



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

█
Docket No. 7015-20
Ref: Signature Date



Dear █

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 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, sitting in executive session, considered your application on 5 August 2021. 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. In addition, the Board considered the advisory opinion contained in Director CORB letter 5220 CORB: 002 of 4 June 2021 along with your response to the opinion.

A review of your record shows that you entered active duty with the Marine Corps in July 2001. You suffered serious injuries to your legs when you were accidentally shot with a shotgun in April 2004. This resulted in your placement on limited duty and two Fasciotomy surgeries to treat Compartment Syndrome of your legs. Shortly after your surgeries, you were extended on active duty in order to process you through the Disability Evaluation System. Subsequently, on 17 June 2005, a medical board referred you to the Physical Evaluation Board (PEB). On 23 November 2005, the PEB found you unfit for continued naval service for bilateral status post leg fasciotomies for chronic exertional Compartment Syndrome and assigned you a combined 20% disability rating. After you accepted the PEB findings, you were discharged on 31 January 2006 with severance pay. In 2020, the Department of Veterans Affairs (VA) rated you for painful scars related to your bilateral leg injury.

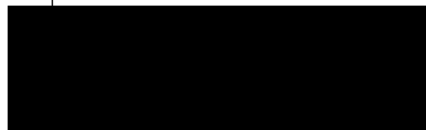
The Board carefully considered your arguments that you deserve to be placed on the disability retirement list. You assert the PEB erroneously rated your bilateral leg condition by failing to rate all the conditions associated with your legs and by failing to account for the severity of your disability conditions. You also argue that the Marine Corps inappropriately extended your enlistment. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion in your case.

In reviewing the facts of your case, the Board concluded the preponderance of the evidence does not support the assignment of a higher rating than 20% for your unfitting conditions. Despite your assertions that the PEB erroneously assigned you a 20% rating, the Board noted that the VA similarly rated your unfitting condition at a combined 20% (10% per leg) upon your discharge. While you point out that the VA eventually rated you for additional disability conditions related to your 2004 bilateral leg injury, the Board noted that these ratings were not assigned by the VA until 2020. Based on the passage of time between your discharge in 2005 and the new VA ratings, the Board concluded it could not realistically rely on the 2020 VA ratings to determine whether your scars were unfitting in 2005. Finally, the Board determined that your combined 20% rating was properly assigned by the PEB after applying the bilateral factor required by the regulations. As explained in the advisory opinion, applying a bilateral factor of 1.9% still results in a final combined rating of 20%. Therefore, absent evidence that the PEB erroneously applied the disability regulations in your case, the Board concluded the preponderance of the evidence does not merit a change to your PEB record or placement on the disability retirement list. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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,

8/9/2021

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Deputy Director

Signed by

A black rectangular redaction box covering the name of the Deputy Director.