



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

██████████
Docket No. 5857-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 was 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 7 November 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.

The Board determined that a 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 the Navy and commenced active duty on 22 June 1999. On 10 November 1999, you received nonjudicial punishment for wrongfully supplying alcoholic beverages to a minor. On 17 November 2003, you were diagnosed with sleep apnea. On 5 December 2003, you were notified that you failed your physical fitness assessment (PFA) due to height/weight/body fat standards. On 15 June 2004, you were notified that you again failed the PFA height/weight/body fat standards. On 25 February 2005, a sleep study showed you had mild sleep apnea and you were prescribed a CPAP machine. On 27 May 2005, you were notified that you again failed the PFA height/weight/body fat standards. Your performance evaluation through 15 June 2005 reflects that you were in the fitness enhancement program.

On 20 September 2010, you were diagnosed with panic disorder. On 17 May 2011, you were diagnosed with depression. You received a performance evaluation through 15 March 2012, which reflected that you had received nonjudicial punishment for unauthorized absence. Aside from the statement relating to your unauthorized absence, your evaluation otherwise reflected that you were an effective Sailor. On 2 July 2012, you were counseled that you were being administratively separated for failing to meet physical standards. On 3 July 2012, you were discharged due to failure to meet physical standards with an honorable characterization of service. You have provided documentation that, on 10 January 2013, the Department of Veterans' Affairs (VA) awarded you a 50% service connected disability rating due to anxiety.

In 2014, you filed an application with the Navy Discharge Review Board (NDRB) seeking to have your narrative reason for separation changed. On 16 November 2014, the NDRB denied your application. In 2020, you filed your original application with this Board. This Board informed you by letter, dated 10 March 2020, that it denied your requested relief. In reaching its decision, the Board concluded that the evidence supported the Navy's decision to administratively separate you for failing to meet physical standards due to your documented PFA failures. The Board further concluded that your mental health condition did not excuse your failure to maintain weight standards. Further, as follows:

The Board noted there was no evidence you were medically excused from meeting PFA standards despite ample evidence you were being treated by medical providers for your mental health symptoms and sleep apnea. This convinced them that your medical providers did not believe that your medical symptoms were sufficient to waive you from the PFA or Navy weight requirements. Further, the Board noted that you were never referred to a medical board by any of your medical providers. This supported their finding that you were, more likely than not, fit for continued naval service despite the existence of your disability conditions.

The Board also relied on your 15 March 2012 performance evaluation that documented your ability to perform at fleet standards for your paygrade and rating. The Board noted you were recommended for promotion and received positive performance comments despite failing the PFA. This was strong evidence your command felt you were able to perform the duties of your office, grade, rank or rating less than three months from your discharge date. Finally, the Board was not persuaded by the VA's decision to assign you disability ratings since 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.

Thus, the Board found insufficient evidence of error or injustice to warrant a change to your record.

In your current request, you seek reconsideration of the Board's denial of your petition discussed above. In support of your request, you provided, among other things, a written statement discussing several points of contention in disagreement with the Board's prior decision. Such arguments included that the Paxil that you were taking is known to cause weight gain and that,

during the time of your service, mental health and primary care did not align as they should have. You also provided documentation in support of your request for reconsideration, which the Board fully considered.

The Board reviewed your petition for reconsideration and all associated material and disagreed with your rationale for relief. In reaching its decision, the Board observed that, in its diligent review of your latest request, the Board was unable to discern new material that it had not previously considered in its several prior reviews of your request that was sufficient for it to change its position. Similarly, despite its careful study of your new arguments, the Board also found that its prior decision was rational and based in substantial facts, and that the material and arguments that you provided in support of your request for reconsideration were insufficient for the Board to change its prior decision. 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,

12/2/2024

