. You were, in fact, discharged due to unsuitability – character and behavior disorders, which is reflected in Copy 2. Thus, there is no apparent error in your DD Form 214 provided in connection with your discharge and the Board denied this part of your requested relief.

With respect to your request for a medical discharge, the Board found no basis for such relief. In reaching its decision, the Board observed that, 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 his or her office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if his or her disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; the member’s disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met any the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. In reaching its decision, the Board observed that there was no evidence in your record, nor did you provide any, that you incurred a qualifying disability condition while you were on active duty service. To the contrary, as set forth in your Commanding Officer’s letter of 2 September 1975, you were discharged due to your inability to adapt to the Navy as evidenced by your history of misconduct and your diagnosis of a passive-aggressive personality disorder. Similarly, there is no evidence in your records, nor did you provide any, that you were a victim of any sexual misconduct while you were on active duty, and

the mental health professionals who evaluated you did not cite any such activity. In sum, the Board observed the actual reason for your discharge was as a result of your demonstrated unsuitability for further service as evidenced by the aforementioned medical record as well as the imposition of nonjudicial punishment on two occasions.

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,

3/29/2023

