

DEPARTMENT OF THE NAVY

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

> Docket No. 4610-21 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 14 October 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.

A review of your record shows that you entered active duty with the Marine Corps in June 2009. After successfully completing two deployments to Afghanistan between June 2010 and June 2012, you were eventually discharged at the end of your obligated active service on 28 June 2014. In August 2017, you underwent lumbar surgery to correct chronic back and leg pain. Medical records at the time document that you were diagnosed with alcohol abuse in remission, Traumatic Brain Injury, Post-Traumatic Stress Disorder, and Migraine headaches. The Department of Veterans Affairs (VA) rated you a combined 100% for all your service connected disability conditions as of March 2018. In July 2019, you underwent a spinal cord stimulator implant to address leg pain associated with lumbar issues. Medical records from 2021 indicate your pain symptoms are mostly controlled but you still suffer from Chronic Pain Syndrome, Post Laminectomy Syndrome of your lumbar spine, and Somatic Dysfunction of your left sacroiliac joint.

The Board carefully considered your arguments to be placed on the disability retirement list. You argue that had you been properly examined prior to your discharge from the Marine Corps,

medical issues that became apparent post-discharge would have been discovered. Unfortunately, the Board disagreed with your rationale for relief.

In order 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; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting. 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. Specifically, the Board found no evidence that any disability condition created a sufficient occupational impairment at the time of your discharge to merit your referral to the Disability Evaluation System. The Board noted that your final proficiency marks of 4.4 document that you were able to perform the duties of your office, grade, rank or rating at fleet standards. In addition, the RE-1A reenlistment code assigned to you upon your discharge also documented that there were no medical impediments to your continued service on active duty. While the Board considered your post-discharge medical treatments, they did not find them persuasive on the issue of unfitness since your back surgery occurred approximately three years after your discharge from the Marine Corps. In the Board's opinion, too much time had passed from your discharge date to your 2017 surgery to be able to rely on the surgery evidence to determine your fitness for duty in 2014. Further, the Board considered your VA ratings but did not find them probative for fitness for duty 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. 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.

