



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. 9974-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request or 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 14 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.

A review of your record shows that you entered active duty service on 26 July 1995. On 24 August 1995, the Commanding Officer (CO), █ █ notified you that you were being processed for defective enlistment and induction into the naval service due to erroneous enlistment as evidenced by your diagnosis of chronic low back pain. The CO noted that you disclosed pre-service medical history to Branch Medical Clinic staff. You were separated on 29 August 1995 with an uncharacterized characterization of service. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states the narrative reason for separation was failed medical/procurement standards per Military Personnel Manual (MILPERSMAN) 3620280.

You previously petitioned the Board for medical retirement in Docket No. 2989-23. The Board denied this request in June of 2023 noting that your medical evidence of your conditions you assert were unfitting consisted of documents from the Department of Veterans Affairs (VA) twenty-five years after discharge. For this petition, you again argue that although you had a car accident prior to entering the service, you were well upon entry and injured your shoulder and back while in swim training. You included a radiology record from a civilian medical center in █ dated 27 January 1995 documenting a normal cervical spine and normal lumbar spine to support your contention you were medically sound upon entry. In addition, you argue that you never told medical personnel that you had to quit a job due to back pain. For your reconsideration request, you presented new evidence, a statement as well as a Board of Veterans' Appeals decision dated 21 September 2023 stating that you have a right to have a VA hearing in support of your claim to

service connection for back pain. You again contend that you were injured physically and mentally while in service and warrant a medical retirement.

The Board carefully reviewed your petition and the material that you provided in support of your petition and disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service, to include whether they qualified you for the military disability benefits you seek. In reaching its decision, the Board again noted that you served on active duty for a total of one month and four days and Naval Military Personnel Manual (MILPERSMAN) Article 3630200, authorizes separation of a member during the first 180 days of service when the member has been found unqualified for further service and Article 3610300 specifies that the separation will be uncharacterized and described as Entry-Level Separation.

Again, the Board did not find your argument that you suffered from a disability at the time of your discharge persuasive as your new material evidence is based on a Board of Veterans' Appeals decision. The Board of Veterans' Appeals decision to grant you the ability to have a hearing regarding your claim for service-connection for your back condition, is a Department of Veterans Affairs issue and is not relevant to your request for a medical retirement from the Navy. As stated in the Board's previous decision letter, to rate a medical discharge from the military, a medical board would have had to find you unfit for continued service based on your inability to perform the duties and responsibilities of your rate and rank. As you served less than two months on active duty and had not completed initial recruit training, the Board noted you did not qualify for an administrative discharge review board and the Navy was authorized to administratively discharge you with an uncharacterized characterization of service. In sum, in its review and liberal consideration of all the evidence, the Board did not observe any error or injustice in your naval records and determined that your administrative discharge with an Entry-Level Separation is administratively correct.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/11/2024

