



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. 4423-22
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 5 December 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 19 March 2003. On 27 March 2003, you tested positive for marijuana use on your accession urinalysis after you certified that you did not use any illicit drugs on your Illicit Behavior Screening Certificate. As a result, you were discharged for erroneous entry on 7 April 2003 and issued an uncharacterized entry level separation. In 2015, you filed a petition with this Board seeking an honorable characterization of service and a medical discharge, which this Board denied. In 2017, you filed another petition with this Board making similar contentions, which this Board administratively closed due to your failure to provide any new matter.

In your current petition, you request an honorable/medical separation. In support of your request, you state that your entry approved you to be in "tolerance level for desired tests." You also included documentation relating to your claim before the Board of Veterans' Appeals and from the Social Security Administration.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and it 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 of 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 any of the criteria for unfitness at the time of your discharge. In reaching its decision, the Board concurred with its finding in your prior petition, in which it did not "find any evidence to support a finding that you suffered from a disability incurred or aggravated during your brief period on active duty or that there was an occupational impairment resulting from any disability. The Board further determined that the material you provided in your current petition was insufficient to change its view on your requested relief. In sum, there is no evidence that you suffered a disability condition while you were on active duty within the meaning of the disability evaluation system. To the contrary, the evidence demonstrates that you tested positive for use of marijuana shortly after you certified that you had not used illicit substances, and that you were promptly separated from service. Accordingly, the Board 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

12/20/2022

