



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. 451-24
Ref: Signature Date

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Dear █

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 11 March 2024. The names and votes of the panel members 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 service record, and applicable statutes, regulations, and policies.

You previously submitted a petition to the Board for Correction on Naval Records and were denied relief on 20 August 2021.

You enlisted in the United States Navy and commenced a period of service on 5 January 1987. Prior to your entry into service, you were medically screened to determine fitness for duty and did not disclose any potentially disqualifying conditions at that time. On 13 January 1987, eight days after your entry into service, you were medically treated after experiencing a sharp, shooting pain radiating from your first metatarsophalangeal joint up your right leg. You were referred to Podiatry and diagnosed with a “severe hallux abducto valgus deformity, right foot, *existing prior to enlistment* (EPTE).” (emphasis added)

Your case was reviewed by a Medical Board, and on 21 January 1987, the Board reported “The past history before enlistment in the Navy, as obtained from the patient, reveals that he *has had bunion pain in the right foot for the last two years*. The patient had his own podiatrist and he was scheduled for surgery but was unable to have it done. The patient states the problem has gotten worse over time. The patient *did not mention this condition at the time of enlistment.*”

(Emphasis added). The Board recommended that you be “discharge[d] by reason of enlisted in error, i.e. failure to meet enlistment physical standards.” It was determined that your pre-existing physical condition interfered with your ability to complete recruit training.

On 22 January 1987, you were notified that you were being processed for uncharacterized Entry Level Separation (ELS) based on “Erroneous Enlistment – Enlisted in Error” due to your non-disclosed pre-existing condition that interfered with your performance of duty. You waived your right to consult with qualified counsel and your right to submit a statement in rebuttal. You were informed that your period of service would be uncharacterized due to your limited time in service and did not object to the discharge. On 30 January 1987, you were discharged from the Navy with an ELS uncharacterized 31-day period of service and assigned an RE- 3E reentry code.

In your request for relief, you contend that the command failed to complete a line of duty Investigation, which would have demonstrated that your in-service diagnosis was caused or exacerbated by your period of service in the Navy. You argue that the “combination of the ill-fitting boots with the long day of training were the impetus for the feet issues that ultimately disqualified [you] from military service.” You further assert that your current medical issues are linked to your original foot injury (right foot hallux valgus and hallux rigidus, right foot pes planus) including but not limited to diabetes, spinal stenosis, GERD, Menier's Syndrome/vertigo, bilateral knees, bilateral hands, injuries to his right shoulder and right hip, migraines, sleep apnea, and Post Traumatic Stress Disorder (PTSD). Finally, you also argue that your record should reflect 161 days of service vice 31, as you committed a substantial amount of time to physical fitness and working with your recruiter during the period of time that you were in the Delayed-Entry Program.

The Board carefully considered all potentially mitigating and/or extenuating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to: (a) your desire for a characterized (Honorable) period of service, (b) your assertion that your in-service diagnosed medical condition was caused or exacerbated by your military service and has resulted in secondary conditions, and (c) your argument about the amount of time that you served in the Navy. The Board considered all of the in-service and post-service medical evidence that you provided in support of your request.

The Board gave liberal and special consideration to your record of service and your contentions about your medical condition. After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board concurred with the Medical Board that your medical condition was pre-existing to your service, was not disclosed as required during your pre-service medical evaluation, and interfered with the performance of your duty, specifically, the completion of recruit training. The reason that such conditions are required to be disclosed during pre-service medical screening is to identify any conditions that would disqualify an individual from service. You knew about your condition prior to entry, and even had arranged for treatment and surgery. The Board highlighted that it was not the Navy’s responsibility to identify “various medical solutions” for an undisclosed, disqualifying medical condition. Further, the Board did not feel that the Navy “placed blame on [you] for something entirely out of [your] control,” rather, granted you a measure of clemency by

separating you for “erroneous entitlement” vice the much more negative basis of “fraudulent enlistment.” Reporting your condition during service entry screening was well within your control, and you knowingly chose not to disclose this medical issue that had been causing you pain for two years prior to entry into service. The Board also felt that your post-service diagnoses are temporally remote to your service and fail to draw sufficient nexus to your service.

In regards to your request for an Honorable characterization of service, the Board highlighted that when a separation is initiated while a member is in entry level status (within the first 180 days of enlistment), it will be described as entry level separation except in rare circumstances. After thorough review of your service record, the Board did not identify unusual circumstances involving personal conduct and performance of military duty that would support an Honorable characterization of service. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your ELS and narrative reason for separation are accurate and should remain unchanged.

The Board considered your request to change your record to reflect “one hundred and sixty-one (161) days of service” to account for your time in the Delayed-Entry Program. Specifically, you state that you “committed a substantial amount of time to physical fitness and working with [your] recruiter during the period of time [you were] within the Delayed-Entry Program.” The Board did not agree with your argument and concluded that 31 days is the accurate amount of time that you served in the military. The purpose of the “Delayed-Entry Program” is to provide an individual with extra time prior to entrance into the service. During this time, individuals are in an unpaid, non-drilling status, and are not subject to the Uniform Code of Military Justice (UCMJ). It is commonplace for individuals to work with their recruiters and physically train prior to entry into service, but these individual efforts do not equate to time in service. The Board highlighted that Volume 7A, Chapter 01 of the DoD Financial Management Regulation does not apply to your case. This reference applies to Reserve Component members who are authorized to perform training or special additional duty while not on active duty, during prescribed training or maintenance activities of the units to which they are assigned.

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,

3/18/2024

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