



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. 5564-22
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 16 February 2023. 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 entered active duty with the 25 May 1973. Prior to enlisting, on 9 April 1973, you were found to be physically qualified to enlist as a result of an enlistment physical. On 11 October 1973, you received nonjudicial punishment for disobeying a written order. On 23 October 1973, you missed your ship's movement. On 7 May 1974, you were convicted by a summary court-martial for five instances of unauthorized absence, which totaled 37 days, as well as breaking restriction. On 16 December 1974, you received nonjudicial punishment for four instances of unauthorized absence, totaling nine days. As a result, on 19 December 1974, you were notified of the initiation of administrative separation processing and your rights in connection therewith on the basis of unfitness due to frequent involvement of a discreditable nature with military authorities. On 30 December 1974, your commanding officer transmitted his recommendation that you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service. On 6 January 1975, you were so discharged.

In 2021, you filed a petition with this Board requesting that your GEN discharge should be changed to a medical discharge. In support of your petition, you contended that your mental health conditions are related to your military service. You further stated that you suffered a

concussion during boot camp and that you almost drowned during training. In addition, you provided several medical records as well as letters from medical providers relating to your mental health condition. By letter dated 8 February 2022, the Board denied your petition, explaining that, among other things, “Based upon its review, the Board determined the preponderance of the evidence did not support a finding that you met any of the criteria for unfitness in order to qualify for military disability benefits. In particular, the Board found that there is an absence of health record entries contained in your active duty medical records recommending that you be referred to a physical evaluation board for any condition. The Board further observed that none of the medical documentation that you provided contained support for your contention.”

In your current petition for reconsideration, you again seek to have your GEN discharge changed to a medical disability. In support of your request, you again assert that your mental health conditions are related to your military service. You reiterate that you suffered a concussion during boot camp and that you almost drowned while in the pool. You submitted additional documents, to include a letter denying your claim for Social Security Income as well as a decision from the United States Court of Appeals for Veterans Claims denying your appeal.

Based upon its careful review and reconsideration of your prior petition, the Board determined that the new material that you provided was insufficient for the Board to change its prior decision. At the outset, the Board affirmed its rationale in its prior decision, dated 8 February 2022. The Board noted that the materials that you provided failed to provide documents demonstrating that you were entitled to a service disability discharge or retirement. The Board reiterated that, during the period you served on active duty, you received nonjudicial punishment on two occasions and you were convicted by a summary court-martial. The Board observed, as it stated previously, the fact that you received a discharge under honorable conditions despite your several instances of misconduct, was a favorable outcome in light of the misconduct you engaged in during your service. As a result, the Board concluded that the preponderance of the evidence supports your discharge based on your unfitness due to frequent involvement with military authorities. 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,

3/11/2023

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Executive Director

Signed by: █