



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. 3569-22
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 31 October 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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 21 November 1990. You received nonjudicial punishment on four occasions for unauthorized absences, disobedience of a commissioned officer, missing ship's movement, and dereliction of duty. On 20 November 1992, the Bureau of Naval Personnel directed that you be discharged by reason of misconduct due to a pattern of misconduct, with a general (under honorable conditions) characterization of service. On 2 February 1993, a pulmonary medicine specialist diagnosed you with mild obstructive lung disease and emphysema. He noted that you continued to use tobacco despite those diagnosis. He also found you fit for discharge, and recommended that you discontinue tobacco use. As directed by the Bureau of Naval Personnel, you were discharged by reason of misconduct on 18 February 1993.

In your petition, you request a medical discharge. In support of your request, you contend that you were mistreated by the Navy and that you had medical conditions that were evident while you were on active duty, which should have resulted in a medical discharge. Specifically, you contend that you were diagnosed with emphysema while you were on active duty and you should have received a medical discharge. In further support of your request, you provided a lengthy written statement, medical documentation, reference material, and character questionnaires. You also provided evidence that the U.S. Department of Veterans Affairs (VA) awarded you a service connected disability.

Your petition did not reflect that you were seeking reconsideration of a prior decision of this Board. But Board records reflect that in 1999 you filed a petition seeking relief similar to the relief you request in your current petition. By letter dated 7 March 2000, this Board denied your petition as follows:

The Board noted that a discharge by reason of misconduct takes precedence over disability evaluation processing. Accordingly, in order for you to qualify for disability retirement or separation, you must demonstrate that your discharge by reason of misconduct was improper, and that you were unfit by reason of physical disability at that time. With regard to the former issue, the Board noted you committed numerous acts of misconduct during your enlistment, which would have warranted a discharge under other than honorable conditions rather than the general discharge you actually received. The Board was not persuaded that the discharge was unwarranted or improper. With regard to the issue of physical disability retirement or separation, it noted that although you suffered from pulmonary conditions during your enlistment, you were found fit for discharge by a pulmonary medicine specialist, and you have not demonstrated that you were unfit to perform the duties of your office, grade, rank or rating because of your pulmonary conditions.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation that you provided, and the Board disagreed with your rationale for relief. On review, the Board determined that you did not provide new matter sufficient to overcome the rationale of its prior decision. In other words, the Board determined that its prior decision remained valid and it concurred with its prior rationale. With respect to the material that you provided relating to findings by the VA, which does not appear to have been addressed previously, the fact that the VA rated you for a disability condition that it determined was connected to your time in the service did not persuade the Board these conditions were unfitting at the time of your discharge from the Navy since eligibility for 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. In your case, as described above, not only did your misconduct take precedence over any disability evaluation processing, you were found fit for discharge by a pulmonary medicine specialist. In light of all of the foregoing, the Board determined there was no error or injustice in your naval record and it 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,

11/17/2022



Deputy Director

