



On 4 November 2003, you attended a medical addiction consultation. The consultation recommended that you attend the Mental Health Unit to address psychological issues related to trauma. The consultation further explained that there was “compelling reason to extend enlistment for tx [treatment] of substance/mental health issues. Rec[ommend] proceed with separation promptly as planned.” On 1 December 2003, the Substance Abuse Counseling Center (SACC) issued a report of its evaluation, and it noted that you self-admitted to the use of methamphetamine. According to the SACC, you should attend the Marine Drug Awareness Course and be processed for administrative separation. Further, according to the SACC, after the completion of the course, you showed “poor potential for future service.” In December 2003, your commanding general directed that you be discharged with an OTH characterization of service and, on 19 December 2003, you were so discharged.

Subsequent to your discharge, and as you describe in your petition, you filed applications with the Naval Discharge Review Board (NDRB) seeking an upgrade to your discharge characterization. After denying your first application, you filed additional applications and, thereafter, the NDRB upgraded your discharge to General (Under Honorable Conditions), and, ultimately, to Honorable. In addition, you state in your petition that you requested Headquarters Marine Corps (HQMC) to update your Certificate of Release or Discharge from Active Duty (DD 214) to include several medals, dates of combat campaigns, and military education. You state in your petition that your DD 214 was eventually updated to include missing awards, but that your DD 214 is still missing military education, combat campaigns, and deployment dates.

In your petition, you request that you be placed on the permanent disability retired list (PDRL) at 100%, with back pay, that you be retroactively promoted to Corporal/E-4, that your DD 214 reflect that you attended the School of Infantry in January 2001, that your DD 214 reflect that you served in support of Operations: Enduring Freedom and Iraqi Freedom, Block 23, 25, 26, and 28 of your DD 214 be changed to reflect “Retirement,” “Par. 8401,” “SEJ,” and “Disability, Permanent (Enhanced).” You also request that the following documents be removed from your service record and destroyed: 2003 nonjudicial punishment documents, administrative separation records, all negative counseling and other derogatory records related to your 2003 post-combat misconduct and undiagnosed PTSD, previous NDRB decisions and HQMC letters, and (5) all DD214s and DD215s issued prior to September 29, 2021. In support of your requests, you contend that you suffered from undiagnosed service-connected PTSD and TBI at the time of your discharge, which made you unfit to continue serving as an infantry squad leader. You provided a written brief and attached materials in support of your requests.

In order to assist it in reviewing your petition, the Board obtained the 28 November 2022 AO. According to the AO, in part:

Post-discharge, the VA appropriately determined his PTSD (and TBI) were service-connected and granted him disability benefits based on his level of disability at the time of his disability evaluations post-discharge (the VA Disability Evaluations and VA Rating Decisions were not available for review).

However, the contention he was also unfit for continued service due to a mental health condition that rendered him unable to adequately perform the range of duties

commensurate with his rate and rank, and therefore warranted a Medical Evaluation Board (MEB) and referral to the Physical Evaluation Board (PEB), is not as well supported in the in-service records.

During his Separation Physical Examination, Petitioner indicated worsened overall health due to a range of somatic and mental health symptoms. However, he denied any conditions that caused him to miss duty, require treatment by a health care provider, or suffered any illness or injury for which he did not seek medical care. He denied any conditions limiting his ability to work in his military specialty or require geographic or assignment limitation. He denied having any questions about his health or intent to file for VA disability.

The examining physician reviewed his interim medical history and did not indicate any significant issues. Petitioner was found physically qualified for separation. On his Post-Deployment Health Assessment, Petitioner endorsed seeing numerous dead and wounded, discharging his weapon, feeling in danger of being killed, as well as multiple somatic and psychological symptoms.

However, he also described his current health as “good” and denied seeking mental health counseling/care nor intending to seek mental health care. He denied having any questions or concerns about his health. After examining Petitioner, the examining physician did not assess a need for referral for any deployment related symptoms or conditions.

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Post-discharge clinical evaluations and clinical opinions consistently diagnosed Petitioner with PTSD and attributed its origin to his in-service combat deployment to Iraq. All examiners opined the early manifestations of PTSD in-service mitigated the drug abuse misconduct, with Dr. [ ] further asserting Petitioner was medically ‘unfit for service and a medical disability retirement separation under Honorable conditions is the appropriate disposition.’ However, while the examiners described the traumatic events and early psychological manifestations that eventually evolved into a diagnosable PTSD condition post-discharge, there was little to no establishment of a nexus between the early prodromal symptoms and how Petitioner was occupationally impaired to the point of being unable to execute his duties and responsibilities. Even the drug abuse misconduct was characterized as isolated and impulsive.

Review of the available objective non-clinical evidence documented Petitioner adequately executed the range of responsibilities of his rate and rank up to his discharge. His Proficiency/Conduct (Pro/Con) marks were consistently competitive and predominantly ranged from 4.4 - 4.6, with the exception of his marks following his first NJP (20020731 Pro/Con 4.1/3.9). Of note, his post-deployment Pro/Con assessment on 20030731 was 4.6/4.4 (prior to second NJP). In his Letter recommending administrative discharge with an OTH, his Weapons

Company Commanding Officer recommended final Pro/Con marks of 2.0/3.0 for misconduct, not an inability to perform his duties.

