



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. 9597-23
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 4 January 2024. 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 Marine Corps and commenced a period of active duty on 28 June 1968. On or about 4 May 1970, you commenced a period of unauthorized absence, declared a deserter after 30 days, and eventually apprehended on 17 May 1971. On or about 9 August 1971, you commenced another period of unauthorized absence, you were again declared a deserter after 30 days, and eventually apprehended on 14 March 1973. In the face of criminal charges relating to your extensive periods of unauthorized absence, on 17 April 1973 you submitted a request for discharge under other than honorable conditions to escape a trial by court-martial. On 25 April 1973, your request approved. Per your request you were discharged on 11 May 1973 under conditions other than honorable. In 1980, you filed an application with the Naval Discharge Review Board (NDRB), in which you argued that you were told that "if I didn't like my duty I should go AWOL, so I did what they told me to do." The NDRB conducted a review of your application on 8 May 1980, at which it denied your request, reasoning, among other things, that your offenses while on active duty demonstrated a "complete disregard for duty and responsibility."

In your petition, you request that your naval record be corrected by upgrading your discharge from other than honorable and that you be awarded a service disability retirement. In support of your request, you contend that while you were in Vietnam you had a toe amputated, and that, thereafter, you were sent to Camp Pendleton, where you requested educational opportunities and your request was denied.

The Board carefully reviewed all of your contentions and the material you submitted in support of your petition, and the Board disagreed with your rationale for relief. The Board first addressed your request for an upgrade to your discharge. The Board determined that undergoing a medical procedure on your toe or having educational opportunities denied are not sufficient justifications for embarking on two extensive periods of unauthorized absence. Unauthorized absence, particularly of great length such as yours, are considered serious offenses in the naval services. In reaching its decision, the Board observed that you were essentially provided clemency at the time your request for undesirable discharge to escape court-martial was granted. The granting of your request spared you the possibility of a federal conviction, time in the brig, and a punitive discharge, such as a bad conduct or dishonorable discharge, all of which were possible should you have faced a court-martial. In sum, you provided no reasonable justification for your request to upgrade your discharge.

With respect to your request for disability retirement, 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. There is no documentation in your service record, and you provided none, tending to support that you had an unfitting condition while you were on active duty. In fact, after your toe amputation, you were not reviewed by a medical board for determination as to fitness. To the contrary, you remained an active Marine and there is no indication in your service record that you were physically or mentally unable to perform the duties of your position. Further, even assuming you had a potentially unfitting condition, the processing of your serious misconduct while you were on active duty took precedence over any potential evaluation of a disability. Accordingly, based on all of the foregoing, the Board denied the entirety of your petition.

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,

1/24/2024

