



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. 2963-22
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 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.

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 9 August 2010. On 22 August 2012, you were notified that you needed to attend a review by a Physical Evaluation Board (PEB). On 17 October 2012, the PEB issued a notification that you were unfit for service due to a condition that existed prior to your entry into service. On 29 November 2012, in accordance with the findings of the PEB, you were discharged with an honorable characterization of service based on a disability, existing prior to entry. After your service, on 29 January 2015, the U.S. Department of Veterans' Affairs (VA) granted you a 100% service connected disability finding.

In your petition, you seek a change to your Narrative Reason for Separation set forth in your Certificate of Discharge or Release from Active Duty (DD 214). Specifically, you state that your DD 214 erroneously reflects that your disability existed prior to service despite the fact it

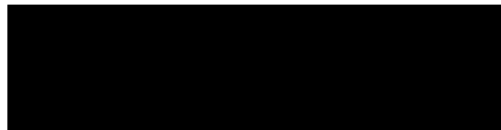
manifested during your service. In support of your request, you provided information demonstrating that the VA assigned you a 100% service connected disability rating. You further state that without this correction, 100% of your GI Bill will not be granted.

The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures, and it disagreed with your rationale for relief. 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 disability condition that existed prior to your entry into service. 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. Absent substantial evidence to the contrary, the Board concluded the presumption of regularity supports a finding that you were properly discharged based on the PEB findings. The fact that the VA later provided you service connected disability findings, was determined to be insufficient evidence to overcome the presumption in your case. In making this finding, the Board considered that the VA decision to find a service connection is not binding on the Navy and is based on a review process separate and distinct from the Department of the Navy. 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

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Executive Director

Signed by:

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