



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. 8023-23
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.

A three-member panel of the Board, sitting in executive session, considered your application on 27 June 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, applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that you entered active duty service in the Navy on 22 April 2011. You underwent a medical examination for voluntary separation on 15 April 2018 and were determined to be medically cleared to separate. You were discharged on 23 July 2018 with an Honorable characterization of service; your Certificate of Release or Discharge from Active Duty (DD Form 214) states "Completion of Required Active Service" as the narrative reason for separation and "Resigned" as your type of separation. You subsequently transferred to the Naval Reserve on 24 July 2018.

Your fitness report and counseling records demonstrate participation in the Reserves from 2018 through 2021. On 5 October 2021, Navy Personnel Command (NPC) notified you that as a

result of having twice failed selection for promotion to O-4 and having served for eight years, you would be honorably discharged on 1 April 2022. Consequently, you submitted a request for continuation stating that you were undergoing a medical board evaluation and needed the extra time to complete the process. On 13 March 2022, NPC notified you that your request for continuation in an active status of the Ready Reserve was approved until 1 September 2022 and if you were not selected for promotion by the Fiscal Year (FY) 2022 Promotion Selection Board, you would be separated from the Navy Reserve. On 22 April 2022, the [REDACTED] [REDACTED] informed you that you were found Not Physically Qualified (NPQ) for retention and that you had the option to request a review of your package by the Physical Evaluation Board (PEB) or discharge. You replied asking what is needed to pursue a medical retirement from the Navy and were informed that the PEB is only to dispute the NPQ finding and a medical retirement was not an option. On 16 November 2022, NPC informed you of required discharge due to failure to promote for the FY22 Promotion Selection Board and you were honorably discharged from the United States Navy Reserve effective 1 April 2023.

For your petition, you contend that you should have received a medical retirement for sleep apnea, bilateral hip strain, post-traumatic stress disorder (PTSD), Bilateral Ankle Tendonitis, Bilateral Knee Osteoarthritis, Bilateral hip strain, and cervicgia. You contend you incurred these conditions on active duty and argue it was an error that you were not processed through the disability evaluation system (DES) in 2018 since the conditions that determined you were not physically qualified to remain in the Naval Reserve existed in 2018.

The Board carefully reviewed your petition and the material 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 noted that the mere presence of a diagnosis is not synonymous with a disability. In order to qualify for a medical discharge and/or retirement, a medical provider must refer a service member to the disability evaluation system (DES) if they believe the member has a condition that prevents them from continued service. In this process, the service member had to be found unfit; meaning there must have been evidence the service member was unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. In reviewing your record, the Board concluded the evidence does not support a finding that, when you discharged in 2018, you were unable to perform the duties of your office grade and rank. In fact, the Board found ample evidence to the contrary. First, as noted above, when you were examined for separation, your medical diagnoses were properly documented and you were still found physically qualified for separation. Second, you were authorized to transfer to the Naval Reserve with these conditions, further indicating your medical providers did not believe the conditions prevented you from performing the duties of your office, grade, and rank. Moreover, the Board noted you served in the Reserves successfully for over three years, and you were discharged not due to a NPQ status, but due to not being promoted to O-4 within the time requirement.

The Board further noted for Reserve service members to be eligible for a disability retirement, their injuries or medical conditions have to be determined to have been sustained or exacerbated while in a duty status via a Line of Duty Benefits (LOD-B) determination. Thus, you would have had to request for a LOD-B and provide documentation to show how the conditions were incurred on active duty and aggravated while in an active duty status. In reviewing your record, the Board noted there is no evidence you received a LOD-B. Finally, the Board noted your argument for a medical retirement is based on the VA decision to issue you service connected disability ratings. The Board was not persuaded by your VA evidence since 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 light of the foregoing standard applicable to the DES, the Board did not discern any facts that would support you being eligible for a disability retirement. Rather, the evidence of record demonstrates that after you voluntarily resigned from active duty you were able to continue your Naval Reserve career until you were ultimately discharged for failures of selection to O-4. 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. 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,

7/1/2024

