





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

 Docket No. 5649-23
Ref: Signature Date


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 14 September 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 in the Navy on 29 July 1974. Within days of commencing active duty, you reported back pain along with other physical ailments. A medical board diagnosed you with Thoracic Scoliosis and Status Post Congenital Cerebral Palsy and determined both conditions existed prior to your entry into the Navy based on your medical history and brief period of service. You were subsequently discharged for erroneous enlistment, on 16 August 1974, and received an Honorable characterization of service.

In your prior petition, Docket No. 2949-20, you requested that your cerebral palsy diagnosis be removed from your naval record. You argued that you never had cerebral palsy, and you provided two medical opinions that stated you do not suffer from cerebral palsy. The Board noted that cerebral palsy is a condition that cannot be outgrown by children and concluded that the medical board misdiagnosed you in 1974, and that you did not have Congenital Cerebral Palsy at the time of discharge. The Board directed that your record be corrected "by placing a copy of this record of proceedings in his naval record. This record of proceedings documents the findings of the Board that Petitioner was misdiagnosed with Status Post Congenital Cerebral Palsy in his 1974 medical board report and serves as notice to all outside agencies that he should not be denied benefits based on the diagnosis."

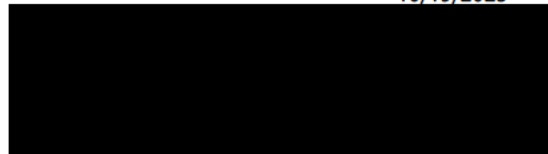
For this petition, you request medical retirement, arguing that you suffered a fractured vertebra after falling in the shower while on active duty that prevented further service.

The Board carefully reviewed your petition and the material that you provided in support of your petition and disagreed with your rationale for relief. The Board noted you went to sick call numerous times within a few days of recruit training, complaining of back pain. However, the Board determined there is no medical evidence that you fractured your vertebrae during active duty or had any injury while in recruit training. In addition, the Board noted that the prior Board's decision, Docket No. 2949-23, acknowledged that you were misdiagnosed with Status Post Congenital Cerebral Palsy in 1974, and directed that your record be corrected by placing a copy of the Board's proceedings documents in your naval record. The Board determined that, even when considering the correction already made to your record, placement on the Permanent Disability Retired List is not warranted, and your administrative discharge for erroneous enlistment (medical disqualification) remains supported by the medical evidence. 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,

10/19/2023

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Executive Director

Signed by:

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