



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. 2686-22
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 24 June 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 on 22 March 2010. In September 2010, a medical doctor diagnosed you with an asthmatic condition, determined that it was not considered a disability, and recommended that you be discharged. On 22 September 2010, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 28 September 2010, your commanding officer recommended that you discharged due to condition, not a disability. On 15 October 2010, your commanding general directed that you be discharged due to condition, not a disability and, on 18 October 2010, you were so discharged.

In your petition, you requested that your narrative reason for discharge be changed from condition, not a disability, to a disability discharge. In support of your petition, you contend that you have service connected asthma, and that it was improperly determined to be a condition, not

a disability, because it did not exist prior to service. In support of your petition you provided a letter from the Department of Veterans' Affairs (VA) containing a finding that you have a 10% service connected disability.

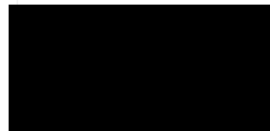
The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures. The Board also reviewed your service and medical records. In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service 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 disability 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, not a disability. Medical records document that your asthma condition prevented you from performing the Marine Corps PFT. While an inability to perform the PFT is one criteria for a finding of unfitness, the Board determined this factor alone was insufficient to find that you were unfit for continued naval service. Ultimately, the Board concluded that you were appropriately discharged for the convenience of the government based on your inability to complete the PFT and your training while assigned to the School of Infantry. In reaching its conclusion, the Board also determined that the presumption of regularity applied to the process employed with respect to your narrative reason for separation.

Finally, to the extent you assert that the VA later provided you service connected disability findings, the Board noted that any such findings from the VA for service connected disability conditions did not persuade the Board these conditions were unfitting at the time of your discharge from the Marine Corps since 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, the Board determined insufficient evidence of error or injustice exists to warrant a change to your record.

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,

7/4/2022



Executive Director

Signed by:

