



**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. 5555-24  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 7 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 and applicable statutes, regulations, and policies.

A review of your record shows that, after you served for approximately four years in the Coast Guard Reserve, you enlisted in the Navy Reserve on 20 December 2002. While you were in the Navy Reserve, you served a period of active duty from 11 February 2005 to 27 November 2005, which included a deployment to █ in support of █ and █. Thereafter, you served a period of active duty from 8 February 2008 to 1 July 2009, which included a deployment to Afghanistan. You then served a period of active duty from 12 March 2010 to 21 February 2011, which included a deployment to the █. You were returned early from this deployment as a result of misconduct. Effective 1 December 2017, you were transferred to the Standby Reserve – Inactive. Your service record reflects that beginning in 2019, you received a series of Page 13 administrative remarks noting that you had been discharged from the Navy Reserve. Another document in your service record reflects that your final date in service was 15 December 2022.

In your petition, you have requested to be provided a service disability retirement. In support of your request, you contend that you have been awarded a 100% service connected disability rating from the Department of Veterans Affairs (VA) for a variety of conditions. You further note that, while you were in the Navy Reserve, you waived your drill pay in favor of receiving VA disability payments.

The Board carefully reviewed your petition and the material that 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 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.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. In particular, the Board observed that you failed to provide evidence that you had any unfitting condition within the meaning of the DES. To the contrary, your record does not include, and you did not provide, any evidence that anyone in your chain of command observed, by way of a non-medical assessment or otherwise, that you failed adequately to perform your duties. In fact, the latest available performance evaluation in your service record reflected that you were progressing back to the solid performer that you had been prior to your misconduct incident. Applying a presumption of regularity, the Board determined that if you actually had a medical condition under circumstances that warranted your referral to a medical board, you would have been so referred. In fact, because you were in the Navy Reserve, you would have been required to obtain a Line of Duty finding, which would document your condition and connect it to a period of service. With respect to your reliance on post-service findings by the VA, the Board noted that the VA 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. 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,

12/3/2024

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