



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

██████████
Docket No. 8635-24
Ref: Signature Date

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██████████
██████████

Dear Petitioner:

This is in reference to your reconsideration request 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 5 December 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 you entered active duty in the Navy on 29 July 1974. Within days of commencing active duty, you reported back pain along with other physical ailments. A medical board diagnosed you with Thoracic Scoliosis and Status Post Congenital Cerebral Palsy and determined both conditions existed prior to your entry into the Navy based on your medical history and brief period of service. You were subsequently discharged for erroneous enlistment on 16 August 1974 and received an honorable characterization of service.

In 2018, you petitioned the Board requesting that your cerebral palsy diagnosis be removed from your naval record. You argued that you never had cerebral palsy, and you provided evidence that you did not have the condition as of 2005. The Board denied your petition (Docket No. 2496-18). You submitted a reconsideration request and provided two medical opinions that stated you do not suffer from cerebral palsy. In 2020, the Board concluded that cerebral palsy is a condition that cannot be outgrown. The Board determined that the medical board misdiagnosed you in 1974 and that you did not have Congenital Cerebral Palsy at the time of discharge and directed a copy of the Board proceedings be inserted into your naval record (Docket No. 2949-20).

In 2022 (Docket No. 6472-22) you submitted a request for medical retirement, arguing that you were misdiagnosed and robbed of a career. In 2023 (Docket No. 5649-23), you submitted a request for medical retirement, arguing that you suffered a fractured vertebrae after falling in the shower while on active duty that prevented further service. The Board denied both requests, noting you went to sick call numerous times within a few days of recruit training, complaining of back pain and served a total of only eighteen days on active duty. The Board determined there was no medical evidence that you fractured your vertebrae during active duty or had any injury while in recruit training. In addition, the Board found there was evidence in the record that you were experiencing muscle spasms in the upper thoracic spine on the right and that the examining physician found thoracic and lumbar scoliosis with tenderness during your physical examination. The Board concluded that more likely than not you entered the Navy with an undiagnosed back condition, thoracic scoliosis, that was a disqualifying physical condition for enlistment. Consequently, the Board determined that your administrative discharge for erroneous enlistment (medical disqualification) was valid.

For this petition, you request retroactive pay, arguing you should have been medically retired for your spondylolisthesis condition. You included a Department of Veterans Affairs (VA) rating decision in which the Board of Veterans Appeals granted service connection on 25 June 2009. In reaching its decision, the Board observed that in order to qualify for military disability retirement, a medical provider refers a service member to a physical evaluation board (PEB) if they believe the member has a condition that prevents them from continued service. In this process, the service member has to be found unfit; meaning there must be evidence the service member is unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Moreover, the Board noted relevant policy authorized separation of a member during the first 180 days of service when the member has been found unqualified for further service. The Board noted you served a total of 18 days on active duty and had not completed entry level training. Consequently, the Board determined that your administrative discharge was valid, your characterization was proper, and there is no error or injustice in your record warranting correction.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/29/2025

