



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. 2605-22
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 11 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 26 May 1993. On 2 July 1993, you reported to medical and complained of pain in your knees. On 6 July 1993, you were placed on light duty and recommended for a medical board. On 12 July 1993, you were diagnosed with chondromalacia of both knees and symptomatic debridement and recommended for administrative separation for erroneous enlistment. On 21 July 1993, you were discharged pursuant to the medical board findings with an uncharacterized entry level separation.

You previously filed a petition with this Board in 2020 seeking a medical discharge. On 9 November 2020, this Board denied your petition, explaining that it “found medical evidence that you entered the Marine Corps with a history of knee issues that previously required surgery.” The Board determined that this supported the medical board finding that your chondromalacia condition preexisted your entry into the Marine Corps and should have disqualified you from enlistment. Therefore, the Board denied your petition.

In your current petition, you again seek a medical discharge. In support of your petition, you contend that the Marine Corps knew of your knee condition prior to his entry. You also state that you were subject to abuse while you were in recruit training. You provided a personal statement setting forth your assertions, as well as describing that you have post-traumatic stress disorder as a result of the abuse you described.

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures. The Board also reviewed your service and medical records. 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. In denying your request for a medical discharge, the Board observed that there were no findings that you had a qualifying disability condition while you were on active duty. Rather, the Board found that you were in fact discharged based on contemporaneous medical findings that you had a condition that existed prior to entry, which was disqualifying for enlistment. With respect to your statement that the Marine Corps knew about your knee condition prior to your enlistment, the Board noted that confirms that you had a disqualifying condition prior to enlistment, that you should not have been enlisted due to your preexisting disability condition, and were appropriately discharged for erroneous enlistment. In reaching its conclusion, the Board also determined that the presumption of regularity applied to the process employed with respect to the medical findings that resulted in your separation. 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,

7/19/2022

