



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

█
Docket No. 341-24
Ref: Signature Date

█
█
█

Dear Petitioner:

This is in reference to your reconsideration request 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 18 April 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.

A review of your record shows you enlisted in the Navy and entered active duty on 4 June 1979. On 13 September 1979, you received non-judicial punishment (NJP) for two instances of failing to go to your appointed place of duty. On 15 February 1980, you received NJP for 18 days of unauthorized absence (UA). On 23 February 1980, you were convicted by summary court-martial (SCM) of two specifications of UA, and assault. During the period 6 February to 1 July 1981, you received three additional NJPs for four specifications of disobeying a lawful order, wrongful communication towards a petty officer, two periods of UA, and disrespect. On 8 July 1981, you were notified of administrative discharge action for the convenience of the government, due to creating an administrative burden to your command and minor disciplinary infractions. You did not object to the discharge and signed documentation stating that you did not desire to make a statement and did not want to consult counsel. On 10 July 1981, you received your sixth NJP for disobeying a lawful order by missing three restricted musters. Your case was subsequently forwarded to the separation authority and, on 21 July 1981, you were discharged from the Navy with a General characterization of service.

In 2020, you requested from this Board an upgrade to your discharge to Honorable and a medical discharge based on your assertion you suffered from post-traumatic stress disorder (PTSD) during your service. The Board denied your request, finding that the evidence failed to establish you were diagnosed with PTSD, suffered from PTSD, or any other major mental health condition at the time of your military service. The Board determined that your in-service misconduct could not be attributed to PTSD or other major mental health conditions.

For this petition, you request a change in your separation code and a medical discharge. You claim that, while on active duty, you sustained a neck injury in 1980 which resulted in your need to have surgery in 2006. You included two letters from Department of Veterans Affairs (VA) medical providers to support your contention. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case.

The Board observed that at the time of your active duty service, in order to qualify for military discharge, a medical provider referred a service member to a medical evaluation board (MEB) if they believed the member had a condition that prevented 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 preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within Navy Regulations. You were not placed on limited duty for your neck condition and there is no documentation that your performance was hindered due to a medical issue. In light of the foregoing standard, the Board did not discern any facts that would support a medical discharge. Rather the evidence of record demonstrates you were discharged due to your misconduct, as evidenced by your six NJPs and SCM conviction. Moreover, 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. Therefore, the Board determined your assigned narrative reason for separation and separation code remain appropriate. 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,

5/8/2024

