



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 7612-22
Ref: Signature Date

█
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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 25 January 2024. The names and votes of the panel members 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, to include the Kurta Memo.

A review of your record shows that you entered active duty with the Navy and commenced a period of active duty on 8 May 2006. On 12 August 2008, you received nonjudicial punishment for disobeying an order and drunken or reckless operation of a vehicle. On 6 May 2011, having completed your required service, you were released from active duty and transferred to the Navy Reserve.

After you affiliated with the reserve, you changed rating from Sonar Technician to Hospital Corpsman and you completed Hospital Corpsman Basic course on 21 May 2014. On 10 September 2019, you reenlisted in the Navy Reserve for six years. On 3 June 2021, you were issued an approved Line of Duty Healthcare Benefits (LODB) for an elbow condition. On 21 March 2022, you were reviewed by an Informal Physical Evaluation Board (IPEB), which found that you were unfit due to elbow conditions rated at 20%, and you were recommended to be discharged with severance pay. On 31 March 2022, you filled out an Election of Options form on which you initialed that you accepted the findings of the IPEB. On 7 April 2022, President, PEB, informed Navy Personnel Command that you were found to be unfit with a 20% disability finding, and you were discharged thereafter.

In your petition, you request to be medically retired from the Navy. You contend that the PEB erred in discharging you with a 20% disability and it did not consider your post-traumatic stress disorder (PTSD) or other disability conditions. You assert that you were told not to list other disability conditions before the IPEB, despite suffering for years, because you were told to list only your recent conditions. You further assert that, post-service, you were found to be 100% serviced connected disabled for PTSD and you provided a document from the U.S. Department of Veterans' Affairs (VA), which states that you it awarded you a 100% combined service connected disability rating.

The Board reviewed your petition and the material that you provided in support, and disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service. In reaching its decision, the Board observed that it relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Further, the Board found that you provided insufficient evidence that the IPEB erred in evaluating your potentially unfitting conditions. The Board did not find persuasive the document you provided from the VA containing your post-service VA rating, in that VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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.

Further, in its comprehensive review of the entirety of your request, the Board determined that, even assuming, arguendo, you were diagnosed with mental health condition such as PTSD while you were on active duty, there is no evidence that any medical provider considered such conditions to warrant referral to a medical board for a determination of fitness for duty within the DES. In your case, the Board noted that your record does not contain, nor did you provide, any evidence that you received an LODB for any mental health condition during your Reserve service, which is a prerequisite for such a condition to be reviewed for a finding of unfitness and potential service disability retirement. Service members routinely serve in the naval services with PTSD and other mental health diagnoses, and such a diagnosis does not necessarily result in a finding of an unfitting condition. In your case, the Board observed that there is no indication in your record, and you provided none, that your unit found you mentally unfit to perform your duties. Therefore, in its review and liberal consideration of all the evidence, the Board did not observe 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.

Sincerely,

2/12/2024

