



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

█  
Docket No. 1944-24  
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 11 April 2024. The names and votes of the panel members 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.

A review of your record shows that you enlisted in the Navy and commenced active duty on 7 January 1997. On 12 January 2011, you were discharged from the Navy due to having reached high-year tenure as an E-5. On 4 May 2011, █ Command informed you that you were physically unqualified for accession into the Reserve as a result of several disqualifying conditions.

In 2018, you filed a prior petition with this Board seeking service credit to be eligible to retire or to be placed on the permanent disability retired list. In support of that Petition, you asserted you were twice denied the ability to sit for the first class petty officer exam while you were assigned to █. In its review of your prior petition, this Board observed that on 25 October 2005, you reported aboard █ and that you detached from the command on 21 April 2009, having received three positive evaluations while onboard. Board records reflect that it denied your prior petition.

In your current petition on reconsideration, you request either an early retirement or a disability retirement. In support of your request, you state that you were denied being able to take the first

class petty officer exam four times and that you “maxed out on awards.” You also argued that while you were in the Navy, you injured your feet. You provided service record documents, medical records, and a finding from the Department of Veterans’ Affairs (VA) in support of your petition.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. At the outset, the Board observed that you provided insufficient new material to support changing the Board’s decision in your 2018 case, Docket No. 4668-18. Nevertheless, the Board evaluated the entirety of the material you provided and determined that you did not provide new material or authority sufficient to support that there was an error or injustice in your discharge such that you should be awarded an early retirement or a disability retirement.

In reaching its decision, the Board observed that in order to qualify for military disability benefits through the 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. As the Board observed in its prior decision, it is clear that you received positive evaluations while attached to ██████████. It is also clear that there is no indication in your record that you were referred into the disability evaluation system while you were on active duty nor did any of your leadership set forth any non-medical analysis concerning any physical disabilities. Rather, the proximate reason for your separation from service was high-year tenure and it was not related to any potential disability condition. To the extent you rely upon findings by the VA to support your request for a disability retirement, the Board reiterated 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. Finally, the Board noted that the fact you were later denied accession into the Reserve was not persuasive evidence that you were unfit for continued naval service at the time of your release from active duty since accession standards differ from retention standards in that they are more stringent. 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

