



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. 8563-20
Ref: Signature Date

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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 16 December 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 opinions contained in Senior Medical Advisor CORB letter 5220 CORB: 002 of 1 November 2021 and Director CORB letter 5220 CORB: 001 of 1 November 2021; copies of which were previously provided to you for comment.

A review of your record shows that you entered service with the Marine Corps Reserve in February 1988. You commenced a period of active duty on 24 July 2006. In 2009, you were diagnosed with Post-Traumatic Stress Disorder (PTSD), Depression, and Insomnia but determined to be psychologically fit for duty. You continued to receive treatment throughout 2009 and early 2010 during which your diagnosis did not vary. In each evaluation, you were determined to be psychologically fit for duty. Eventually, a medical board referred you to the Physical Evaluation Board (PEB) in January 2010 for Bilateral adhesive capsulitis of the shoulders, Carpal tunnel syndrome, Dupuytren's contracture, Spondylolisthesis L4/L5, and Borderline Hypertension. Addendums to the medical board were added the additional conditions of Right ACL deficiency status post ACL reconstruction, Right knee medial meniscus tear status post partial medical meniscectomy, Cervical intervertebral disc degeneration, and Cervicalgia. In January 2011, the PEB found you unfit for Spondylolisthesis and assigned you a 20% disability rating after determining your other referred conditions were not separately unfitting.

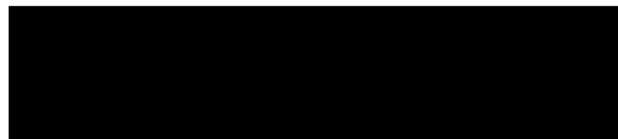
Based on your PEB findings, you were discharged from the Marine Corps Reserve on 30 August 2011 for disability with severance pay. Post-discharge, you were diagnosed with Bipolar Disorder in 2012 that resulted in several hospitalizations. On 15 October 2014, the Department of Veterans Affairs (VA) assigned you a disability rating of 100% effective 2013 after initially assigning you a rating of 0% for your mental health condition in 2011.

The Board carefully considered your arguments you deserve to be placed on the disability retirement list. You argue that your mental health condition was also unfitting at the time of your discharge and the PEB failed to consider evidence of your mental health condition. In addition, you rely on your post-discharge medical diagnosis and treatment for Bipolar Disorder as substantiation of your unfitness. Finally, you argue that you were also unfit for Sleep Apnea along with the other conditions referred to the PEB that were determined not to be unfitting. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion in your case. Specifically, the Board determined the preponderance of the evidence does not support a finding that your mental health condition was unfitting based on multiple mental health treatment sessions between August 2009 and February 2010 that determined you were psychologically fit for duty. The Board also agreed with the advisory opinion that your Bipolar Disorder diagnosis issued seven months after your discharge from the Marine Corps Reserve was too distant in time to be reasonably relied upon as evidence of your unfitness in August 2011. Regarding your other claimed conditions, the Board also agreed with the advisory opinion that insufficient evidence exists to support a finding of unfitness for these conditions. The Board adopted the same rationale utilized in the advisory opinion, i.e. the VA ratings and medical evidence for those conditions do not document an occupational impairment sufficient to change the PEB findings in your case. Therefore, while the Board empathizes with your current medical condition, they felt compensation and treatment for your disability conditions fall outside the scope of the Department of Defense disability system and under the purview of the VA. 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,

12/17/2021



Deputy Director

Signed by: 