



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. 7678-22
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 20 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 Navy and commenced a period of active duty on 8 April 2013. On 12 June 2013, you were diagnosed with Patellar Dysfunction Deficiency and recommended for entry level separation. On 3 July 2013, you were notified of the initiation of administrative separation. On 12 July 2013, you were discharged with an uncharacterized entry level separation for erroneous entry.

In 2020, you filed an application with the Naval Discharge Review Board (NDRB) requesting that your entry level separation be changed because you stated you have a service connected disability. On 22 December 2020, the NDRB denied your application, finding that if your knee condition had been known prior to her entry you would have not been able to enlist.

In your petition, you request that your record be reviewed for a “discharge of disability.” In support of your request, you contend that you were supposed to receive an “entry level medical separation” because you injured your knee in boot camp. You provided medical records and documentation from the Department of Veterans’ Affairs (VA), including email messages concerning your efforts to obtain a home loan, in further support of your petition.

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 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 the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. Notably, the Board observed no evidence that you had any unfitting condition as defined with the disability evaluation system while on active duty. At no time during your service were you referred by a medical evaluation board to be reviewed for potentially unfitting condition or referred to the disability evaluation system. To the contrary, the documentation in your record reflected that the reason you were discharged was due to your unsuitability for service as evidenced by the 12 June 2013 medical record which recommended that you be separated with an entry level separation. You provided no contemporaneous medical documentation contrary to the 12 June 2013 medical diagnosis. Further, while you state that you believed you were to receive an "entry level medical separation," the notice of administrative separation processing that you received and signed on 3 July 2013, which provided you a right to speak with counsel, clearly stated that the basis for your separation was "Defective Enlistments and Inductions - Erroneous Enlistment as evidenced by a physical or mental condition that existed prior to entry into the naval service." Thus, the basis and reason for your separation was accurately described.

Finally, the fact the VA rated you for service connected disability conditions that were diagnosed during your time in the Navy 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. As a result, in light of all of the foregoing, the Board was unable to find any error or injustice to change your narrative reason for separation. 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,

5/4/2023

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Executive Director

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