



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. 10343-23
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 12 September 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. The Board also considered the 7 August 2024 advisory opinion (AO) from a licensed medical professional, which was considered unfavorable to your request. You were provided a copy of the AO and an opportunity to comment, and you did not provide any response to the AO.

A review of your record shows that you enlisted in the Navy and commenced active duty on 27 December 2000. During your service, from time to time, you received mental health treatment, as described more fully in the 7 August 2024 AO. In 2012, as you approached your end of obligated service, you commenced filing for service-connected benefits with the Department of Veterans Affairs (VA). To that end, on 3 February 2012, you completed a Predischarge Compensation Claim in connection with the VA "Benefits Delivery on Discharge" or "BDD" claim program. Notably, this program is not affiliated with the service disability retirement program within the service Disability Evaluation System (DES) and the VA is a separate government agency from the Department of the Navy.

On 14 March 2012, as required by the Navy Bureau of Medicine and Surgery for all Sailors transitioning from service, you underwent a Separation Physical Examination (SPE). During your SPE, you were evaluated by a Family Medicine Physician who documented that you denied any current medical or psychological symptoms to include headache, chest pain or discomfort, dizziness, vertigo, lightheadedness, anxiety, emotional lability, sleep disturbances, decreased functioning ability, and that you were not thinking of suicide. He noted that you had a condition of major depression, single episode, which was being managed by psychiatry, and that you had a euthymic mood and normal affect. The examining physician found you to be medically fit for separation from service and he instructed you to continue your treatment plan and return to clinic as needed. You were released without limitations.

On 16 March 2012, you were issued your final performance evaluation, which stated that you were a “meritorious Sailor and meticulous Emergency Management Leading Petty Officer. Exceeding and excelling in all aspects of his career proves him to be a prime example of a First Class Petty Officer.” You were separated on 1 May 2012 due to completion of your required active service with an honorable characterization of service and issued an RE-R1 reentry code, which meant that you were qualified to reenlist in the Navy.

In your petition, you have requested to be placed on the Permanent Disability Retired List. In support of your request, you contend that while you were on active duty you suffered from major depressive disorder and should have been referred into the DES and reviewed by the Physical Evaluation Board. In further support of your request, you provided a copy of a VA finding granting you a 50% post-service disability rating for major depressive disorder, which was made effective the day after your discharge, 2 May 2012, pursuant to the VA BDD program.

In order to assist it in reviewing your petition, the Board obtained the 7 August 2024 AO. According to the AO, after “review of all available objective clinical and non-clinical evidence, in my medical opinion, at the time of discharge from military service, Petitioner did not suffer from any medical or mental health conditions that prevented him from reasonably performing the duties of his office, grade, rank, MOS, or rating.” The AO explained that you had received appropriate mental health treatment and reached treatment goals while in service and that you were eventually found to be fit for full duty, fit for orders, and worldwide deployable. The AO also noted that you underwent an SPE, which included the physician reviewing your clinical records (containing your mental health history and current status), and the physician determined you were physically qualified for separation. The AO also remarked that your service record reflects that you consistently executed your duties throughout your career, and you were competitive. Ultimately, the AO concluded that, had you been placed in the DES, you likely would have been found fit for continued service.

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 reaching its decision, the Board observed that, in order 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.

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. In particular, the Board observed that you failed to provide evidence that you had any unfitting condition within the meaning of the DES. To the contrary, your record does not include, and you did not provide, any evidence that anyone in your chain of command observed, by way of a non-medical assessment or otherwise, that you failed adequately to perform your duties. In fact, your performance evaluations, to include your final evaluation, reflected that you performed your duties well and that you were held in regard by your leadership. Applying a presumption of regularity, the Board determined that if you actually had a medical condition, including a mental health condition, under circumstances that warranted your referral to a medical board, you would have been so referred. You were, in fact, found to be fit for separation by a SPE. In addition, upon your separation, you were assigned a reentry code that reflected you were actually fit to reenlist, which is inconsistent with a finding that you were unfit to perform the duties of your rating. In reaching its decision, the Board also observed that many Sailors regularly obtain mental health treatment while in service, and a diagnosis of a mental health condition while in service does not automatically result in a referral to the DES. The Board also acknowledged that its own findings are consistent with the finding of the AO, which findings the Board found to be reasonable and based on substantial facts. Further, you provided no rebuttal or other information in response to the findings of the AO.

With respect to your reliance on post-service findings by the VA in connection with your pre-discharge application with the VA for post-service benefits, the Board noted that 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. Accordingly, given the totality of the circumstances and view of all of the foregoing, 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,

10/8/2024

