



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

[REDACTED]

Docket No. 11094-24
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 20 February 2025. 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, to include guidance from to include the 25 August 2017 guidance as well as the 4 April 2024 guidance from the Under Secretary of Defense for Personnel and Readiness relating to the consideration of cases involving both liberal consideration discharge relief and fitness determinations (Vazirani Memo) (collectively the "Clarifying Guidance").

The Board determined that your 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 United States Navy and began active duty service on 30 March 2015. You received favorable performance evaluations from 2016 through 2020. On 13 January 2021, your command received a urinalysis report showing you tested positive for marijuana from the sample you provided on 28 December 2020. On 9 February 2021, you received notification of administrative separation for misconduct, drug abuse. In

addition, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 112a, wrongful use of a controlled substance. Ultimately, on 12 August 2021, you were discharged due to drug abuse with a General (Under Honorable Conditions) characterization of service.

For this petition, you request an upgrade to your discharge to Honorable and medical retirement. You argue you suffered from Post-Traumatic Stress Disorder (PTSD) and back pain during active duty service and these conditions were not properly evaluated at the time of your discharge. You contend you should have been referred to a medical evaluation board (MEB) for these conditions and they have worsened since separation. You submitted evidence of treatment for PTSD and back pain from the Department of Veterans Affairs (VA), as well as the VA rating decision of 2 March 2022 showing that you are rated at 100% for PTSD and 40% for degenerative disc disease.

In keeping with the letter and spirit of the Clarifying Guidance, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service, to include whether they qualified you for the military disability benefits you seek. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System 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. Despite its application of special and liberal consideration, the Board observed no evidence that you had any unfitting condition while on active duty. As an initial matter, in its application of the Clarifying Guidance, the Board acknowledged that you have asserted that you had a condition or experience that may excuse or mitigate your discharge, which, at least for the sake of analysis, occurred, or was worsened, during your naval service. Next, the Board analyzed whether your condition actually excused or mitigated your discharge. On this point, the Board observed that, even assuming that you had a condition, the Board determined that such condition would not excuse or mitigate your discharge. The Board found no evidence, and you provided none, that a nexus exists with your disability conditions and your misconduct. Thus, the Board determined your assigned characterization of service remains appropriate and is supported by your record of misconduct.

Next, the Board analyzed whether your condition mitigated your discharge with respect to the award of a service disability retirement. The Board determined that the record evidence demonstrates that, even if you had a condition, there is no evidence that any medical provider determined that you had any conditions that warranted referral to a medical board for a determination of fitness for duty within the disability evaluation system. In addition, there is no

indication that any leader in your chain of command prepared any non-medical assessment describing your inability to perform the duties of your rate. Further, even assuming, arguendo, that you had back pain or mental health diagnoses while you were on active duty, it would not necessarily result in the award of a service disability retirement. Service members routinely remain on active duty with diagnoses of back pain or mental health conditions without those conditions considered to be unfitting. A diagnosis alone is not the standard for the award of a service disability retirement. Rather, as mentioned, to be eligible for a service disability retirement, a service member must have conditions that have been medically-determined to be unfitting at the time of service. In your case, the proximate reason for your discharge was your illegal use of marijuana. Thus, even assuming that you were found to have a back condition or a mental health condition during your service, discharges based on misconduct typically take precedence over disability evaluation processing. In sum, in its review and liberal consideration of all of the evidence and its careful application of the Clarifying Guidance, the Board did not observe any error or injustice in your naval records. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Finally, the Board noted your argument for a medical discharge is partially based on the Department of Veterans Affairs (VA) decision to issue you service connected disability ratings. The Board was not persuaded by your VA evidence 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.

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,

3/12/2025

