



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. 8565-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 December 2022. 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.

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 enlisted in the Navy and commenced a period of active duty on 3 October 1996. On 2 April 1997, you were reviewed by the medical department on your ship after there were reports that you were sleepwalking. You were diagnosed with somnambulism (sleepwalking). On 16 May 1997, you were notified of the initiation of administrative separation processing and your rights in connection therewith due to convenience of the government based on somnambulism (sleepwalking), which is defined as a condition, not a disability. You were so discharged on 2 June 1997.

In your petition, you seek to have your reason for separation changed to a medical disability. In support of your request, you explain that you were discharged for a medical disability, therefore, according to your petition, you should have received a medical disability discharge.

The Board reviewed your contentions and disagreed with your rationale for relief. 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 any of the eligibility criteria for a disability retirement at the time of your discharge. As set forth in your service and medical records, you were diagnosed with somnambulism (sleepwalking), which is defined as a condition, not a disability, and you were appropriately discharged due to a condition, not a disability. There is no evidence, nor did you provide any, that you suffered an unfitting disability condition in the meaning of the Disability Evaluation System. In fact, the comments of your commanding officer reflected that, other than your condition, not a disability, your performance was excellent. Therefore, the Board determined there was no error or injustice in your naval record and it denied your petition.

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,

1/4/2023

