



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. 3895-22
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 3 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. The Board also reviewed the 14 July 2022 advisory opinion (AO) of a qualified medical professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty in 1977. On 2 March 1979, you received nonjudicial punishment for unauthorized absence. On 7 December 1993, your physical condition was reviewed by a medical board, which reported that it diagnosed you with knee condition, found you not currently fit, and provided you six months of limited duty. The report of the medical board also included a recommendation that your case be reviewed by the Bureau of Naval Personnel. Your naval records do not appear to contain a copy of a report of a physical evaluation board (PEB). On 15 August 1994, a message was issued from Bureau of Naval Personnel, which directed that you discharged due to a disability, with severance pay. On 6 September 1994, you were discharged due to disability with severance pay.

In your petition, you seek to have your reason for separation changed to a medical retirement and that you receive all benefits retroactive to your separation date. In support of your request, you explain that you had intended to complete 20 years of military service, but you received no

assistance from your final command and no information on how the Department of Defense or Department of Veterans' Affairs (VA) disability systems worked. You further assert your former division officer and department head laughed when you requested assistance. You state that you are currently unemployable and that you are rated at 80% disabled per the VA and suffer from dangerous night terrors regularly. You did not provide any documentation from the VA concerning your disability.

In order to assist it in reviewing your petition, the Board obtained the 14 July 2022 AO. According to the AO:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his medical processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. While separation from service is a stressful process, his personal statement is not sufficiently detailed to establish clinical symptoms (e.g., traumatic precipitant). Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation from service) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his separation could be attributed to PTSD or another mental health condition."

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. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In your case, the Board applied a presumption of regularity based on the lack of records rebutting the findings of the Navy. The Board noted that your physical condition was reviewed by a medical board. Further, the Bureau of Naval Personnel transmitted a message directing that you be discharged due to a disability with severance pay. Based on this evidence, the Board reasonably inferred that you were not found unfit to the extent that warranted a disability retirement.

In addition, the fact that you contend the VA rated you for a disability condition that it determined were service 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. Thus, 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,

10/17/2022

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Executive Director

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