



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

■  
Docket No. 7148-23  
Ref: Signature Date

Dear ■

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 2 November 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 15 December 1997. On 21 April 1998, you were diagnosed with knee pain. The medical professional that conducted your evaluation noted your knee pain existed for approximately two years and, thus, existed prior to your entry in the naval service. On 2 June 1998, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 5 June 1998, your commanding officer transmitted notice of your separation to the Chief of Naval Personnel. In his transmittal letter, your commanding officer explained that your discharge was based on convenience of the government on the basis of other designated physical condition. The physical condition was identified as tendonitis that existed prior to entry into service. You were then discharged on 25 June 1998 with an uncharacterized entry level separation.

You previously filed a petition with this Board in 2023 seeking similar relief. On 29 June 2023, this Board reviewed your petition and denied your requested relief on the basis that your discharge was in accordance with regulations. In its letter explaining its rationale for denying

your petition, the Board set forth the standard applicable to the Disability Evaluation System, and explained that you did not meet that standard when you were on active duty, as follows:

As set forth in your separation documents, you were determined to have a condition that was not considered a disabling condition within the disability evaluation system. In other words, the Board observed no evidence that you had any unfitting condition while on active duty. With respect to a heart problem that you described as a reason for your late discovery of the alleged error in your naval record, the Board observed that you did not provide any information concerning your heart problem. To the extent you cite your heart problem as a reason to support a medical retirement, there is no evidence relating to a heart problem in documents available to the Board, and you did not provide any. Rather, as noted, all record evidence demonstrates that you were medically evaluated while you were on active duty, found to have a condition that existed prior to your entry in service, and separated based on that condition.

In your current petition for reconsideration, you again request that your discharge be changed to a medical retirement. In support of your request, you provided new evidence in the form of a 15 February 2023 letter from the Department of Veterans' Affairs (VA), which awarded you a 30% service connected disability for left atrial enlargement.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition for reconsideration, and the Board disagreed with your rationale for relief. In reaching its decision, the Board reiterated that it found insufficient evidence that you qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, and it affirmed its prior denial of your petition. The Board noted that the new matter that you provided did not contravene its prior decision that all of your record evidence demonstrates that you were medically evaluated while you were on active duty, found to have a condition that existed prior to your entry in service, and separated based on that condition. With respect to your reliance upon a finding by the VA that you have manifested a heart condition, the Board noted that you were separated based upon a finding that you had knee pain that existed prior to your entry into service. There is no indication in your records, and you did not provide any, that you had an unfitting heart condition while you were on active duty. Further, the Board did not find the new matter you provided to be persuasive in 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. In addition, the Board observed that your heart condition was rated by the VA approximately 25 years after your discharge from the Navy. 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,

11/24/2023

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Executive Director

Signed by: █