



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. 6584-23
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 12 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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 14 February 2011. On 24 February 2012, you were reviewed by an abbreviated medical board, which found you to have Major Depressive Disorder and placed on limited duty. On 29 June 2012, you were reviewed by an Informal Physical Evaluation Board (IPEB), which found you to be unfit due to Dysthymic Disorder and Major Depressive Disorder, which existed prior to your entry into service. On 10 October 2012, the President, PEB, wrote to the Chief of Naval Personnel advising that you were found to be unfit and that you should be discharged. On 18 December 2012, you were discharged due to a disability that existed prior to your entry in service.

In your petition, you have requested that you be awarded a Department of Defense disability pension and compensation. In support of your request, you contend that you did not receive mental health treatment before you were on active duty. You asserted that you were traumatized after your Captain denied your request for religious accommodation. You included a statement

from your wife as well as a document from Department of Veterans Affairs (VA) demonstrating that you have been awarded a 70% disability rating post-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. 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 military disability benefits as defined within the disability evaluation system at the time of your discharge. In particular, the Board observed that the report of the IPEB while you were in service found you to be unfit due to Dysthymic Disorder and Major Depressive Disorder, which existed prior to your entry into service. As indicated, that document explained that you were being processed for a disability that existed prior to your entry into service. Your petition did not include any documentation to the contrary of the findings of the IPEB in your case. In particular, the Board noted that you did not provide any evidence contemporaneous to your time in service that demonstrated the IPEB in your case was in error. With respect to your reliance on post-service findings by the VA, the Board noted 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, 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,

10/26/2023

