



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. 4380-22
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 28 November 2022. The names and votes of the panel members 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 6 April 2010. On 2 March 2012, you were issued a written counseling describing that you were diagnosed with a mood disorder that was not considered a disability, but which did constitute a factor in your assignability in the Navy. On 5 March 2012, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 8 March 2012, your commanding officer directed your discharge. On 27 March 2012, you were discharged due to a condition, not a disability.

In 2022, you filed an application with the Naval Discharge Review Board (NDRB), seeking relief similar to the relief you seek from this Board. On 28 June 2022, the NDRB denied your application explaining that it did not have the authority to award a medical retirement and that only this Board can grant this form of relief.

In your petition, you requested that your discharge be changed to a medical retirement. In support of your request, you asserted that you were discharged for a condition, not a disability, but after your discharge, you were awarded a service connected disability by the U.S.

Department of Veterans' Affairs (VA). You provided a letter from the VA reflected that you have a 50% service connected disability.

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 reaching its decision, the Board observed that, in order 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; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. The Board observed that there is no evidence that you received any diagnosis of an unfitting condition as defined within the disability evaluation system while you were on active duty, and there is no referral to a medical evaluation board evident in your records. Rather, the Board concluded that you were discharged due to a condition that was diagnosed as not a disability. In other words, your diagnosed condition did not necessarily prevent you from performing the duties of your office, grade, rank or rating but was determined not to be amendable to Navy service since your prescribed medication placed you in a non-deployable status and your condition was considered a disqualifying condition under DOD policy. With respect to the VA findings that you cite, the Board observed that 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. Therefore, the presence of a VA assigned disability rating does not establish unfitness for continued service as defined within the disability evaluation system. 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,

12/19/2022

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Executive Director

Signed by: █