



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. 5657-22
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 23 March 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 revealed that you enlisted in the Navy and commenced a period of active duty on 11 July 2006. A review of your medical records demonstrated that, while you had various contacts with medical providers during your service, there are no referrals to a medical board, or from a medical board to the Physical Evaluation Board (PEB). On 10 July 2014, your final evaluation marked you as an "early promote," and described you as a "Hard Charger" and an "Outstanding Boatswain's Mate." Your final evaluation also described that you failed two body composition assessments over a four-year period. On 10 July 2014, you were released from active duty at the expiration of your obligated service with an Honorable characterization of service and an RE-6 (high year tenure) reentry code. You provided information that, after your release from active duty, the U.S. Department of Veterans' Affairs (VA) determined that you had an 80% service connected disability effective 13 November 2019. Your disability percentage was ultimately raised to 100%.

In your petition, you request that your discharge be changed to a medical retirement. In support of your request, you contend that you now have 100% service connected disabilities through the VA. You further assert that while you were in service, you met the requirement for a medical

retirement, but it was not an option during the climate in the service branches at the time of your service.

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 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 as defined within the disability evaluation system at the time of your discharge. The Board observed that there are no indications that, while you were on active duty, you were treated by a medical professional who recommended that you be reviewed by a medical board or that you were referred to the Physical Evaluation Board for review within the Disability Evaluation System. The Board also noted that the Disability Evaluation System existed when you were on active duty and you could have been referred to a medical board, had your provider decided you met the criteria for a referral. However, as previously discussed, your final evaluation described you as a "Hard Charger" and as an "Outstanding Boatswain's Mate" and marked you as early promote. This is contrary to your assertions that you were unfit to perform the duties of your rate. Rather, the reason for your discharge was the expiration of your obligated service after apparently reaching high-year tenure. Your assertion that the VA awarded you service connection for disabilities after your service did not persuade the Board these conditions were unfitting at the time of your discharge from the Navy, 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. 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,

4/11/2023

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Executive Director

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