



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. 547-22
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 13 April 2023. 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, to include the Under Secretary of Defense Memo of 25 Jul 18 (Wilkie Memo). The Board also considered the 28 February 2023 advisory opinion (AO) from a qualified medical professional, which was provided to you and to which you did not provide a response.

Regarding your request for a personal appearance, the Board determined that a 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 30 November 2005. On 2 July 2007, you were injured in your thigh by an improvised explosive device (IED) in Iraq. As described in the AO, following this incident you received mental health counseling. As further described in the AO, in July 2009, you had surgery to remove a calcified mass in your thigh and you were thereafter referred to physical therapy. You completed your active duty service on 29 November 2009.

In your petition, you request to be medically retired with a disability due to suffering from post-traumatic stress disorder (PTSD) as well as due to a serious physical condition that resulted in

surgery prior to your release from active duty. In support of your request, you contend that, due to everything that happened to you on deployment, it made you not understand what was happening to you, and you did not understand the feelings that you were experiencing. You further assert that, two months after your discharge, you received a 60% disability rating from the Department of Veterans Affairs (VA), and since that time your rating has increased to 90% with 70% for PTSD and 50% for residuals to your leg as a result of the aforementioned explosion.

In order to assist it in reviewing your petition, the Board obtained the AO, which was considered unfavorable to your petition. The AO, in part, reasoned as follows:

After review of all available records, it is my medical opinion that Petitioner's conditions of PTSD and Left Hip Heterotrophic Ossification did not prevent the Service member from reasonably performing the duties of their office, grade, rank, MOS, or rating. Additionally, Petitioner's conditions did not represent an obvious medical risk to the health of the member or to the health or safety of other members, or impose unreasonable requirements on the military to maintain or protect the Service member.

The AO concluded, "in my medical opinion, the preponderance of available objective 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."

The Board carefully considered your petition and assertions contained therein and denied your requested 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 of 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 denying your request for a disability discharge, the Board observed that there were no findings that you had a qualifying disability condition while you were on active duty. The Board concurred with the finding of the AO, particularly its findings that your noted medical conditions did not prevent you from reasonably performing the duties of your office, grade, rank, MOS, or rating. Additionally, those conditions did not represent an obvious medical risk to your health or to the health or safety of other members, or impose unreasonable requirements on the military to maintain or protect you. Further, the Board observed the actual reason for your separation from service was due to your release from active duty at the completion of your required service.

Further, your assertion that the VA awarded you service connection for disabilities after your 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, considering there is no indication that you suffered from any unfitting condition as that phrase is used within the Disability Evaluation System, the Board denied your request for a medical discharge.

Lastly, in light of the Wilkie Memo, the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity.

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,

5/1/2023

