



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. 4553-22
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 31 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 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 Navy and commenced a period of active duty on 8 July 1997. On 21 November 1997, you were discharged with an uncharacterized discharge due to entry-level performance and conduct. Your service record does not include your discharge paperwork. Thus, in light of the absence of any evidence to the contrary, the Board relied upon the presumption of regularity in determining your administrative separation processing was in order and appropriate.

In your petition, you have requested this Board change your discharge from uncharacterized to a medical retirement. In support of your request, you contend that you suffered a knee injury on active duty, you have been diagnosed with post-traumatic stress disorder by the U.S. Department of Veterans' Affairs (VA), and therefore you should have received a medical retirement. Your

petition did not include any medical record documentation, but you did provide a letter from the VA demonstrating that the VA has awarded you a service connected disability rating of 70% as of 1 February 2022. The documentation you provided did not include any medical evidence, and it did not include any evidence relating to any findings of unfitness while you were on active duty.

The Board carefully reviewed all of your contentions and the materials you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reaching its decision, the Board determined 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 petition, the Board observed that you did not provide any evidence to support a finding that, during your period of active duty, you met the standard stated above. The Board also observed that your service record did not contain any evidence that demonstrated your unfitness due to a physical disability condition. Further, with respect to your submission of a letter from the VA demonstrating that it has awarded you a service connected disability rating, 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. Here, in light of the absence of any supporting material, the Board did not find any error or injustice in your service record. 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,

11/17/2022

A large black rectangular redaction box covering the signature of the Deputy Director.

Deputy Director

A black rectangular redaction box covering the contact information of the Deputy Director.