



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. 1502-25
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.

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 24 April 2025, 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 your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

You previously applied to this Board and were denied on several occasions. The Board noted your first submission, Docket No. 10357-19, requested your narrative reason for separation be changed to "medical," and your Docket No. 6560-24 submission requested "correction of more than 84 days of service." Again, in Docket No. 1098-24, you requested a medical discharge, but your case was administratively closed because you did not "submit new evidence, other matters not previously considered by the Board, or material not available when you submitted your previous application." In your current request, you have again requested a medical discharge/separation, but you also requested, on your DD Form 149, "an honorable¹ discharge

¹ The Board noted your characterization of service is currently Honorable. Therefore, the Board took no action on this aspect of your application.

with RE-1.” Due to the addition of counsel’s brief and a print out of your Department of Veterans Affairs (VA) disability rating as of December 2024, the Board considered your request to assign a RE-1 reentry code, change the narrative reason for separation to a medical discharge/separation, and “provide any additional equitable remedies that align with the interests of justice and recognition of your ‘honorable intent to serve’.”

In your current request, you assert your case should be “relooked [at] due to new legal argument and evidence” because your discharge is inequitable, and you should receive liberal consideration. Specifically, you contend the following:

(1) Just 12 days² into your enlistment, you were administratively separated on 31 March 1978, under the “designation of ‘erroneous enlistment’.”

(2) After you suffered significant medical issues following exposure to a gas chamber exercise in recruit training, you were diagnosed with pneumonia on 22 March 1978 and admitted for medical evaluation. Your recorded medical history noted recurrent asthma attacks dating back to 1974, but you currently deny any prior diagnosis or symptoms of asthma. In your narrative statement, you further assert the medical history was “inaccurately recorded and dictated under duress.” Further, you contend you have “provided sworn statements and testimony³ denouncing the alleged preexisting asthma diagnosis;” you “maintain that no evidence existed to support this claim;” and you state your “statements during hospitalization were misrepresented and coerced.” Lastly, you highlight the fact you have “provided consistent testimony regarding [your] mistreatment and the inaccuracies observed in [your] medical discharge process.”

(3) A comprehensive evaluation was not conducted to “validate the claim of asthma” nor were you afforded the opportunity to “contest or provide clarity.” In your narrative statement, you assert the “medical discharge process failed to account for alternative diagnoses and was devoid of input from [you].”

(4) In your narrative, you state the “abrupt discharge left [you] grappling with cascading challenges throughout [your] life.” You have received a combined Department of Veterans Affairs (VA) disability rating of 100% for mental health disorders⁴, Post-Traumatic Stress Disorder (PTSD)⁵, and obstructive sleep apnea caused by service-related conditions. “These factors incontrovertibly demonstrate the nexus between [your] short military service and ongoing medical challenges.” Post-service, you have demonstrated resilience and a commitment to rehabilitation.

² Based on your Official Military Personnel File, you enlisted on 6 January 1978 vice 19 March 1978 as stated by counsel.

³ The Board noted your submission does not contain statements or testimony.

⁴ The Board noted the VA evidence indicates the only mental health condition you have been service-connected for is adjustment disorder with mixed anxiety and depressed mood (chronic) with a 50% disability rating effective 9 September 2023.

⁵ The Board noted the 6th page of the VA printout you submitted regarding your disability ratings specifically lists PTSD as one of the conditions the VA determined was not service-connected.

(5) The Kurta Memo⁶ supports proprietary and equity review in favor of discharge upgrade. Specifically, with regards to the proprietary review, you assert the “possible procedural errors” in documenting your asthma as a pre-existing condition “render the discharge characterization⁷ improper.” Further, you contend your case “demonstrates a failure by the military to conduct an appropriate Medical Evaluation Board (MEB) process to assess his fitness for duty before effecting his discharge.” With regards to the equity review, you assert you “not only met the physical standards of service upon induction but developed acute medical conditions after exposure to on-duty risks.” Therefore, you assert it is “inequitable to penalize [you] with a discharge that fails to reflect the service connection of [your] health issues.” Further, based on equity, you assert your post-service VA evidence underscores the necessity of a medical discharge, especially in light of your continued suffering.

(6) Granting your discharge upgrade to medical separation with benefits recognizes the gravity of the medical hardship placed upon you during and subsequent to service. This correction will allow you access to benefits that align with the service-connected nature of your impairments, rectifying the inequity of your original separation status.

(7) Department of Defense’s clarification memos and liberal review standards exemplify a commitment to honoring service where conditions such as mental health disorders and injuries were undiagnosed or overlooked. Your case “falls squarely within this mandate.”

(8) In your narrative statement, you assert “prior denials have largely relied on the original discharge rationale and have not adequately addressed discrepancies.”

(9) Past cases involving misdiagnoses or procedural missteps during service separations provide a framework for reviewing your case under equitable principles⁸.

The Board carefully reviewed your petition and the material you provided in support of your petition and disagreed with your rationale for relief. The Board determined the new evidence and the contentions, as fully discussed above, provide insufficient evidence of an error or injustice in the Marine Corps’ original decision to discharge you by reason of erroneous enlistment. Further, the Board determined the evidence does not overcome this Board’s previous denial of your request for medical discharge. Specifically, the Board noted the record clearly establishes you provided your treating physician with a medical history of asthma attacks dating back to 1974 that required hospitalization. Additionally, the Board noted your 22 March 1978 discharge note in your medical record memorializes your statement that you were “on medication until just prior to joining MC but did not mention this to AFEES doctor because ‘[you] wanted to get in’.” Further, the Board noted a MEB diagnosed you with preexisting asthma on 27 March 1978 and recommended your separation for erroneous enlistment.

⁶ The Board noted the clarifying guidance provided in the Kurta Memo pertains to requests by veterans for modification of their discharge due to mental health conditions, sexual assault or sexual harassment.” You, however, do not appear to be contending your discharge should be modified due to any of these reasons.

⁷ The Board again notes your characterization of service, as reflected on your DD Form 214, is Honorable.

⁸ The Board noted you did not list or provide copies of the referenced “past cases.”

Additionally, the Board noted NAVMED 6100/2 (the Medical Board Statement of Patient) allowed an opportunity to submit a statement in rebuttal but you chose not to avail yourself of that opportunity. The Board concluded the available evidence does not support your current contention that you were “under duress,” “coerced” and “misrepresented” in the captured medical history of preexisting asthma. Lastly, you contend you have provided “consistent testimony” but the Board noted that in your current submission you have asserted, for the first time, that you never disclosed you suffered from asthma prior to service.

Regarding your contention a “comprehensive evaluation was not conducted to validate the claim of asthma” and that you were not afforded the opportunity to “contest or provide clarity,” the Board again notes you chose not to avail yourself of the opportunity to submit a statement in rebuttal to the MEB determination. Further, the Board determined the record does not support your contention the “medical discharge process failed to account for alternative diagnoses and was devoid of input from [you].”

Lastly, the Board noted the only “evidence” you submitted in your current request for relief – the VA disability rating print out – provided insufficient evidence to overcome the previous Board’s decision. The Board again disagreed with your rationale for relief. Your post-service VA disability ratings do not change the fact you were diagnosed for erroneous enlistment because you did not meet physical standards and failed to disclose your pre-existing asthma when you enlisted, nor do they underscore “the necessity of a medical discharge.”

Simply stated, you have provided insufficient evidence to overcome the Marine Corps’ discharge decision and the previous Board’s decision. The Board thus concluded there was no error or injustice in your separation by reason of erroneous enlistment and assignment of a RE-3P reentry code. 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,

5/7/2025

