



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

[REDACTED]  
Docket No. 3544-16

JUN 11 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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 May 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. In addition, the Board considered the advisory opinion contained in Director, Secretary of the Navy Council of Review Boards letter 5220 CORB: 002 of 28 March 2017; a copy of which was provided to you for comment.

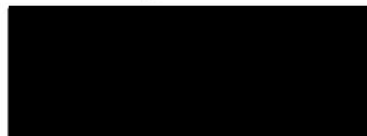
A review of your record shows that you entered active duty with the Marine Corps in December 2001. After injuring your leg in 2004 and deploying to Iraq, you were seen for persistent right thigh pain due to a quadriceps muscle tear and treated with physical therapy. You were first seen for Post-Traumatic Stress Disorder in September 2005 and again in October 2005 but released both times without limitations. As a result, you were discharged at the end of your obligated active service and issued a RE-1A reentry code. Upon your discharge and entry in the Marine Corps Reserve, the Department of Veterans Affairs (VA) rated you for a number of service connected disabilities including PTSD. In February 2008, BUMED determined you were not physically qualified for retention and you were eventually discharged from the Marine Corps Reserve on 9 September 2009.

The Board carefully considered your arguments that you deserve a disability separation or placement on the disability retirement list. You assert that Department of Navy regulations were not followed in your case since you were not referred to the Physical Evaluation Board (PEB) despite the existence of qualifying disabilities. Unfortunately, the Board disagreed with your

rationale for relief. In making their findings, 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 March 2017. The Board also considered your rebuttal statement to the advisory opinion but did not find it persuasive. Specifically, the Board was unable to find sufficient evidence to support a finding of unfitness for continued naval service at the time of your discharge from active duty. As pointed out in your application, you performed well while on active duty despite the existence of service connected disabilities that were later rated by the VA. You were promoted to E5 and received excellent proficiency and conduct marks throughout your career. Further, you received laudatory comments in your last observed performance evaluation prior to your release from active duty. This indicated to the Board that you did not suffer from a substantial occupational impairment warranting your referral to a medical board or the PEB and led the Board to conclude that you would have been found fit for continued naval service had the PEB considered your case. Regarding your VA ratings, the Board did not find that evidence conclusive on the issue of fitness for continued naval service 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. Finally, the Board was not persuaded by your argument regarding BUMED's not physically qualified determination since the PEB is responsible for determining whether an individual is unfit for continued naval service. 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.

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,



Executive Director