



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 3691-22  
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 25 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.

A review of your record shows that you entered service with the Navy on 26 May 1987. On 19 June 1987 you were notified of administrative separation processing for failing to meet minimum swimming requirements. On 26 June 1987, you were discharged for condition, not a disability with an uncharacterized entry level separation. You reenlisted in the Navy Reserve in 1996. On 14 November 2001, you were recalled to active duty. In December 2002, you were seen for the removal of a cyst on your foot. You were released from active duty and transferred to reserve status on 26 August 2003. On 12 June 2005, you reenlisted in the Navy Reserve for six years. On 30 September 2005, your performance evaluation reflected a 3.57 trait average with a Must Promote recommendation, and it included various positive performance comments. On 16 November 2005, you were transferred to Naval Support Activity █. On 5 January 2007, you were placed into an inactive reserve status. On 11 June 2011, you were released from the Navy Reserve at the end of your obligated service with an Honorable discharge.

In 2021, you filed a prior petition with this Board seeking a disability retirement. On 9 December 2021, this Board denied your request for a disability retirement based on lack of evidence that you had a qualifying unfitting condition. In reaching its decision, this Board

considered your post-active duty performance and your reenlistment in 2005. Shortly thereafter, you filed another petition with this Board in 2022, again seeking a disability retirement. On 27 January 2022, this Board denied your request as follows:

Therefore, despite evidence you underwent medical procedures while on active duty, these factors led the Board to conclude the preponderance of the evidence does not support a finding that you were unfit for continued naval service at the time of your release from active duty. While the Board considered your arguments that your command failed to assist you in your efforts to seek disability benefits, they concluded they were not probative to the issue of whether you were unfit for continued naval service in August 2003. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

In your current petition, you again requested disability benefits. Specifically, you have requested that you be placed on the temporarily disabled retirement list (TDRL) in order to be evaluated and placed on the permanently disabled retired list (PDRL). You contend, as you had before, that your command did not provide you the support necessary, and they kept telling you to wait due to the command being deactivated. In support of your petition, you provided medical documents and a current rating from the U.S. Department of Veterans' Affairs (VA) at the level of 100%.

The Board carefully considered your petition and assertions contained therein and denied your requested relief. In order to qualify for military disability benefits through the Navy's 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. In denying your request for a disability discharge, the Board observed that there were no findings that you had a qualifying disability condition while you were on active duty. Rather, the Board found that, contrary to findings of unfitness, your performance evaluations were satisfactory and that you were, in fact, honorably released from active duty, and later, from the Navy Reserve at the natural expiration of your obligations. Further, the Board was not persuaded by your VA evidence 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. The Board observed that the contentions you made in your current petition are very similar to the contentions that you had made in your prior two petitions, and, as such, the Board concurred with its prior decisions, and refers you to its prior letters denying you relief for any additional explanation as to the Board's decision to deny your requested relief. 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,

8/8/2022

