



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. 4455-22
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 application 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 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 a 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 active duty on 3 February 1993. On 5 March 1993, you were reviewed by a medical board, which found that you had degenerative joint disease, a disqualifying condition that existed prior to your entry into the Marine Corps, and recommended that you be discharged. On 12 March 1993, your Commanding General approved the recommendation of the medical board to discharge you due to physical disability existing prior to entry, and you were discharged that day.

You provided information that in 2002, the U.S. Department of Veterans' Affairs (VA) awarded you a 20% service connected disability due to right shoulder sprain.

In your petition, you request to have your DD Form 214 changed to reflect that your reason for discharge was disability/medical, that your separation program designator be changed to JFN1, and that your characterization of service be changed to Honorable. In support of your request, you contend that your preexisting condition was noted during your entrance processing, it was waived, and that you aggravated your condition on active duty. In further support of your request, you provided documentation relating to the findings of the VA.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the documentation from the VA, and 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.

The Board observed that you did not provide any medical documentation contemporaneous to your service that tended to show that the finding of the medical board while you were in-service was in error. Nor did you otherwise provide documentation that you suffered an unfitting condition while on active duty as that phrase is defined within the Disability Evaluation System. In other words, the Board found that you were discharged, not because you were unfit for continued naval service, but because your right shoulder condition made you unsuitable for Marine recruit training. With respect to the material that you provided relating to findings by the VA, the fact that the VA rated you for a disability condition that it determined was 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 Marine Corps because 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. Finally, the Board concluded you were properly assigned an uncharacterized entry-level separation based on applicable regulations. The Board noted you were in your first 180-days of active duty service when you were discharge. Thus, absent the existence of policy excepting circumstances that would have qualified you for a waiver from the Secretary of the Navy, the Board concluded your uncharacterized discharge remains appropriate. 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

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