



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. 6069-21
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.

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 2 December 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 August 2003. You underwent left knee arthroscopic surgery on 19 August 2010. Physical therapy notes document that you continued to experience some pain after your surgery but your knee condition steadily improved as you commenced workouts. On 4 January 2011, you reported some knee pain with swelling but denied locking and instability. As a result, you were discharged at the completion of your required active service on 2 February 2011. On 30 November 2012, you received treatment for left knee pain after injuring your knee while coaching basketball the previous month. Imaging reports document that you suffered from a mild Anterior Cruciate Ligament (ACL) deficiency in your left knee. On 7 March 2013, you again stated to your medical provider that you injured your left knee while coaching basketball in 2012. This Board previously denied your request to be placed on the disability retirement list on 23 September 2021 based, in part, on an unfavorable advisory opinion from Director, Secretary of the Navy, Council of Review Boards (CORB) and their determination that the medical evidence did not support relief in your case.

The Board carefully considered your arguments you deserve to be placed on the disability retirement list. You argue that your medical records were not properly routed for possible review in the Disability Evaluation System and that you were unfit for continued naval service at the time of your discharge due to your knee condition. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board agreed with the rationale utilized by the previous board in their decision to deny your request to be placed on the disability retirement list.

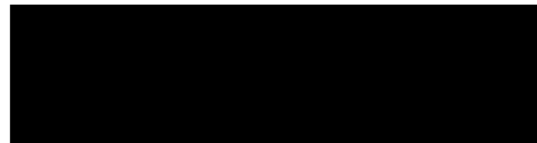
After reviewing the evidence in your case, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness at the time of your discharge. The Board noted that you provided no new medical evidence with your reconsideration request. Accordingly, in making their finding, the Board again relied on the 4 January 2011 medical report that noted, despite continued pain, you suffered from no locking or instability of your knee. Notes from the visit also documented that you were “doing good.” Further, the Board took into consideration that you did not report any additional knee pain until approximately 21 months after your release from active duty and were able to participate in basketball related activities. In the Board’s opinion, this was strong evidence that your knee condition did not prevent you from performing the duties of your office, grade, rank or rating at the time of your discharge in February 2011. In effect, the Board substantially concurred with the previous advisory opinion that stated there was “no clear indication of resulting significant sustained impairment of duty related functioning due to any cause or condition while serving on active duty.” Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

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.

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,

12/4/2021

A large black rectangular redaction box covering the signature of the Deputy Director.

Deputy Director

A black rectangular redaction box covering the contact information of the Deputy Director.