



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. 4965-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 21 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 November 2003. In 2004, you suffered shrapnel related injury to your left knee after being exposed to an Improvised Explosive Device blast in Afghanistan. You underwent a Magnetic Resonance Imaging (MRI) scan on 8 July 2005 that revealed a mild intrasubstance injury of your posterior cruciate ligament and mild patella alta. As a result, you were placed on two periods of limited duty. In December 2005, an exploratory arthroscopy was performed on your left knee. That procedure revealed insufficient pathology to warrant correct surgery. You had no swelling and full range of motion. However, after continued knee pain, you were recommended for a MOS change or administrative separation for condition not a disability on 8 March 2006. You were eventually discharged on 23 May 2006 for condition not a disability. Post-discharge, you continued to suffer symptoms from his left knee condition and received treatment including a spinal cord stimulator insertion in 2016 and 2018. On your previous application to this Board, you were granted partial relief in the form of changing your narrative reason for separation to disability with severance pay. This decision was based on an advisory opinion that concluded your left knee condition was, more likely than not, unfitting at the time of your discharge from the Marine Corps and would have been rated at 10% had it been adjudicated by the Physical Evaluation Board. In your current application for reconsideration, you provided new medical

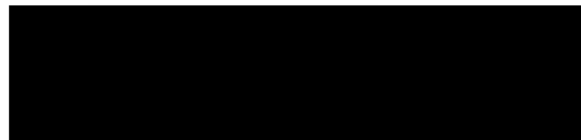
evidence that documents you continue to suffer from issues with your left knee in addition to witness statements attesting to your medical status after your 2004 blast injury.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list due to the residual effects of your 2004 blast injury. You argue that you should have been provided an opportunity for a medical board and processing through the Disability Evaluation System (DES) due to your left leg injury. Unfortunately, the Board disagreed with your rationale for relief. While the Board agrees that you should have been processed through the DES, as evidenced by their previous decision to change your narrative reason for separation to disability, they did not agree that you should be placed on the disability retirement list. They made this finding based on the medical evidence that documents your leg condition did not merit a disability rating of 30% or greater at the time of your discharge from the Marine Corps. The Board closely considered your post-discharge medical evidence that documents your leg condition worsened over time and required extensive treatment. However, the military disability system assigns ratings based on disability conditions as of the date of discharge from active duty. In reviewing your medical evidence, the Board again concurred with the advisory opinion from your previous case that concluded a 10% rating for your left leg was appropriate due to the lack of pathology at the time and absence of range of motion restrictions. While the Board sympathizes with your current medical condition, they felt it falls outside the military disability system and within the purview of the Department of Veterans Affairs. 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,

10/24/2021

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Deputy Director

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