



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. 620-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your father's (Service Member (SM)) naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of SM's 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 15 August 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 SM enlisted in the Navy on 25 September 1943. On 4 October 1943, SM commenced recruit training at █. He completed recruit training on 20 December 1943 and was transferred to █ to serve in a █. Thereafter, on or about 16 April 1944, SM was transferred to a █. Having completed his service, SM was honorably discharged on 6 January 1946.

A medical record from a Department of Veterans Affairs (VA) Hospital, dated 2 November 1946, states SM had a history of usual childhood diseases, that he was in good health prior to service, not wounded or injured in service, had been in the hospital for five days due to arthritis, and otherwise had been in fair health since his discharge other than the current complaint. A

medical record, dated 27 February 1947, reflects that SM sought treatment due to complaints of arthritis. This medical note also states that, in November 1946, SM reported that he had a history of syphilis to the same medical provider, for which he received treatment in the form of penicillin.

You filed two previous petitions with this Board. On 30 March 2023, the Board denied your most recent petition, explaining that your application revealed you were seeking assistance regarding VA benefits. The Board explained that post-discharge service connected disability determinations and resulting compensation payments for disability conditions resulting from active duty injuries fall under the purview of the VA. Thus, the Board explained, your request fell outside the jurisdiction of this Board based on 10 U.S.C. § 1552 (f)(2) regarding post-discharge claim payments for service connected disabilities.

In your current petition, you request to have SM's record changed to reflect that he was provided a medical retirement. In support of your request, you contend that he was one of the individuals in the █ and had many medical issues on active duty. In further support of your request, you provided medical records from SM's time in service reflecting that he sought treatment for swelling of his left shoulder, had a history of synovitis and symptoms of rheumatism from childhood, complained of pain in his right thigh and had a similar prior pain in 1941 prior to entering service, and that he was stung on his eyelid.

In its review of your petition, including all of the materials that you provided, the Board 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 (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.

The Board concluded the preponderance of the evidence does not support a finding that there was an error or injustice by not providing SM a service medical disability retirement. In its review of the available documentation including the materials that you provided, the Board found insufficient evidence that SM had an unfitting condition while in service that warranted review within the DES. For example, there are no medical records in SM service record, nor did you provide any, that reflected that any medical professional recommended SM be referred to the DES. You provided medical records from SM time in service that reflected that he had a history of syphilis as well as reflecting that, from time to time, he sought medical care for other complaints. The medical records reflect that SM received treatment for syphilis, as well for the other conditions for which he sought medical care. Those medical records also reflect that SM was qualified for duty. Similarly, there is no indication from any of his commands that SM was unable to perform the duties of his rating while in service. In addition, the Board found no supporting information that SM was part of any experiment while he was in service.

Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board thanks you for your father's selfless and faithful service to this country.

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,

8/26/2024

