



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. 7639-22
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 13 April 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 Marine Corps on 8 December 1969. On 6 August 1970, you were referred to Naval Hospital █ due to complaints of suffering from low back pain. Subsequently, you were referred to for a mental health evaluation on 9 December 1970 and diagnosed with an immature personality disorder. A medical board was convened and determined your condition caused severe military impairment, you were unsuitable for further U.S. Marine Corps service, and recommended you be discharged from the service. You did not submit a rebuttal to that recommendation. As a result, on 11 January 1971, you were discharge with an Honorable characterization of service based on your unsuitability for military service.

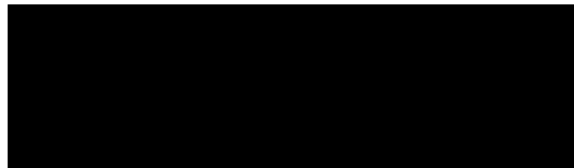
In your petition, you request your discharge be updated to an "Honorable under Medical Conditions." You assert that you injured your back during a hand-to-hand combat training exercise, but the Navy physicians could not find a definitive reason for your back pain. You contend that your Report of Transfer or Discharge (DD Form 214) should reflect a medical discharge because you were not a malingerer or immature.

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 reaching its decision, the Board observed that, in order to qualify for military disability benefits 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 found no evidence that you were processed for a medical board as a result of your back condition. Instead, the Board noted you were processed for separation based on your unsuitability for further military service due to your immature personality disorder. In addition, the fact you received a disability rating from the Department of Veterans Affairs (VA) was not persuasive evidence to the Board. The Board concluded that the mere presence of a medical condition or specific correspondence of any manifestations thereof to an entry indicating a disability rating contained in the VA Schedule for Rating Disabilities is insufficient to warrant either a finding of unfitness for continued naval service in the absence of demonstrated duty performance impairment of sufficient magnitude as to render a Service member unfit for continued naval service. The Board noted 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. Therefore, the Board concluded there is insufficient evidence of error or injustice to grant your request for a disability or "medical" discharge. 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,

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Executive Director

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