



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. 8032-23
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 9 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.

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 shows that you enlisted in the Navy and commenced a period of active duty on 1 November 2006. On 15 April 2019, you received nonjudicial punishment for disrespect to a superior commissioned officer. On 6 February 2021, you requested to be discharged and, along with your request, you provided a letter from a military physician that recommended that you be discharged. According to the physician, he diagnosed you with adjustment disorder with anxiety and he specifically found that you did not have any condition that needed to be reviewed by the Physical Evaluation Board, that you did not have a diagnosis of traumatic brain injury, and that you did not have a diagnosis of post-traumatic stress disorder. On 16 April 2021, you were discharged with an Honorable characterization of service based on a condition, not a disability. On 6 May 2021, your commanding officer transmitted your

administrative separation package to his administrative superior explaining that you had been discharged with an Honorable characterization of service based on your request.

In your petition, you request that your discharge be changed from condition, not a disability, to a disability retirement. In support of your request, you contend that, post-service, you were found to have several service connected disabilities by the Department of Veterans' Affairs (VA). You assert that during your service you were suffering mentally and physically and your command did not refer you to the Physical Evaluation Board (PEB). You contend that, if you were referred to the PEB, you would have been found unfit. In support of your request, you provided materials that included medical documentation as well as materials from the VA demonstrating you have been awarded a variety of service connected disabilities which total 100%.

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. With respect to your assertion that you should have been referred to the PEB. The Board observed that you were, in fact, reviewed by a military physician during your service, and the physician that reviewed you during your service made specific findings as discussed above. That physician had the responsibility and the authority to refer you to the PEB during your service should your conditions at that time warranted such a referral. Instead, that physician specifically found that you did not have any condition that needed to be reviewed by the PEB, that you did not have a diagnosis of traumatic brain injury, that you did not have a diagnosis of post-traumatic stress disorder, and you were fit to continue on duty while you were being processed for separation. In addition, the Board found insufficient independent evidence to support your request upon independent review of your petition as well as available documentation. Moreover, the Board took into consideration that your separation from the Navy was based on your request to be discharged.

Finally, the Board was not persuaded by your reliance on findings by the VA, because 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 sum, in its review of all the evidence, the Board did not observe any error or injustice in your naval records. 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

