



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

█  
Docket No. 1211-22  
Ref: Signature Date

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Dear Petitioner:

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 25 May 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. In addition, the Board considered the 11 April 2023 Advisory Opinion (AO) from a qualified medical provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

A review of your record shows that you entered active duty in the United States Marine Corps (USMC) on 21 December 1983. On 13 April 1994, you were counseled for failing to maintain USMC height and weight standards and you were placed on the Weight Control program. You were subsequently counseled for not being recommended for reenlistment due to your height and weight. On 22 March 1996, there is a memorandum from your commanding officer (CO) approving an alternate weight of 220 pounds with requirement of maintaining body fat of 17%, while in his command. At a new command, █ Communication Battalion █ Force Services Support Group Marine Forces Reserve, you were directed to go on a weight control program.

On 1 November 1999, a Family Medicine Physician at [REDACTED] Army Health Clinic evaluated you, stating your physical appearance was not due to a pathological disorder, you were fit for participation in a physical exercise program, and the recommended loss of 3.4 pounds per week and a total of 40 pounds within 3 months was a realistic goal. On 18 November 1999, you presented to medical with a leg injury sustained during physical training. Diagnosed with muscle strain left leg, you were referred to Physical Therapy for four weeks, orthopedic evaluation, and follow up with a primary care provider. Subsequently, you were placed on light duty from prolonged standing, jogging, weight lifting involving the lower extremities “until further notice.”

You were re-examined for weight control on 16 February 2000; the provider noted that your left hamstring injury was severe and still symptomatic. The provider found you were still overweight not due to a pathological disorder but noted

“ [REDACTED] has an injury to his left hamstring muscles which occurred Nov. 15, 1999. On examination today his left hamstring muscle group is still swollen and tender. This injury while doing physical training exercises. Because of continued work outs it has not healed yet and this condition is preventing him from doing enough exercise to bring his weight down to standards.”

In an undated statement during your administrative discharge proceedings, you stated you were placed on no Physical Training by the VA physicians at VA Hospital [REDACTED] due to your left hamstring injury. Despite these limitations, you write that your command expected you to participate in the command remedial physical training program in order to return to height/weight standards. You further state despite your ongoing medical injury, you were unjustly being administratively processed for weight control failure. On 30 June 2000, you were involuntarily discharged for weight control failure with an Honorable characterization of service.

In your petition, you request a disability retirement instead of an administrative discharge for weight control. You contend, post discharge, you have developed numerous chronic medical conditions, to include end stage renal failure in November 2012, requiring regular dialysis treatments. You further argue that your treating physical told you that you were in kidney failure in 1999 and that was the reason for your failure to maintain weight standards.

As part of the Board’s review, it considered the AO provided by a qualified medical provider. The AO stated in pertinent part:

Petitioner underwent several medical evaluations to rule out other medical conditions as a cause for his inability to meet weight/height standards, including laboratory evaluations for his lipid profile (determine blood levels for cholesterol and triglycerides), TSH/T4 (to rule out thyroid disease), and a comprehensive metabolic panel (which included tests for renal functioning). There were no symptoms, physical examination findings, or laboratory abnormalities documented to indicate other causes for his inability to maintain height/weight standards.

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 due to a renal condition and should have been medically retired."

The Board carefully reviewed your petition and the material that you provided in support of your petition and it disagreed with your rationale for relief. In reaching its decision, the Board concurred with the AO that the evidence you provided was insufficient to support a finding that you were unfit due to any qualifying disability conditions. In its review, the Board did not observe any evidence that there was any error or injustice apparent in your administrative separation process. Therefore, the Board determined you were properly discharged for weight control failure. While the Board noted that your VA disability evidence, they concluded it was insufficient to show a nexus between your kidney condition, diagnosed 12 years after your discharge, and your failure to maintain weight standards. As a result, the Board concluded insufficient evidence of error or injustice exists with your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

6/9/2023

