



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. 3319-22
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 16 March 2023. 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 9 February 1968. While you were in service, you were reviewed by a medical evaluation board, which referred you to the Physical Evaluation Board (PEB). The PEB found that you were unfit due to mucoviscidosis with a 10% disability rating. On 6 November 1969, you were discharged in accordance with the findings of the PEB. You provided documentation that the Department of Veterans' Affairs (VA) found that you had been awarded, among other conditions, a 60% service connected disability rating for heat intolerance effective 28 May 2009. The materials from the VA that you provided also describe that they awarded you a service connected disability rating for mucoviscidosis at 10%, effective 11 July 1969.

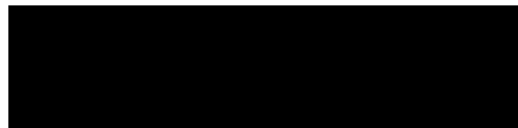
In your petition, you request that your discharge be changed to medical retirement. In support of your request, you contend that you were medically discharged due to a misdiagnosis of cystic fibrosis (mucoviscidosis), and that your cystic fibrosis diagnosis was found to be heat intolerance characterized by nausea, vomiting, weakness, and weight loss at 60% disability rating. You argue that your heat intolerance happened in the line of duty, and that, had you not been misdiagnosed, you would have received a medical retirement with a 60% rating.

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. At the outset, the Board observed that there is no evidence in your record, and you provided none, that the PEB made a misdiagnosis in 1969. The Board applies a presumption of regularity in reviewing the actions of naval officials in the execution of their duties, and, in the absence of substantial evidence to the contrary, it will presume that they have properly discharged their official duties. In reviewing your petition, the Board presumed that the conduct and findings of the PEB were correct. In addition, the Board gave greater weight to the finding of the PEB, which reviewed you in person contemporaneous to your service in 1969 as compared to the finding of the VA in 2009, approximately 40 years after your discharge. The Board further observed that there are many other unknown factors that may have intervened over the years, including that your physical condition may have changed over the several decades since your discharge. In reaching its decision, the Board also observed that the VA documentation that you provided includes the diagnosis of cystic fibrosis (mucoviscoidosis). In other words, the documentation does not demonstrate that the cystic fibrosis diagnoses was erroneous as you allege. As a result, the Board concluded insufficient evidence of error or injustice exists with the PEB findings in your case. 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,

4/6/2023

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Executive Director

A black rectangular redaction box covering the contact information of the Executive Director.