



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

█
Docket No. 4078-22
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 26 September 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 determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 3 August 1982. On 22 October 1982, you presented to medical with back pain. You were reviewed by a Medical Board, and on 1 November 1982, it issued a report finding that you did not meet the minimum standards for enlistment or induction and that you had no unfitting condition that was incurred or aggravated while in service. In accordance with the findings of the Medical Board, you were discharged on 4 November 1982 with an Honorable characterization of service due to failure to meet required physical standards for enlistment.

In your petition, you seek to have your characterization of service be changed to "Honorable Medical" and that your narrative reason for separation be changed to "Honorable Discharge Due to Medical Disability." In support of your requests, you contend that these changes must be made because you were discharged due to the injury that he incurred while on active duty. In

further support of your petition, you provided a statement, medical reports, including a record from a civilian provider, as well as other statements in support.

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. In denying your request for a disability discharge, the Board observed that, in order for you 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 their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; or the member's disability imposes unreasonable requirements on the military to maintain or protect the member.

Here, the Board carefully reviewed the materials that you provided as well as available service records and determined that you did not provide evidence, nor was any in your record, sufficient to demonstrate that you were discharged due to a qualifying unfitting condition. To the contrary, the report of the Medical Board during your period of service made clear that you did not have an unfitting condition that was incurred or aggravated during service. In reaching its decision, the Board also applied a presumption of regularity in the conduct of officials, and there was nothing your naval records that appeared in error. Finally, the Board did not find a contradiction between in your DD Form 214 regarding your narrative reason for separation. The Board noted that the Marine Corps determined that you did not meet induction standards due to your preexisting back condition and, since this was not discovered during your enlistment processing, you were allowed to enter the Marine Corps erroneously. In light of all of the foregoing, the Board did not observe any error or injustice in your discharge and characterization of service. 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,

10/6/2022

█