



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. 8445-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 23 May 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 to included the Under Secretary of Defense for Personnel and Readiness Memorandum of 25 August 2017 (Kurta Memo). The Board also considered the 16 March 2023 advisory opinion (AO) from Navy Personnel Command (NPC). Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that you entered service with the Navy Reserve on 25 October 2007. On 15 August 2022, the Bureau of Medicine and Surgery (BUMED) notified NPC and Navy Reserve Region Readiness and Mobilization Command Fort Worth that you do not meet retention standards due to post traumatic stress disorder with panic attacks, insomnia, right knee pain, and hypertension. BUMED did not recommend you for retention in the Naval Reserve, and also advised that you could appeal this Medical Retention Review (MRR) to the Physical Evaluation Board (PEB). BUMED delineated the MRR appeal would only address the retention determination and specifically stated MRR appeals to the PEB are not for evaluation of disability benefits.

On 22 August 2022, PERS-95, released a message to Navy Reserve Center (NRC) [REDACTED], directing NRC [REDACTED] to provide you with the following options: a. A review of the MRR package to the PEB; b. Discharge from the United States Navy; c. Transfer, if eligible, to the Retired Reserve; or d. If eligible, request LOD-B for DES. The message directed that if you did not make an election within 30 days of receipt of notification, NCR [REDACTED] was to contact PERS-912 to determine your retirement eligibility. You did not make an election; consequently, on 27 October 2022 NRC [REDACTED] discharged you from the Navy Reserve.

For this petition, you contend that you were told not to sign the paperwork until after 20 November 2022, if you wanted to retire. You further argue that you were not credited for all of your eligible drill periods. Finally, you claim that you were told that you were eligible for a disability discharge and you request disability retirement.

In order to address your request, the Board referred your case to NPC for an AO. PERS-912 reviewed your record and found that you completed the requisite years of qualifying service from 25 October 2007 to 24 October 2022 for retired pay for non-regular service. Consequently, effective 1 November 2022, you transitioned to the Retired Reserve.

The Board carefully reviewed your petition and the material that you provided in support of your petition and it 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, to include whether they qualified you for the military disability benefits you seek. In reaching its decision, the Board noted for Reserve Service Members to be eligible for a disability retirement, their injuries or medical conditions would have to be determined to have been sustained or exacerbated while in a duty status via a Line of Duty Benefits (LOD) determination. If a Reserve Member is granted a LOD, then the member can enter the Disability Evaluation System (DES); the process that determines if the medical condition prevents the Member from continued service and warrants a disability discharge. In your case, the Board determined you lack the requisite LOD to be considered by the DES.

The Board determined that you were properly notified of not being physically qualified for retention in the Navy Reserve and of your option to request a LOD for processing into the DES. You admit that you did not submit your election of options. Thus, the Board determined you were appropriately not considered for a disability retirement based on your ineligibility for DES processing. Ultimately, 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 to be placed on the disability retirement list does not merit relief.

Regarding your drill points, NPC determined there was an error in your record and found you eligible for reserve retirement effective 1 November 2022. Thus, the Board determined no further action was required on this issue.

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,

6/8/2023

