



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

█  
Docket No. 3139-21  
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.

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 10 March 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, the 23 January 2022 advisory opinion (AO) of a qualified medical professional, and its 28 January 2022 endorsement, as well as your two written responses to the AO.

The Board determined that a 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 were referred to a Physical Evaluation Board (PEB) for left ankle osteoarthritis on 12 April 2012. In the meantime, a report of misconduct was issued, in which you were alleged to have filed multiple travel claims while in █ for housing that did not reflect your rental payments. Your debt to the government was determined to be █. On 26 July 2012, the PEB found you unfit for continued naval service due to your ankle condition and issued a disability rating for █. You accepted the findings of the PEB on 27 Jul 2012 and were released from active duty on 1 August 2012. On 30 August 2013, you were discharged from the Marine Corps Reserve after a decision was made not to pursue show

cause proceedings based on the report of misconduct. At the time of your discharge, you were entitled to [REDACTED] in severance pay, which was applied to the debt you owed to the government.

In 2015, you filed a petition with this Board seeking to have additional disability ratings for spondyloarthropathy and shoulder conditions to warrant placement on the Permanent Disability Retirement List (PDRL) as of 1 August 2012, to have your debt to the government forgiven, and contesting the amount of your severance pay. The Board disagreed with your rationale for relief and denied your petition. In its evaluation of this previous petition, the Board obtained an AO from a qualified medical professional, which, after a complete review of your medical documentation, determined there was insufficient evidence to place you on the PDRL. The Board substantially concurred with the finding of the AO. In addition, the Board concluded that you were properly discharged from the Marine Corps Reserve.

In your current petition, you contend that the conditions for which you were evaluated were erroneous. In addition, you contend that you should have been placed on the temporary disability retired list (TDRL) because your conditions were not stable and if you had been placed on the TDRL the additional conditions would have been revealed. You assert that the correct conditions to be rated should have been Reiter's syndrome (Reactive Arthritis). You also contend that you were suffering from post-traumatic stress disorder (PTSD) and that you were not properly screened for PTSD. In your second response to the AO, you clarified and revised the relief that you requested in your petition, to include that you seek to be placed on the TDRL from 1 August 2012 to 1 January 2017 (or such date as would provide that you would be retired with a 20-year retirement). You later provided an updated DD Form 149, which contained the same requested relief that you set forth in your second response to the AO.

In reviewing your current petition, the Board considered all of your contentions and the material that you submitted in support of your petition. After careful review, the Board did not agree with your rationale for relief. In connection with its review of your petition, the Board obtained an AO, which was considered unfavorable to your request for relief. According to the AO, with respect to your contention relating to PTSD:

the absence of a diagnosis of any mental health disorder, including PTSD, in any health record contemporary with the petitioner's enlistment is noted. Moreover, the quantity of submitted Service Health and Personnel records is insufficient to address the claim of inadequate PTSD screening. Nor is there evidence of significant impairment maintaining the petitioner's gainful civilian employment despite his reported mental health and physical symptom burden.

The AO also addressed other medical issues that you raised, by explaining:

12 April 2012 Medical Evaluation Board Report (MEBR) which referred the petitioner to the DON PEB clearly included recognition of the petitioner's multiple joint related symptoms and the resulting related rheumatologic evaluation(s) as it concluded unfitness for full duty was limited to his left ankle condition and the resulting limitation of the applicant's ability to run. Also clear

was the absence from involved healthcare providers that referral to the DON PEB was warranted for symptoms referable to other joints (shoulders, back, knees, etc.), and, hence, not likely to have been found unfitting (and, thus, ratable) by the DON PEB at separation.

With respect to your assertion that you were later diagnosed by the VA with Reiter's syndrome and PTSD, the AO explained that "is of significantly less probative value in determining either impairment or unfitness attributable to same at separation. As it stands, the available record suggests a combination of traumatic/degenerative and autoimmune factors in play, manifested to an unfitting extent in the petitioner's left ankle."

In your response to the AO, you raise the concern that you were not provided a proper separation health assessment (SHA). You contend that if you had a SHA, your conditions would have been revealed. You also state that if you were placed on the TDRL, you would have been able to have your conditions reviewed. You also state that it took the VA many years to come to its current findings.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that the conditions for which you were evaluated were erroneous. Rather, the Board concurred with the finding of the current AO. With respect to your assertion that the VA later found that you rated other service-connected disabilities, the Board was not persuaded that these conditions were unfitting at the time of your discharge because 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. As a result, the Board concluded the preponderance of the evidence did not support your placement on the TDRL or regular retirement list with 20 years of creditable service. 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,

3/31/2022

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Deputy Director

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