



disability rating should have exceeded the 30% rating necessary to qualify for medical retirement.

In order to assist it in reviewing your petition, the Board obtained the 22 April 2022 AO. The AO reviewed your service and medical records, as well as your petition and its supporting documents. According to the AO:

In summary, the preponderance of evidence provides insufficient support for the request. This is due to the absence of objective evidence any of the additionally claimed conditions were unfitting for continued Naval service by regulations in existence at the time of the petitioner's separation incident to his Left Knee condition. None of the additional diagnostic conditions claimed to the VA had been referred to the PEB or had demonstrated evidence that any involved healthcare providers felt referral to the PEB was indicated. With specific attention to potential mental health issues, the pertinent VA DBQ examination found none, and review of the available active duty mental health related record revealed only one, technically, mental health related encounter (from 2015) for a problem of life issue noncompensable by Department of the Navy PEB action and largely related to the petitioner's desire to remain on active duty and worry his left knee condition was going to adversely affect his USMC career aspirations. The available evidence, strongly, suggests, absent the Left Knee condition which precipitated the petitioner's placements on Limited Duty and, subsequent referral to the PEB, he would have, happily, continued his USMC career as fit for same at the time of his separation with severance pay.

The Board carefully considered your arguments, including the entirety of your petition and its enclosures, and disagreed with your rationale for relief. At the outset, the Board concurred with the findings of the AO. Further, after its own careful review of the available service record documents, as well the entirety of your petition, the Board did not discern any error or injustice in connection with the disability rating for which you were discharged. In reaching its conclusion the Board also determined that the presumption of regularity applied to the process employed with respect to your service disability finding.

Finally, to the extent you assert that the U.S. Department of Veterans' Affairs (VA) later provided you service connected disability findings that were higher than the disability rating that you received at the time of your discharge, the Board noted that any such findings from the VA for service connected disability conditions did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps 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.

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,

6/17/2022



Executive Director

Signed by:

