



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

█
Docket No. 9021-23
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.

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 7 December 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 14 December 2004. On 24 January 2005, you were formally counseled concerning misconduct. On 27 January 2005, you were counseled concerning a pre-service conviction for parking violations and issuing a worthless check. On 1 April 2005, you received non-judicial under Article 92, Uniform Code of Military Justice for three specifications of wrongfully contributing to a minor, violating Phase II liberty by not signing a liberty logbook, and failing to report an offense. On 21 September 2005, you were evaluated by a medical professional who recommended that you be discharged due to having a condition that was not considered a

disability. On 24 October 2005, you received notification of the initiation of administrative separation processing and your rights in connection therewith. On 15 November 2005, your commanding officer directed that you be discharged due to condition, not a disability. You were discharged on 21 November 2005.

In your petition, you request that your discharge be changed from a “condition, not a disability” to “condition is a disability.” In support of your request, you contend that an ankle injury caused you to be discharged and that post-discharge you were rated by the Department of Veterans’ Affairs (VA) for your ankle condition. Along with your petition, you have provided documentation that the VA awarded you a 10% service connected disability.

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. At the outset, the Board observed no error or injustice in the narrative reason for discharge currently on your DD Form 214, Certificate of Release or Discharge from Active Duty, because it accurately reflects the reason for your discharge, and you did not provide any supporting argument or evidence tending to demonstrate its issuance was in error or unjust.

Next, to the extent your request for relief seeks the award of a service disability retirement, the Board determined that there was no basis for granting that 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. The medical documentation contemporaneous to your service clearly reflects a medical finding that you had a condition, not a disability. The Board did not find persuasive your argument that the VA awarded you a disability rating for a disability years after your service that the VA determined was connected to your service 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 and consideration of all of 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,

12/18/2023



Deputy Director

Signed by: [Redacted]