



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. 1606-24
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 25 July 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 you enlisted in Navy and commenced active duty on 5 September 2019. You provided a medical record demonstrating that you were admitted to a hospital, on 16 November 2021, where you were diagnosed with adjustment disorder with mixed anxiety and depressed mood/other problem related to your employment. The medical documentation reflects that it was recommended that you should be discharged due to condition, not a disability. Your administrative separation documentation is not contained in your service record, but your record reflects that it you were discharged on 10 March 2022. You provided documentation that after your service, you were awarded a 50% service connected disability from the Department of Veterans' Affairs (VA).

In your petition, you request to have your discharge due to condition, not a disability, be changed to discharge due to a service-connected disability. In support of your request, you contend that,

post-service, the same condition for which you were discharged was considered a service connected disability by the VA.

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. Further, the Board also noted that it relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties.

In its application of the foregoing principles, the Board observed that the available medical documentation from your time in service reflects that medical professionals determined that you did not have a condition that warranted referral to the DES for a finding of unfitness within the meaning of the DES. Rather, the medical professionals explained that you had a condition that did not amount to a disability, your command leadership concurred with this assessment, and you did not provide documentation to the contrary. Thus, the Board determined that you provided insufficient evidence that you had an unfitting condition within the meaning of the DES at the time of your service, and thus you provided insufficient evidence to overcome the presumption of regularity in your case. With respect to your assertion that, post-service, you received a VA service-connected disability rating, the Board noted that the VA does not make determinations as to fitness for service as contemplated within the service DES. 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. Therefore, the Board did not find your reliance on such post-service findings to be persuasive. 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,

8/5/2024

