



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

[REDACTED]
Docket No. 3321-16

MAY 22 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 April 2017. 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, your naval record and applicable statutes, regulations and policies. The Board also considered the advisory opinion contained in Director Secretary of the Navy Council of Review Boards letter 5220 CORB: 002 of 28 February 2017; a copy of which was provided to you for comment.

A review of your record shows you entered active duty with the Marine Corps in August 2009. You deployed to Afghanistan in November 2010 through May 2011 where you assert you were injured during an improvised explosive device explosion on 15 November 2010. You were seen for headaches in December 2012 and were treated for post-traumatic stress disorder (PTSD) through 24 June 2013. On 23 August 2013, you were discharged at the end of your obligated active service and issued a RE-1A reentry code. On 23 November 2013, you were rated by the Department of Veterans Affairs (VA) for a number of service connected disabilities including PTSD, migraines, and a number of nerve, muscular, and joint conditions.

The Board carefully considered your arguments that you deserve to be placed on the Permanent Disability Retirement List based on your service connected disability conditions rated by the VA. Unfortunately, the Board disagreed with your rationale for relief. In making their decision, the Board substantially concurred with the advisory opinion contained in Director Secretary of the Navy Council of Review Boards letter 5220 CORB: 002 of 28 February 2017.

SECNAVINST 1850.4E provides the standard to be used in making determinations of physical disability as a basis for retirement or separation. A service member must be unfit to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while

entitled to basic pay. Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating. So the mere presence of a medical condition or specific correspondence of any manifestations thereof to an entry indicating a disability rating contained in the VA Schedule for Rating Disabilities is insufficient to warrant either a finding of unfitness for continued naval service or a specific disability rating by the Physical Evaluation Board in the absence of demonstrated duty performance impairment of sufficient magnitude as to render a Service member unfit for continued naval service. By contrast, 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. In your case, the Board was not convinced that you were unfit for continued naval service at the time of your discharge. Physically, there was no medical treatment evidence to indicate your disabilities were causing you an occupational impairment prior to your discharge. The most serious of your conditions was your PTSD condition that was determined to have improved so much by 24 June 2013 that you were restored to full duty status. This convinced the Board that insufficient evidence exists, despite your VA disability ratings, to find you were unfit for continued naval service due to a disability prior to your discharge. Accordingly, the Board was unable to find an error or injustice warranting a correction to your record and denied your application. The names and votes of the members of the panel will be furnished upon request.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. You are entitled to have the Board reconsider its decision upon the submission of new and material evidence. New evidence is evidence not previously 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,

A solid black rectangular box used to redact the signature of the Executive Director.

Executive Director