



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. 6472-22
Ref: Signature Date

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Dear █

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 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 enlisted in the Navy on 29 July 1974. Within days of commencing active duty, you reported back pain along with other physical complaints. Approximately two weeks after your entry on active duty, on 14 August 1974, you were reviewed by a medical board. The medical board explained that you were given a “therapeutic trial of duty only to return to sick call on numerous occasions complaining of constant back pain. The medical officer at sick call talked with his recruit Company Commander who described this man as not being able to keep up with the company and he was not motivated to remain on active duty.” The medical board diagnosed you with Thoracic Scoliosis and Status Post Congenital Cerebral Palsy and found that both conditions were determined to exist prior to your entry into the Navy, based on your medical history and brief period of service. Thereafter, on 16 August 1974, you were discharged for erroneous enlistment.

You filed a petition with this Board in 2004, claiming disability benefits for your back condition. You argued that you suffered a fractured vertebrae after falling in the shower during your brief period of active duty. This Board denied relief based on the medical board report that documented that your back condition preexisted your entry into the Navy. You filed another petition with this Board in 2018 requesting that your cerebral palsy diagnosis be removed from

your naval record. You argued that you never had cerebral palsy and provided medical evidence that demonstrated you did not have the condition as of 2005. The Board again denied your request based on the medical board report.

In 2020, you sought reconsideration of the denial of your petition and included medical opinions that indicated you do not suffer from cerebral palsy. By letter dated 9 June 2020, the Board granted relief, finding that cerebral palsy is a condition that cannot be outgrown by children. Therefore, the current absence of cerebral palsy likely means your childhood cerebral palsy symptoms were not, in fact, due to cerebral palsy.

In your petition, you assert that you were misdiagnosed with cerebral palsy while you were in service, which robbed you of a career. In an email message to the Board, you asked, “What is the VAs responsibility to a veteran that was discharged honorably on a [misdiagnosis]?” Although you did not specifically request, it, the Board considered your petition to include a request for a disability discharge.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation and statements that you provided, and the Board 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 supports the findings of the medical board that your disability conditions preexisted your entry into the Navy. Therefore, in light of the foregoing standard applicable to the disability evaluation system, the Board did not discern any facts that would support you being eligible for a disability discharge. In reaching its decision, the Board applied a presumption of regularity to the actions of the decision-makers at the time of your service. In other words, while you may not have had a diagnosis of cerebral palsy, the records indicate that you were discharge due to a pre-existing condition relating to your back. There is no evidence in your records, nor did you provide any, that you suffered an injury that was caused or aggravated by your naval service. Finally, with respect to your assertion concerning the U.S. Department of Veterans’ Affairs (VA), the Board observed that the VA is a separate agency from this Board. Any queries you have concerning the VA’s responsibility, as set forth in your email message, should be directly addressed to the VA. Thus, in light of the foregoing, the Board did not discern any error or injustice in your naval records. 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.

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,

3/10/2023

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Deputy Director

Signed by: █