



**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. 10522-23  
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 29 February 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 Navy Reserve on 27 February 1997. While you were in the reserve, you served a period of active duty from 10 January 2004 to 9 January 2006, which included service in █. Eventually, on 2 August 2012, you were notified that you were found to be not physically qualified (NPQ) for retention in the Navy Reserve. Your available service record documents do not contain military readiness review documents associate with this NPQ finding, and you did not provide any such documents in your petition. Thereafter, you were discharged from the Navy Reserve on 13 October 2012.

You filed a petition with this Board in 2015 seeking a reserve retirement, in which you argued that you had been advised that you had enough good years to retire, and then you were later told that you were short of the required time by two years. You also argued that you had an unfitting condition and that you should have been medically retired. On 21 August 2016, the Board granted you relief in the form of awarding you additional reserve points such that you could obtain a reserve retirement. With respect to your request for a disability retirement, the Board found that you provided insufficient evidence that you had an unfitting condition, and therefore

denied this portion of your request. Thereafter, in accordance with the finding of this Board, on 22 September 2016, you received a Retirement Order and Transfer to Retired Reserve.

In your current petition, which is for reconsideration of this Board's prior denial of your request for a disability retirement, you request that this Board direct that you be reviewed by a physical evaluation board to determine whether you should have been medically retired and be paid back pay. In your petition, you did not break out which documentation you contend was new matter for the Board to consider. The Board observed you argued that you should have been reviewed by a medical evaluation board prior to release from an active duty period during which you were exposed to burn pits when you were on active duty.

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. Your contention appears to relate to your time that you served on active duty. The Board noted that there is no documentation in your service record, nor did you provide any, demonstrating that, while you were on active duty, you incurred any condition that would be considered unfitting within the meaning of the Disability Evaluation System. Nor did you provide any non-medical assessment describing your inability to perform the duties of your rate. To the contrary, as you describe in your petition, upon your detachment from [REDACTED] you were described as someone with "outstanding performance and proven dedication," with a "can-do attitude" and you "earned the evaluator's strongest recommendation for advancement to Petty Officer First Class." After your release from active duty, it appears that you remained in the Navy Reserve until such time as you were found to be NPQ. As noted above, documentation providing the basis for your NPQ finding is not contained within your service records, nor did you provide such documentation. Thus, the Board presumes you were properly discharged from the Navy due to being NPQ. 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,

3/14/2024

