



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

█  
Docket No. 2604-22  
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 22 July 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 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 enlisted in the Marine Corps and commenced a period of active duty on 13 December 2000. While you were in basic training you injured your back participating in an obstacle course. On 11 April 2001, you were notified that you were going to be administratively separated from the Marine Corps based on a condition, not a disability. On 3 May 2001, you were placed on limited duty. On 1 August 2001, you waived your right to disability processing and a PEB. On 29 August 2001, you were dropped from training due to back pain. On 4 September 2001, Commanding Officer, Naval Hospital, █, recommended that you be separated based on your mechanical back pain in light of your waiver of the PEB. On 3 October 2001, you were discharged due to condition, not a disability, with an uncharacterized characterization of service.

On 4 October 2001, the U.S. Department of Veterans' Affairs rated you at 0% disability for lumbosacral strain, which was later increased upon your appeal to 10%. You later filed a

petition with the Naval Discharge Review Board (NDRB), which, on 14 February 2003, found no error in your discharge. On 18 June 2018, the VA increased your disability rating for lumbosacral strain to 20%.

In 2019, you filed a previous petition with this Board, in which you sought to have your reason for discharge changed to a medical retirement, as well as additional relief. By letter to you dated 10 July 2019, this Board directed relief as follows:

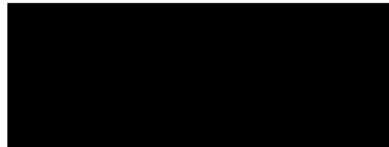
Petitioner's naval record be corrected by changing Petitioner's record to show he was unfit for continued naval service due to Chronic Lumbosacral Strain, VASRD Code 5237, with a disability rating of 10% effective the date of his discharge. Petitioner shall be issued a DD Form 214 or 215 that reflects his narrative reason for separation is "Disability" and a characterization of service as "Honorable" with a reentry code of "RE-3P" and appropriate separation code based on the change to his narrative reason for separation. A copy of this decision shall be placed in Petitioner's record.

In your current petition before this Board, you have requested that your type of separation be upgraded to a medical retirement with an 80% disability rating. Your current petition does not provide evidence or argument demonstrating disagreement with the prior finding of this Board. Specifically, the Board based its assignment of a 10% disability rating for your back condition on the VA rating assigned effective the date of your discharge. While the Board considered the recent VA increase to your overall disability rating, the Board determined that you did not provide sufficient new matter for the Board to change its prior decision. The Board considered the fact Disability Evaluation System ratings are assigned effective the date of discharge. Therefore, absent evidence the January 2004 VA rating of 10% was erroneous, the Board concluded insufficient evidence of error or injustice exists to merit placing you on the Disability Retired List. 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,

8/2/2022

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Deputy Director

Signed by: 