



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

█  
Docket No. 2280-22  
Ref: Signature Date



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 8 August 2022. 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.

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 in August 1996. On 23 November 2002, you deployed to Kuwait until 23 November 2003. On 14 February 2004, you deployed to Iraq until 11 September 2004, and you deployed again to Iraq from 3 February 2006 to 30 January 2007. During your 2006 to 2007 deployment to Iraq, you were exposed to an improvised explosive device. In 2009, you underwent a corneal transplant due to a Keratoconus condition. As a result of this condition and transplant, in June 2010, a Physical Evaluation Board (PEB) found you unfit and assigned you to the temporary disability retirement list (TDRL) with a 40% disability rating. On 18 November 2015, a periodic

TDRL examination determined that your eye condition had improved as a result of a second corneal transplant. A letter to you dated 2 February 2016, from the President of your PEB explained:

After a thorough review of all the medical and non-medical information, and by way of enclosure (1), the Physical Evaluation Board (PEB) has made the following findings in your case: that you are Unfit for continued Naval Service due to a physical disability ratable at 0% percent and that you are to be removed from the Temporary Disability Retired List (TDRL) and separated from the Naval Service with severance pay.

In accordance with this letter, you were discharged with severance pay. After your discharge, the U.S. Department of Veterans' Affairs (VA) rated you with several service connected disabilities, specifically, post-traumatic stress disorder (50%-2017, 70%-2018), Bilateral Corneal Transplant with Keracotonus (40%), and seven other disability conditions.

In 2019, you filed a petition with this Board seeking disability retirement status based on your eye condition as well as PTSD. In connection with its review of this prior petition, the Board obtained an advisory opinion (AO) from a medical professional, which was considered unfavorable. On 6 July 2020, this Board denied your requested relief, concluding that, "you did not qualify for continued placement on the disability retirement list since your eye condition improved significantly after your second corneal transplant and your PTSD symptoms were not unfitting at the time of your discharge from the Marine Corps." In reaching its decision, the Board based its decision, in part, on the lack of evidence that you suffered from PTSD symptoms while on active duty that created a substantial occupational impairment, as well as your ability to work for the U.S. Postal Service for approximately three years post-discharge.

In your current petition, you seek the award of a disability retirement. In support of your request, you contend that it was error when your eye condition was found to be not unfitting and not sufficiently severe to be rated at 30 percent. You argue that you demonstrated by a preponderance of the evidence that your eye disorder should be rated at least 30 percent and found unfitting. In support of your contention, you assert that (1) the VA rated your eye condition at 40 percent immediately after your separation from the Marine Corps; (2) you had two failed corneal transplants; (3) you wear corrective lenses; (4) you are unable to care for yourself in any way, nor are you able to work; and (5) you are currently rated at 70 percent for the same condition. Thus, according to your contentions, your eye disorder would render you undeployable, which makes it unfitting for service. You provided enclosures to your petition, which included a statement from you and your spouse, medical records, and VA findings.

In review of the entirety of your naval service record, and your petition and its enclosures, the Board disagreed with your rationale for relief. In considering your current petition, the Board observed that you did not provide new matter sufficient to overcome the rationale of this Board's 2020 decision. In denying your request for a disability discharge, the Board observed that the PEB appropriately found that your eye condition improved sufficiently for you to be removed from the TDRL and to be discharged with severance pay. After considering your arguments, the Board determined that none of your arguments were sufficient to overcome the findings of the

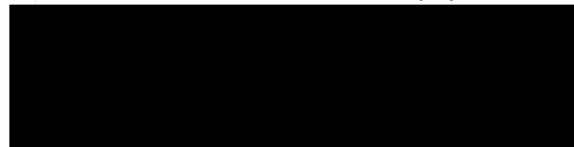
PEB in your case. The Board further observed that non-deployability is a factor in determining unfitness but not the standard for placement on the Permanent Disability Retired List (PDRL). In your case, the PEB found that you were unfit but at a level which resulted in discharge with severance pay.

In addition, the Board was not convinced by your arguments relating to your post-discharge ratings by the VA. The Board noted that such findings from the VA for service connected disability conditions do not necessarily demonstrate that these conditions would be 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. In your case, the relevant time period for determining your unfitness for military duty was when you were on active duty, and, later, on the TDRL. During those time frames, the PEB found you unfit, placed you the TDRL, and, later, determined that you had sufficiently improved such that you should be removed from the TDRL and discharged. The Board determined that you did not provide evidence sufficient for the Board to find that the PEB was in error when it made its determination as to your fitness. Ultimately, the Board concluded that there was no error or injustice relating to the findings of your fitness and your discharge and concurred with the previously issued AO and Board decision. 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,

8/19/2022



Executive Director

Signed by: 