



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 10655-23  
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.

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, upon your graduation from the U.S. Naval Academy on 25 May 1983, you were commissioned in the Marine Corps. You served on active duty until 21 June 1990, at which time you transferred to the Marine Corps Reserve. On 9 July 2002, you were notified by Commandant of the Marine Corps that you had twice failed to select for promotion to lieutenant colonel and you had the option of being separated or resigning. Your final date in the Marine Corps Reserve is not available in your official military personnel file.

In your petition, you request that your discharge narrative reason be changed to a disability discharge. In support of your petition, you contend that you had gout since 1995 and that the Department of Veterans' Affairs (VA) eventually confirmed the connectivity of your gout to your naval service. Thus, in your view, you would normally be considered for disability retirement. You provided a copy of a finding from the VA that you have serviced connected

gout with limitation of pronation and extension in your elbow, effective 9 March 2022, as well as depressive and anxiety disorder.

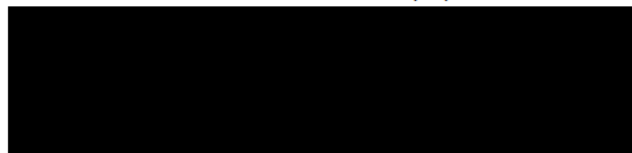
The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation 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 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. There are no indications you were referred to a medical board during your service for review of potentially unfitting conditions. In addition, you provided no documentation contemporaneous to your service that you had any potentially unfitting conditions. Further, the Board observed that your record demonstrates you had no service-limiting conditions and that the proximate reason for your separation from service was your failure of selection to lieutenant colonel, not due to any physical condition, unfitting or not. In other words, you were not discharged because you could not do your job due to gout or any other condition. Finally, the Board did not find as persuasive the findings by the VA that you provided to support your request for a disability retirement. The Board observed that the VA is a separate organization, and it 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, 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,

3/29/2024



Executive Director

Signed by: 