



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. 3502-23
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 30 May 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 naval record, and applicable statutes, regulations, and policies. The Board also considered the 19 April 2024 advisory opinion (AO) from a medical professional as well as the additional medical documentation that you provided in response to the AO.

A review of your official military personnel folder (OMPF) shows that you graduated from the U.S. Naval Academy and commissioned an Ensign on 31 May 1989. You served on active duty without incident until 1 March 2000, when you were discharged from active duty and reappointed to the Navy Reserve. On 26 October 2010, you were issued a notice of eligibility that you were eligible to retire from the Navy Reserve. While in the Navy Reserve, you were active duty from 12 November 2001 to 30 October 2002 and 7 May 2014 to 30 September 2014.

You provided documentation that, in September 2017, you received correspondence from the U.S. Department of Veterans' Affairs (VA) setting forth disability findings. According to the VA, you were rated at 0% for bilateral hearing loss and 0% for bladder cancer. According to the AO, you provided a screenshot of VA Service-Connected Disabilities that documented a combined disability rating of 80% for multiple service-connected conditions to include Bladder Cancer Residuals (40% effective 11/17/2017); Scar, Inside Bladder and Urethral (0% effective 4/13/2017); and Adjustment Disorder with depressed mood and somatic symptom disorder, mild, with predominant pain (70% effective 8/6/2020).

On 8 June 2016, Navy Personnel Command wrote to you that you were soon going to reach 28 years of service and would be required to retire as a commander. On 2 May 2017, you received notification from Navy Personnel Command that you were to be transferred to the Retired Reserve effective 1 June 2017. On 1 June 2017, you were transferred to the Retired Reserve.

In your petition, you request that your reserve retirement date of 1 June 2017 be reclassified as a medical disability retirement and medical retired effective that day, that you receive retroactive active duty pay, allowances, and entitlement cash value for time spent in cancer treatment, that you be granted service time and reserve retirement points for your time spent in bladder cancer treatment (1 October 2014 to 1 June 2017), that you receive back pay for military retirement and cash value of entitlements until your regular retirement pay and entitlements take effect. In support of your request, you contend that, at the time of your demobilization in September 2014, you had active bladder cancer symptoms that should have been recognized by a medical officer. You assert that due to this failure to diagnose, you lost a 2-year head start on treating bladder cancer that was finally properly diagnosed 22 months later after your reserve retirement date had been set, and that if your cancer was properly diagnosed you would have been retained on active duty and likely medically retired. You also argue that the additional time on active duty would have increased your retirement and his GI Bill percentage.

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 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 order to assist it in reviewing your petition, the Board obtained the 19 April 2024 AO, which was considered unfavorable to your request. Among other things, the AO addressed your contention that, during your demobilization medical review from your 2014 active duty period, your active bladder symptoms should have been recognized by the medical officer. According to the AO, the applicable record reflected that you had mild left abdominal pain and the provider noted that you had residual discomfort and you reported "some trouble sleeping while on ADSW." Further, according to the AO, "[t]here was no report of additional genitourinary symptoms. He was noted to be 'well-appearing' and 'in no acute distress.' He was deemed medically cleared for demobilization and released without limitations." In addition, the AO explained:

Regarding his contention had he been referred for evaluation, he would have been retained on active duty with full pay and benefits during his cancer treatment, "and most likely medically retired." The available clinical records at the time of his

demobilization from his █ ADSW do not contain clinical indications of additional medical conditions besides the documented Spermatocoele and subsequent Spermatocoelectomy, from which it appeared Petitioner had recovered and maintained his full duty status at the time of his demobilization from his ADSW period.

That Petitioner was diagnosed and treated for bladder cancer beginning in 2016 is not in question. Petitioner has provided evidence confirming the diagnosis and treatment and need for continued surveillance for recurrence.

However, there is no objective clinical or administrative evidence that this condition prevented him from carrying out his duties and responsibilities of military service. There was no evidence he sought relief or support through his reserve chain of command due to his bladder cancer condition for either relief from duty requirements/assignments or other assistance (e.g., Line Of Duty Benefits, request for medical review/fitness for duty).

Review of the available objective clinical and non-clinical evidence documented Petitioner successfully executed the full range of responsibilities of his rate and rank throughout his career up through his transfer to the Retired Reserve. His 5/1/2014-4/30/2015 FITREP, which included his █, indicated successful execution of his duties and award of the Joint Service Achievement Medal. Subsequent FITREPS continued to exhibit successful performance of his duties and execution of AT/ADT periods. His 5/1/2016-4/30/2017 Retirement FITREP (encompassing the period of diagnosis of bladder cancer and treatment) continued documentation of successful performance of his military duties including his ability to execute multiple periods of AT/ADT (█ and █). Except for 7 days of convalescent leave and direction to not do any physical training for two weeks following his July 2014 Spermatocoelectomy, Petitioner continued to carry out his duties successfully without assignment to additional periods of light or limited duty.

After review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of demobilization from his 2014 █ ADSW, Petitioner had received appropriate medical treatment for his Spermatocoele condition, did not report or exhibit additional medical symptoms indicative of additional genitourinary conditions requiring referral to specialty consultation, and did not exhibit signs or symptoms of medical or mental health conditions that prevented him from reasonably performing the duties of his office, grade, rank, MOS, or rating.

The AO concluded, “in my medical opinion, the preponderance of objective evidence provides insufficient support for Petitioner’s contention that at the time of his demobilization he evidenced signs or symptoms of additional medical conditions that warranted referral for additional specialty care or was unfit for continued military service and should have been medically retired.”

In reviewing your record, the Board concluded that the preponderance of the evidence does not support a finding that you met the criteria for placement into the Disability Evaluation System at any time in during your Navy service. 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 reaching its decision, the Board determined that, even if it assumed that your injury occurred during your period of active duty in 2014, you provided insufficient evidence that you received improper or inadequate treatment during that period of active duty. The Board substantially concurred with the findings of the AO, which the Board found to be rational and based upon available evidence. Further, the Board found that you provided insufficient evidence that you were suffering a potentially unfitting condition that should have resulted in your referral into the Disability Evaluation System while you were on active duty. To the contrary, the service medical documentation, as described in the AO, reflects that you did not in fact have any conditions that warranted such a referral. On this point, the Board observed that the medical documentation you provided in response to the AO did not evidence findings of potential unfitness or recommendations for further review by a Medical Evaluation Board. In this regard, the Board determined you provided no evidence that you were unfit to perform the duties of your rank and position while during your active duty period and no leader in your chain of command prepared any non-medical assessment describing your inability to perform your duties. In addition, the Board observed that you never submitted a request for Line of Duty Healthcare at any time after your period of active duty in order to document a potentially unfitting condition that was incurred during a period of active duty service while in the Navy Reserve.

Finally, to the extent you have been awarded service connected disability ratings by the VA post-service, the Board does not find such awards to be persuasive, because the VA does not make determinations as to fitness for service as contemplated within the service disability evaluation system. Rather, eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. In sum, in its review and consideration of all of the evidence, the Board did not observe any error or injustice in your naval records. 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,

6/24/2024

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Executive Director

Signed by: █