



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. 1497-23
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 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 19 October 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. The Board also considered a 30 August 2023 advisory opinion (AO) from a qualified medical professional, a copy of which was provided to you and to which you did not respond.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 21 June 1993. On 10 December 1993, you were reviewed by a medical board, which found that you had a foot condition that existed prior to your service, which reflected that you failed to meet required physical standards for entry in the Marine Corps, and for which you should be discharged. On 2 March 1994, you were notified of the initiation of administrative separation due to erroneous entry into service. You were discharged on 1 March 1994 and assigned a General (Under Honorable Conditions) characterization of service.

In 1998, you filed an application with the Naval Discharge Review Board (NDRB) seeking to have your discharge changed to honorable. On 10 November 1999, the NDRB denied your request finding no impropriety in your discharge. In 2000, you filed a petition with this Board seeking to have your discharge upgraded. On 5 June 2001, this Board granted your request to have your discharge upgraded from General (Under Honorable Conditions) to Honorable.

In your current petition, you request that your discharge be changed to reflect that you were awarded an honorable medical discharge and that the narrative reason for your discharge be changed from erroneous enlistment to medical discharged. In support of your request, you contend that, your compensation and pension exams provided by the Department of Veterans Affairs (VA) support your request. You assert that the VA has awarded you an 80% service connected disability, including a finding that you are 100% totally and permanently disabled.

To assist it in reviewing your petition, the Board obtained the 30 August 2023 AO. According to the AO, which was considered unfavorable to your request:

Petitioner submitted VA rating indicating service-connection for Unspecified Bipolar Disorder with Unspecified Personality Disorder. There is no evidence that the Petitioner was diagnosed with a mental health condition, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition while in service. His evidence submitted is not related to the reason for separation. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

Based on the available evidence, it is my considered clinical opinion there is insufficient evidence of a mental health condition that existed during military service. There is insufficient evidence that the reason for separation is in error.

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 or 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. At the outset, the Board observed that you did not provide any evidence contemporaneous to your service that tended to demonstrate that the medical findings that were made while you were on active duty were in error. The Board also substantially concurred with the finding of the AO, which noted that there is no evidence that you were diagnosed with a mental health condition, or exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, while you were on active duty. In light of the foregoing standard applicable to the disability evaluation system, the Board did not discern any facts that would support you being eligible for a disability retirement.

Rather, the evidence of record demonstrates that you were discharged due to a failure to meet physical standards for enlistment.

With respect to the material you provided from the VA, the Board observed that the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, 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. Accordingly, in light of all of the foregoing, the Board denied your petition for 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,

10/30/2023

