



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. 1184-23
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.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 6 June 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 include the Kurta memo.

A review of your record shows that you enlisted in the Navy Reserve and commenced a period of active duty for initial training on 24 November 2009. You served another period of active duty from 22 March 2013 to 9 January 2014. On 17 August 2017, your reserve unit issued you a written Page 13 counseling explaining that your retention in the Navy was not recommended due to being not physically qualified (NPQ) and that you were discharged that date. The Page 13 also described that you were “notified of physical risk classification ‘NPQ retention not recommended’ assignment” in June 2017 and you did not respond or elect options. Your service record did not contain any additional information concerning the basis of your discharge. You provided a 30 November 2022 letter from the Department of Veterans’ Affairs (VA), which reflects that the VA assigned you a service connected disability rating due to various disabilities with an effective date in 2015.

In your petition, you request that your discharge be upgraded to a medical retirement. In support of your request, you contend that the change should be made because your Navy Operational

Support Center (NOSC) should have sent you to a medical board and the VA recently awarded you service connected disabilities.

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 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 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. The Board observed that there is no evidence in your service record, and you provided none, describing that, while you were on active duty, you were evaluated by a medical board with a referral the Physical Evaluation Board. After your release from your initial period of active duty for training, you participated in the Navy Reserve. The Board observed that your service record includes documentation that while you were in the reserve you were found NPQ. As mentioned above, your service record does not contain documents amplifying the reason for the NPQ finding, and you did not provide any. In such circumstances, the Board applies a presumption of regularity. In your case, the Board presumed that your reserve unit had a basis for discharging or releasing you from the Reserve. In addition, even assuming that you had a medical condition while you were in the Navy Reserve, there is no evidence, and you provided none, that you were injured or developed a qualifying condition during a qualifying period of military service in the Navy Reserve and received a Line of Duty determination for such alleged condition.

Finally, with respect to your contention that you are deserving of a medical retirement based on a finding of VA disabilities, the award of such disabilities for conditions connected to your service 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. In sum, 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 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,

6/8/2023