The AO concluded, “in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner’s contention that at the time of his discharge he was unfit for continued military service and should have been medically retired.”

You received a copy of the AO, and you submitted the 27 December 2022 response in rebuttal to the AO. In your response, you asserted that the AO (1) stated the wrong dates of your deployment, leaving out four months of your Iraq deployment; (2) stated the wrong date of your post-deployment health assessment wrong; (3) and ignores key medical evidence on the record regarding your PTSD and unfitness to serve in 2003. According to your response, objective evidence demonstrates that you developed severe PTSD while on active duty, which rendered you unfit for continued service as a squad leader in the Marine Corps infantry. Therefore, according to your response, you should have been examined at the end of your combat deployment to Iraq but was not, and as a result your PTSD went undiagnosed. You further dispute the AO’s determination of a lack of nexus between your early prodromal symptoms and any occupational impairment.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, 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 reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. At the outset the Board concurred with the findings of the AO, finding that it sufficiently considered the relevant factors and reached a reasonable conclusion. Notably, the Board observed no evidence that you had any unfitting condition while on active duty. Specifically, as explained by the AO, during your separation physical you denied that you had any conditions that limited your ability to work in your military specialty. Further, the examining physician found that you physically qualified for separation. In addition, review of your proficiency and conduct marks demonstrate that you were adequately performing the range of responsibilities of your rank up to your discharge. And, as noted by the AO, the only recommendation that you received to have low performance marks was based on your misconduct and not on your failure to perform your military duties. In other words, the disability evaluation system provides a determination of medical fitness for service, during your time of service. In your case, there were no indications that you were suffering from conditions that prevented you from performing your duties.

You have asserted that your commanding officer found you to be “unfit for service.” Your assertion, however, did not provide the context in which this was stated. Your commanding officer found that you were unfit for service due your use of illegal drugs and your inability to live up to Marine Corps Standards, which your commanding officer found especially egregious due to the fact that, as an NCO, you led two other Marines in the use of illegal drugs. By contrast, there were no recommendations in your service or medical records that you be referred for findings of whether you were medically fit for service. The Board also carefully considered the entirety of your response to the AO. With respect to your assertions concerning the timeline of events, the Board determined that these assertions did not overcome the lack of contemporaneous evidence of an unfitting condition. In addition, regarding your assertion that there was overwhelming evidence that you were medically unfit, the Board noted there is nothing in your service or medical records reflecting any referral to a medical evaluation board, nor did you provide any such evidence.

In reviewing your petition, the Board acknowledged that since your discharge, you have been diagnosed with several mental health conditions, but these conditions did not manifest to the level of unfitting conditions during your service and prior to your discharge due to misconduct. In fact, the original reason for your discharge was due to your drug use, which was evidenced by your second nonjudicial punishment during your enlistment. The Board further noted that you have received the benefit of mitigation of your discharge characterization as a result of your applications to the NDRB. With respect to your assertion concerning findings by the VA, the fact that the VA rated you for disability conditions that it determined were service connected to your time in the service did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps 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. Accordingly, the Board denied your request to be placed on the permanent disability retired list (PDRL) at 100%, with back pay, and that you be issued a new Certificate of Discharge or Release from Active Duty (DD 214) that contains narrative reason, authority, and separation code reflecting that you were retired due to a disability.

In your petition, you also requested that you be retroactively promoted to Corporal/E-4, and that the following documents be removed from your service record and destroyed: 2003 nonjudicial punishment documents, administrative separation records, all negative counseling and other derogatory records related to your 2003 post-combat misconduct and undiagnosed PTSD, previous NDRB decisions and HQMC letters, and all DD214s and DD215s issued prior to September 29, 2021. After a thorough review of your record, the Board determined insufficient evidence of error exists to grant you the relief you seek. Additionally, as previously explained, the Board found that you received adequate mitigation of your misconduct through the actions of the NDRB. Therefore, the Board concluded any injustice that existed in your record was adequately addressed by the NDRB and no further relief was required.

Finally, in your petition you also requested that your DD 214 be corrected to reflect that you attended the School of Infantry in January 2001 that you served in support of Operations Enduring Freedom and Iraqi Freedom. Upon review of your request, this Board noted that it is not an investigative body, and petitioners are required to exhaust their administrative remedies

prior to seeking relief from this Board. Based on the attachments included in your petition, it appears that you had been in contact with HQMC, Manpower Management Records Research and Reconstruction Section (MMRP-10), 2008 Elliot Road, Quantico, Virginia 22134. The Board noted that the materials you provided did not include any analysis of the reasons for the denial of any request by you for these changes to be made to your DD 214. Accordingly, the Board denied this portion of your petition due to your failure to exhaust administrative remedies.

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,

2/15/2023

