



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

██████████
Docket No. 3638-24
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 26 November 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. In addition, the Board considered the 29 August 2024 Advisory Opinion (AO) provided to the Board by a Licensed Clinical Psychologist and your response to the AO.

A review of your record shows that you enlisted in the United States Marine Corps Reserve (USMCR) and began initial active duty training on 30 May 1981. You were released from active duty on 8 October 1981 with an Honorable characterization of service. A 16 February 1983 administrative remark noted you were involuntarily transferred to the Inactive Ready Reserve due to “excessive unexcused absences of over 9 drills.” On 29 March 1987, you were discharged from USMCR due to unsatisfactory participation¹.

For your petition, you request your record to reflect that you were “100% disabled and insane” at the time of discharge, due to Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). You included a statement and medical records from the ██████████ Department of Corrections to support your contention.

¹ Your record does not contain your administrative separation documents but an administrative remark documents that you were discharged with an Honorable characterization of service.

On 9 April 2024, the Board sent you notice that your application did not include adequate documentation to support your claim of TBI, PTSD or mental health diagnosis or treatment. Further, the Board notified you that your case was placed on administrative hold for thirty days in order to provide you an opportunity to submit any additional evidence or documentation. The Board did receive a letter from you in response but that letter did not include any additional medical records to support your claim.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to, your desire for a disability discharge and contentions that you suffered from a mental health condition (MHC) during your active service.

Based on your assertions that you incurred a mental health concern (MHC) during your military service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service.”

The Board carefully reviewed your petition and the material you provided in support of your petition, and 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 his/her office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if his/her 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.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding you met the criteria for unfitness as defined within the DES at the time of your discharge. In particular, the Board observed you failed to provide evidence you had any unfitting condition within the meaning of the DES. Applying a presumption of regularity, the Board determined that if you actually had a medical condition, including a mental health condition, under circumstances that warranted your referral to a medical board, you would have been so referred.

The Board also concurred with the AO and determined there is insufficient evidence of a mental health condition that may be attributed to military service. The Board noted that the medical documentation you provided state that you did not receive any mental health treatment until you were admitted to [REDACTED] Medical Center in 1992; where you were diagnosed with

Adjustment Disorder related to marital stressors. The record also stated, on 2 April 1999, you were involved in a head-on motor vehicle accident with a truck which resulted in a closed head injury and facial fractures. Both of these events occurred after your release from the Marine Corps.

With respect to your reliance on post-service findings by the VA, the Board noted 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. Accordingly, given the totality of the circumstances, the Board determined 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,

1/16/2025

