



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

■
Docket No. 7470-23
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 2 November 2023. The names and votes of the panel members 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 determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record revealed that you enlisted in the Navy Reserve and began your service on 30 March 2001. During your service, you obtained a commission in the Navy Reserve. You served a period of active duty from 11 December 2009 to 27 September 2010. You served another period of active duty orders from 14 August 2015 to 3 May 2016. You served your final period of active duty from 9 March 2019 to 1 March 2021. Your fitness report for the period ending 31 October 2020 reflects that you were rated as "early promote" and that you were "on track" for promotion to commander. Your fitness report ending 1 March 2021 was similarly positive and did not note any deficiencies in your ability to perform your duties. You were retired from the Navy Reserve effective 1 November 2021.

In your petition, you request that your regular reserve retirement be changed to a medical disability retirement based on the PACT Act. In support of your petition, you contend that while you were deployed to [REDACTED], [REDACTED], from February 2010 to September 2010, and to [REDACTED], [REDACTED], from August 2015 to March 2016, you were exposed to powerful toxins from the burn pits. You assert that, shortly after your return in 2016, you visited the medical clinic for respiratory issues, you began to experience some medical issues, particularly fever and chills, and that you were diagnosed with a stomach infection and stage 1 cirrhosis of the liver. You further assert that, in 2019, during your active duty time in [REDACTED] you visited an Emergency Room and you were told you had what appeared to be bronchitis, and that you later realized you had an enlarged heart; a fact you discovered when you obtained a copy of your medical chart in 2021. Finally, you assert that, in 2021, after the completion of active duty orders and return to Reserve Component, you contracted COVID-19, and you were hospitalized and became deathly ill.

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. In its review, the Board observed no evidence that you were diagnosed with any unfitting condition while you were on a period of qualifying duty status, including during your periods of active duty. Indeed, the Board observed that you met or exceeded the demands of your office, grade, rank, or rating and received above average fitness reports, and that it did not observe any non-medical assessments from any of your commands describing your physical inability to complete your duties. The Board also noted that it did not observe any recommendations that you be reviewed by a medical evaluation board during any of your periods of service, and that, in completion of each of your periods of active duty, you were released without limitation to the Reserve Component. The Board also did not observe any indication that you were unfit to continue in the Reserve Component, by way of a Medical Retention Review or being referred to the Physical Evaluation Board (PEB) for a determination of your physical qualification to remain in the Reserve Component. Similarly, the Board found no applicable Line of Duty findings by any of your commands with respect to any conditions that were incurred or aggravated during any periods of qualifying duty. To the contrary, your records demonstrated that you completed your career and you were transitioned to the Retired Reserve.

With respect to your citation of the PACT Act, and your reference to treatment that you receive from the Department of Veterans' Affairs (VA), the Board observed that the VA is a separate organization, and it 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,

11/24/2023

