



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. 854-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 10 February 2022. 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, as well as a 21 December 2021 advisory opinion (AO) of the Psychiatric Advisor to Secretary of the Navy, Council of Review Boards (CORB) and the forwarding endorsement of the Director, CORB. A copy of these were provided to you for comment and you provided no response.

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

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 18 June 2001. You served honorably from the periods between 18 June 2001 to 15 October 2004, 16 October 2004 to 24 July 2007, 24 July 2007 to 22 March 2012, and 23 March 2012 to 11 March 2015. During your final enlistment, on 27 July 2019, you were arrested by Temecula Police Department for assault on your wife. On 5 September 2019, you were issued a Page 11 written warning noting that you had been issued a restraining order. As a result of the conduct that resulted in your arrest, you were processed for administrative separation on the basis of commission of a serious offense, and you elected your right to have an

administrative board hear your case. Your administrative board was held on 4 March 2020. After hearing all of the evidence presented, the administrative board found that you committed serious misconduct, that you should be discharged, and that your discharge characterization should be other than honorable. On 24 March 2020, your commanding officer transmitted his recommendation that you be discharged with an other than honorable characterization, noting:

The respondent has been medically evaluated per the reference, by a medical provider authorized to perform separation health assessments. I have carefully reviewed the respondent's Separation History and Physical Examination (SHPE) and determined that no medical condition had an effect on the performance or conduct resulting in the basis for separation.

On 6 April 2020, the attorney for the officer that convened your administrative board reviewed your administrative separation proceedings and found those proceedings to be sufficient in law and fact. On 13 July 2020, the commanding general with authority over your discharge proceedings transmitted his recommendation to the Deputy Commandant of the Marine Corps (Manpower and Reserve Affairs) (CMC M&RA), in which he recommended that you be discharged with an other than honorable characterization of service. In his letter transmitting his recommendation, the commanding general explained (with your name redacted):

I have reviewed the medical information provided to me and the record of the administrative separation board. While I acknowledge that [] has a mental health condition that may have impacted his actions on 27 and 28 July 2019, I do not find these conditions sufficiently mitigating to excuse []'s conduct. In this case, [] engaged in a physical altercation with his wife in front of his children. His actions resulted in his arrest by the Temecula Police and a civilian restraining order and military protective order. I have considered []'s long military career and the fact that he has requested voluntary retirement. I believe that the significant negative aspects of []'s conduct outweigh the positive aspects of his military record. I concur with the findings of the administrative separation board and recommend []'s separation from the Marine Corps be with an Other Than Honorable characterization of service.

On 21 August 2020, Deputy CMC (M&RA), in its capacity as the discharge authority, directed that you be discharged, specifically noting that "I also considered medical information and that on 15 June 2020, [] received a medical screening that concluded his current diagnosis was not a contributing factor to the alleged misconduct." On 3 September 2020, you were so discharged.

In your petition, you contend that your total active service, and your exemplary service record, demonstrate that you should have been allowed to retire, and that you seek a military retirement and for any medical retirement you are due, with pack pay and a promotion. In support of your contention, you argue that you were discharged erroneously, that your discharge was unfair at the time, and it is unfair now. You also assert that your discharge was both procedurally and substantively defective. In connection with your contention seeking a medical retirement, the Board obtained the 21 December 2021 AO, and its forwarding endorsement, which, after a

fulsome description of your medical evaluations at the pertinent times during your active service, concluded that:

A disability retirement cannot be supported by the evidence. The Applicant's active service medical record shows appropriate evaluation of the Applicant's mental health condition, and consistent documentation that he was determined psychologically fit for duty throughout the course of treatment leading up to his separation. The mere presence of disease or injury alone does not justify referral to the Physical Evaluation Board. As such, a disability retirement cannot be recommended.

As noted above, you were provided a copy of the AO with its forwarding endorsement, and you did not provide a response to the AO.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition. In your case, the Board determined the preponderance of the evidence did not support a finding that you met any of the criteria for unfitness in order for you to qualify for a medical retirement. In concurring with the findings of the AO, the Board observed that, in order for you to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; or the member's disability imposes unreasonable requirements on the military to maintain or protect the member. Here, the Board carefully reviewed the medical evaluations conducted while you were on active duty, including those relating to your mental health, and the Board determined that it did not find any factors in support of your petition. Specifically, the Board relied on the medical evaluations leading up to your discharge from the Marine Corps in which you were determined to be psychologically fit for duty.

With respect to your contentions that you were "discharged erroneously," that your "discharge was unfair at the time and is unfair now," and that your "discharge is both procedurally and substantively defective," the Board found no support for these contentions. In reaching its finding, the Board carefully reviewed all of your administrative discharge materials, including the character and witness statements that you provided at various stages in your discharge process. The Board also favorably acknowledged your several prior periods of honorable service to the Marine Corps and country. In its review, the Board observed that you were provided all available rights with respect to your discharge, and you availed yourself of the right to an administrative discharge board. At the administrative discharge board you were represented by counsel. The Board did not observe any defects in the conduct or proceeding of the administrative board. The Board further observed that, after your administrative board made its finding, your discharge package was routed through the entirety of your chain of command, from your commanding officer through and including the Deputy CMC (M&RA). The Board observed that your chain of command appropriately evaluated the entirety of your discharge package including pertinent medical records, including your mental health condition, at each stage of review of your discharge package. In its full review, the Board did not observe any

procedural or substantive error in your discharge. Accordingly, the Board observed no error or injustice in your discharge and denied your petition.

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,

2/16/2022

