



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

█  
Docket No. 8011-22  
Ref: Signature Date

█  
█  
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 9 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 shows that you entered active duty naval service on 26 July 1995. On 24 August 1995, the Commanding Officer (CO), █, notified you that you were being processed for defective enlistment and induction into the naval service due to erroneous enlistment as evidenced by your diagnosis of chronic low back pain. The CO noted that you disclosed pre-service medical history to Branch Medical Clinic staff. However, a review of your DD Form 214 states you were separated, on 29 August 1995, with an uncharacterized entry level separation based on “failed medical/procurement standards” in accordance with “MILPERSMAN 3620280.”

In your petition, you contend that although you had a car accident prior to entering the service, you felt well upon entry, and that you injured your shoulder and back while in training. You further contend that other Sailors bullied and threatened you at the time of the injury and that you never told medical personnel that you had to quit a job due to your back pain. You also argue that, as a result of your physical injuries, you became depressed. You provided a Department of Veterans Affairs (VA) ratings decision letter, dated 11 April 2022, stating that you were found to be service-connected for unspecified depressive disorder and insomnia with a rating of 70%,

effective 13 September 2021. The same VA decision letter denied a service connection for back pain. You also included a radiology record from a civilian medical center in [REDACTED], dated 27 January 1995, documenting a normal cervical spine and normal lumbar spine.

The Board carefully reviewed your petition and the material that you provided in support of your petition and disagreed with your rationale for relief. In reaching its decision, the Board noted that the Naval Military Personnel Manual authorizes separation of a member during the first 180 days of service when the member has been found unqualified for further service, and specifies that the separation will be uncharacterized and described as Entry-Level Separation. The Board also noted that you served on active duty for a total of 35 days, disclosed a pre-service history of back issues, and there was no evidence in your record demonstrates you incurred or aggravated your back condition while on active duty. Finally, consistent with this finding, the Board noted that the VA denied a service connection for your back condition.

The Board also considered the VA documentation that you provided, but 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, this documentation did not persuade the Board your mental health condition was unfitting at the time of your discharge from the Navy; especially since the service connection was granted over 25 years after your release from active duty. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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,

4/4/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]