



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. 3134-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 19 September 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 27 June 2017. On 18 September 2017, you were issued a written counseling concerning the Marine Corps' rules concerning Internet posting. On 13 December 2017, you were administratively dropped from the ■■■■■■■■■■. On 16 July 2019, you were medically evaluated and found physically qualified for discharge. On 13 September 2019, you were issued a written counseling concerning the fact that you were eligible, but not recommended for, promotion to corporal, due to legal issues. On 23 October 2019, you received nonjudicial punishment for failing to obey a lawful order or regulation by posting inappropriate Internet content on an adult website. On 24 October 2019, you received a page 11 warning concerning your NJP. Subsequently, you received a medical diagnosis that you had a condition, which was not considered a disability. On 20 November 2019, you were informed of the initiation of administrative separation proceedings and your rights in connection therewith based

on your condition, not a disability. On 10 December 2019, you received a written counseling concerning your condition, not a disability, and it explained it was based on adult personality disorders. On 12 February 2020, you received a written counseling concerning your proficiency and conduct marks of 3.0. On 2 April 2020, your commanding officer transmitted the recommendation that you be discharged due to condition, not a disability, with a General (Under Honorable Conditions) characterization of service. On 2 April 2020, your Commanding General transmitted his approval of your discharge to Commandant of the Marine Corps and you were so discharged on 17 April 2020.

In your petition, you request that your discharge characterization be upgraded to Honorable and that you be awarded a disability retirement. In support of your request, you contend that your injury was found to be in the line of duty defending another Marine and that your discharge was only based on a wrong diagnosis of having a general personality disorder, which is not a disability. You further contend that you did not have a personality disorder but actually had post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other disabilities, which were rated as service connected as set forth in the documentation you provided from the U.S. Department of Veterans' Affairs (VA).

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition and the Board disagreed with your rationale for relief. With respect to your request for an upgrade of your discharge characterization, the Board did not find an error or injustice. The Board determined that your markings of 3.0 for proficiency and conduct correctly warranted a General (Under Honorable Conditions) characterization of service under the applicable regulations in effect at the time of your discharge.

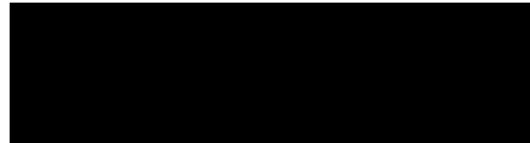
In addition, the Board determined the preponderance of the evidence did not support a finding that you met any of the criteria for unfitness in order for you to qualify for a medical retirement. In denying your request for a disability retirement, the Board observed that, in order for you to qualify 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. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; or the member's disability imposes unreasonable requirements on the military to maintain or protect the member. Here, the Board carefully reviewed the materials that you provided as well as available service records and it noted there was an absence of any medical referrals to a medical board for determinations of fitness. In fact, the Board observed that you were found physically qualified for discharge.

In addition, the fact the VA rated you for service connected disability conditions that were diagnosed during your time in the Marine Corps 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 finding of fitness for duty. In light of all of the foregoing, the Board did not observe any error or injustice in your discharge and characterization of service. Accordingly, the Board observed no error or injustice in your discharge and denied your petition.

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,

10/3/2022



Executive Director

Signed by: █