



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. 10808-23
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 7 March 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 on 22 January 1992. On 3 November 1999, you underwent a pre-separation physical, which found that you were fit for separation. That finding meant that no medical condition had been noted that disqualified you from the performance of your duties or warranted disability evaluation system (DES) processing. On 17 December 1999, you completed your required service and you were separated and assigned an RE-1 reentry code, which meant that you were fully eligible for reenlistment in the Navy.

You filed a petition with this Board in 2019, in which you requested that your naval record be corrected to reflect that you were medically retired based upon a Department of Veterans Affairs (VA) determination that you had a service-connected disability for anxiety. On 24 March 2020, this Board informed you by letter of its decision denying your request, as follows:

The Board, in its review of your entire record and application, carefully considered your contention that you have a VA-rated service-connected condition that merits

a medical military retirement. The Board noted, however, that a VA disability decision is relevant but not dispositive in determining whether a Service member merits a military disability rating and/or military medical retirement. Pursuant to SECNAVINST 1850.4 series, referral to the disability evaluation system is made, in part, in situations where a member is unable to return to full military duty at the end of 30 days of light duty and when a medical board has found that a member's fitness for continued naval service is questionable by reason of physical or mental impairment. The Board noted that your service record reflects that you were able to successfully participate in military duty and completed your active-duty service obligation with an honorable characterization of service. Furthermore, you received an RE-1, reflecting your suitability for reenlistment. The Board concluded that, even in consideration of your assertions of a VA-rated condition or disability, you do not appear to have been unfit for military service. Therefore, the Board determined that your current discharge is appropriate and that you are not entitled to a medical military retirement.

In your current petition you again request that you be awarded a medical disability retirement or to be placed into the DES. Rather than anxiety, however, you proposed different conditions that should have resulted in your placement into the DES while you were on active duty; sleep apnea and irritable bowel syndrome. In support of this new theory, you assert that the failure of numerous medical providers to refer you into the DES upon discovery of your multiple unfitting medical conditions constituted a breach of duty that deprived you of your right to be evaluated for medical disability retirement. In its review of your current petition, the Board considered all of the material that you submitted in your current petition, including a written document from your lawyer, your written statement, service record documents, and medical documentation.

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 to qualify for military disability benefits through the DES 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. The Board determined your petition fell short of demonstrating that you met this standard while on active duty.

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 DES at the time of your discharge. Specifically, the Board found that the documentation that you provided in your current petition was insufficient to demonstrate that you had an unfitting condition or conditions while you were on active duty such that you should have been placed into the DES. On this point, 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 DES. Nor did you provide any non-medical assessment describing your inability to perform the duties of your rate from any leaders in your

chain of command. To the contrary, as noted above, you successfully completed a pre-separation physical medical evaluation prior to your separation from the Navy, which found you fit for separation. In addition, you were issued an RE-1 reentry code. The Board determined that the fact that you were invited to rejoin the Navy at your convenience immediately after discharge was inconsistent with you being unfit for continued service. On the other hand, the Board reasoned, if you had unfitting conditions at your time of discharge, you would not have been allowed to join the Navy again without first obtaining a waiver of any such conditions. Your record indicates you had no such conditions and you were authorized to reenlist without any restrictions. The Board concluded the materials you provided did not provide sufficient evidence to the contrary. 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

