



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

█  
Docket No. 1818-24  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 18 July 2024, has carefully examined your current request. 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, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo).

This Board previously denied your request for disability benefits on 6 September 2018, 4 April 2019, 30 January 2020, 18 June 2020, and 3 February 2022. The 18 June 2020 decision by this Board was made in accordance with a 10 June 2020 U.S. Court of Federal Claims remand order. The facts of your case remains substantially unchanged.

For this reconsideration petition, you request to change your narrative reason for separation to disability. You argue that you should receive a disability pension since your multiple disability conditions are tied to your Oct 1977 head injury that materialized after you departed active duty. For new material evidence you provided a 15 August 2023 Board of Veterans' Appeals decision that ordered a service connection for Traumatic Brain Injury (TBI).

The Board carefully reviewed your petition and the material that you provided in support of your petition, and again disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible

adverse impact on your service, to include whether they qualified you for the military benefits you seek. In reaching its decision, the Board again noted there is insufficient evidence that you met any of the criteria for unfitness at the time of your discharge from the Navy that would have warranted a physical evaluation board. As explained in the previous Board decisions, evidence that you were medically cleared for enlistment in the armed forces after your discharge from the Navy convinced the Board that the preponderance of the evidence does not support a finding that you were unfit for continued naval service in October 1980. Therefore, based on the same rationale from their 4 February 2022 decision, the Board found no error with your assigned narrative reason for separation from the Navy.

Moreover, the Board noted your new request for a medical retirement is based, in part, on a Board of Veterans' Appeals decision to issue you service connected disability rating for TBI. The Board was not persuaded by your new evidence since eligibility for compensation and pension disability ratings by the Department of Veterans Affairs (VA) is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. The Board again noted there are no in-service medical records documenting you were unfit as a result of a mental health condition or cognitive difficulties after the 1977 injury. 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,

8/2/2024

